

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/STOP PRESS:  
HUMAN FERTILISATION AND EMBRYOLOGY ACT 2008

## **MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))**

### **STOP PRESS:**

The Human Fertilisation and Embryology Act 2008 amends the Human Fertilisation and Embryology Act 1990 and the Surrogacy Arrangements Act 1985 and makes provision about the persons who in certain circumstances are to be treated in law as the parents of a child. The 2008 Act received the royal assent on 13 November 2008 and ss 61-64, 67-69 came into force on that date. The following provisions came into force on 1 October 2009: (1) ss 1-7, 9-13, 16-18, 20, 22, 23, 26 (in part), 27-29, 31, 32, 54 (for certain purposes), 55, 59, 60, Schs 1-3, 5 and various repeals in Sch 8; and (2) so far as not already in force, ss 8, 14, 15, 19, 21, 24, 25 (in part) and Sch 7: SI 2009/2232. The remaining provisions come into force on a day or days to be appointed.

### ***Part 1 (ss 1-32) Amendments of the Human Fertilisation and Embryology Act 1990***

Part 1 amends the Human Fertilisation and Embryology Act 1990. By virtue of the 2008 Act s 1, the Human Fertilisation and Embryology Act 1990 applies to all live human embryos regardless of the manner of their creation, and to all live human gametes. The 2008 Act s 2 clarifies that any reference to 'nuclear DNA' includes DNA in both the nucleus and pronucleus of an embryo. Under s 3, embryos created by artificial gametes or genetically modified gametes may not be placed in a woman for the purpose of reproductive cloning. Human admixed embryos, which contain both human and animal DNA, are brought within the regulation of the Human Fertilisation and Embryology Act 1990 by the 2008 Act s 4. Section 5 gives effect to Sch 1, which makes changes to the conditions for disqualification for appointment to the chair, deputy chair and membership of the Human Fertilisation and Embryology Authority. By virtue of s 6, the Authority has the additional general functions of maintaining a statement of general principles and promoting compliance with the requirements imposed by the Human Fertilisation and Embryology Act 1990 and with the code of practice under s 25. The Authority must carry out its functions effectively, efficiently and economically, and have regard to the principles of best regulatory practice in doing so: 2008 Act s 7. The Authority is entitled under s 8 to make arrangements with a government department, a public authority or the holder of a public office for the carrying out of any of its functions. The Authority may also provide assistance to any other public authority in the United Kingdom: s 9. The Authority is permitted by s 10 to delegate its functions.

Section 11 gives effect to Sch 2, which alters the purposes for which research licences relating to embryo testing may be granted. Under s 12, no money or other benefit may be given or received for the supply of human admixed embryos. Schedule 3, which is given effect by s 13, makes provision relating to consent to store or use embryos or gametes to create an embryo in vitro. It is a condition of a licence for treatment that embryos that are known to have an abnormality, including a gender-related abnormality, are not to be preferred to embryos not known to have such an abnormality: s 14, Sch 4. The maximum statutory storage limit for embryos is brought into line with the ten-year limit applicable to the storage of gametes by s 15. Section 16 removes the requirement for a licence application to be in a particular form and for an initial and an additional fee to be paid. The definition of 'nominal licensee' is repealed by

s 17. Under s 18, the Authority may revoke or vary any licence on application by the person responsible or the licence holder. Section 19 makes minor changes to the procedures for notifying licensing decisions to interested parties. A licence may not be suspended for longer than three months, although this period may be renewed: s 20. The Authority is obliged by s 21 to maintain one or more appeals committees.

Section 22 makes provision concerning the directions that may be given in respect of human admixed embryos. By virtue of s 23, the code of practice under the Human Fertilisation and Embryology Act 1990 s 25 must contain information about the giving of a suitable opportunity to receive proper counselling and the provision of such relevant information as is proper. The 2008 Act s 24 alters the rules regarding the information that must be kept on the register of information and the information on the register to which a donor-conceived person is entitled to have access. Provision is made by s 25 regarding the information that may be disclosed by the Authority. Section 26 confers a regulation-making power to enable eggs and/or embryos with altered mitochondrial DNA to be classified as permitted eggs or embryos so that they can be implanted in a woman. The circumstances in which the Authority is entitled to charge a fee under the Human Fertilisation and Embryology Act 1990 are prescribed by s the 2008 Act 27. It is not unlawful for a member or employee of the Authority to be in possession of embryos, gametes or human admixed embryos in the course of his employment: s 28, Sch 5. Section 29 adjusts the rules regarding offences and penalties under the Human Fertilisation and Embryology Act 1990 to take account of the prohibition on the creation and use of human admixed embryos. The making of regulations under the Human Fertilisation and Embryology Act 1990 is dealt with by the 2008 Act s 30. Under ss 31, 32, the Secretary of State is empowered to make amendments to legislation consequent on changes made to the definitions of the terms 'embryo', 'gametes' and 'human admixed embryo'.

## ***Part 2 (ss 33-58) Parenthood in cases involving assisted reproduction***

Section 33 re-enacts the Human Fertilisation and Embryology Act 1990 s 27, and defines a person's mother as the woman who carries a child following assisted reproduction, unless the child is subsequently adopted or parenthood is transferred through a parental order. By virtue of the 2008 Act s 34, ss 35-47 apply, in the case of a child who is being or has been carried by a woman as a result of the placing in her of an embryo or of sperm and eggs or her artificial insemination, to determine who is to be treated as the other parent of the child. Where a child is conceived by a married woman as a result of treatment with donor sperm, her husband is to be treated as the child's father unless it is shown that he did not consent to his wife's treatment: s 35. Under ss 36, 37, an unmarried man is to be regarded as the father of a donor-conceived child if he is treated together with the mother in a licensed clinic in the United Kingdom and both parties have given notice of their consent to him being treated as the father. Section 38 provides that, where a person is to be treated as the father of a child by virtue of s 35 or 36, no other person is to be treated as the father of the child. Where a man's sperm, or an embryo created with his sperm, is used after his death, the man may be treated as the child's father for the purposes of birth registration if various specified conditions are met: s 39. Section 40 makes equivalent provision for the case where donated sperm has been used. The situations in which a man is not to be treated as being a child's father despite his sperm being used are prescribed by s 41.

By virtue of s 42, female civil partners are to be treated in the same way as married persons in relation to determining the parenthood of children born via artificial insemination. Sections 43 and 44 make provision about same-sex female couples who are not civil partners which corresponds to provision made about opposite-sex unmarried couples by ss 36 and 37. There are various circumstances in which ss 42 and 43 do not affect who is to be considered the parent of a child: s 45. Provision is made by s 46 concerning the registration of a deceased same-sex partner as a child's parent in the register of births in certain circumstances. Where a woman has not carried a child, s 47 makes it clear that she is to be treated as a parent of the

child only if the provisions relating to parenthood of the mother's partner apply or she has adopted the child. Under s 48, where a person is to be treated by virtue of ss 33-47 as the mother, father or parent of a child, or as not being the parent of the child, this status applies for all legal purposes. Section 49 specifies the meaning of references to parties to a marriage, s 50 specifies the meaning of references to a civil partnership, and s 51 specifies the meaning of 'a relevant register of births'. The period during which a woman may elect for her deceased partner to be treated as her child's parent for the purposes of birth registration may be extended with the consent of the relevant Registrar General: s 52. Section 53 deals with interpretation. The categories of couples who can apply for a parental order where a child has been conceived using the gametes of at least one of the couple and has been carried by a surrogate mother are extended by s 54. Section 55 makes supplementary provision in relation to parental orders. Section 56 gives effect to Sch 6, which makes various amendments relating to parenthood in cases involving assisted reproduction. Section 57 repeals certain provisions and makes transitional provision, and s 58 deals with the interpretation of terms used in Pt 2.

### ***Part 3 (ss 59-69) Miscellaneous and General***

The Surrogacy Arrangements Act 1985 is amended by the 2008 Act s 59 to enable bodies that operate on a not-for-profit basis to receive payment for providing some surrogacy services. Section 60 amends the Environmental Protection Act 1990 by excluding human admixed embryos and human embryos as defined by the Environmental Protection Act 1990 from the definition of 'genetically modified organisms'. The 2008 Act ss 61, 62 and 64 make provision concerning the making of orders, and s 63 deals with interpretation. Section 65 gives effect to Sch 7, which makes minor and consequential amendments, and s 66 gives effect to Sch 8, which makes various repeals and revocations. Section 67 deals with extent, s 68 with commencement, and s 69 specifies the short title.

### ***Amendments, repeals and revocations***

Subscribers should note that the lists below mention repeals and amendments which are or will be effective when the Act is fully in force. Please refer to the top of this summary for details of the in-force dates of the provisions of the Act. This information may also be found in the COMMENCEMENT OF STATUTES table in the Current Service Noter-up binder. Please also note that these lists are not exhaustive.

The following Acts are repealed: Human Fertilisation and Embryology (Disclosure of Information) Act 1992; Human Reproductive Cloning Act 2001.

Specific provisions of a number of Acts are amended or repealed. These include: Environmental Protection Act 1990 s 106; Human Fertilisation and Embryology Act 1990 ss 1-4, 8, 9, 11-14, 16-21, 24, 25, 31, 33, 41, 45, Schs 1-3; Surrogacy Arrangements Act 1995 ss 1-3.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(1) REGULATION OF THE PROFESSION/1. The Medical Act 1983.

## **1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE**

### **(1) REGULATION OF THE PROFESSION**

#### **1. The Medical Act 1983.**

The principal statute providing for the regulation of the medical profession is the Medical Act 1983<sup>1</sup>.

The Medical Act 1983 provides for the continued existence of the General Medical Council and of branch councils of the General Medical Council<sup>2</sup>; it contains provisions regulating the medical education and registration of persons qualifying as medical practitioners in the United Kingdom<sup>3</sup> and elsewhere in the European Union, and the registration of persons qualifying overseas<sup>4</sup>; it defines the privileges of registered practitioners<sup>5</sup>; it contains wide powers in connection with the disciplinary control of the profession and the fitness of practitioners to practise medicine<sup>6</sup>; and it regulates the keeping of registers of the medical profession and the procedure for registration as a medical practitioner<sup>7</sup>. The general government of the medical profession is vested by the Act in the General Medical Council, but the Council is in many respects subject to control by the Privy Council<sup>8</sup> and is also subject to the oversight of the Council for the Regulation of Health Care Professionals<sup>9</sup>.

Nothing in the Medical Act 1983 extends, or may be construed to extend, to prejudice or in any way to affect the lawful occupation, trade or business of chemists, druggists<sup>10</sup> and dentists<sup>11</sup>, or the rights, privileges or employment of duly licensed apothecaries<sup>12</sup> in Northern Ireland, so far as they extend to selling, compounding or dispensing medicines<sup>13</sup>.

A number of other statutes and statutory instruments contain provision relevant to the practice of medicine<sup>14</sup>.

1 The Medical Act 1983 came into force on 26 October 1983: s 57(2). The Act extends to Northern Ireland: s 57(3). The Medical Act 1983 consolidated the Medical Acts 1956 to 1978. As to the repeal of the former enactments see the Medical Act 1983 s 56(2), (3), Sch 7. For transitional provisions and savings see s 56(1), Sch 6. Where anything done under or for the purposes of any enactment repealed by the Medical Act 1983 would otherwise cease to have effect, it has effect as if it had been done under or for the purposes of the corresponding provision of that Act: Sch 6 para 2. Anything continued in force by the Medical Act 1956 s 57(3) (repealed) continues in force and, so far as it could have been made, given or done under the Medical Act 1983, has effect as if it had been so made, given or done: Sch 6 para 3. The provisions of the Interpretation Act 1978 ss 15-17 (repealing enactments) nevertheless apply: see the Medical Act 1983 s 56(1). As to the repeal of an Act or enactment see STATUTES vol 44(1) (Reissue) PARA 1296 et seq.

2 See *ibid* s 1, Schs 1, 6; and PARA 13 et seq post.

3 'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 s 5, Sch 1. 'Great Britain' means England, Scotland and Wales: Union with Scotland Act 1706, preamble art I; Interpretation Act 1978 s 22(1), Sch 2 para 5(a). Neither the Channel Islands nor the Isle of Man are within the United Kingdom. See further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 3. As to provisions relating to the Republic of Ireland see PARA 11 post.

4 See PARA 93 et seq post.

5 See PARA 190 et seq post.

6 See PARA 138 et seq post.

- 7 See PARAS 34 et seq, 114 et seq post.
- 8 As to the exercise by the Privy Council of its powers under the Medical Act 1983 see PARA 32 post.
- 9 See PARA 33 post.
- 10 As to pharmacists see PARA 880 et seq post.
- 11 As to dentists see PARA 385 et seq post.
- 12 As to apothecaries see PARA 935 et seq post.
- 13 Medical Act 1983 s 54.
- 14 See PARAS 7-10 post.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(1) REGULATION OF THE PROFESSION/2. Scheme of medical legislation.

## **2. Scheme of medical legislation.**

The law does not forbid in general terms the practice of medicine or surgery by unqualified persons<sup>1</sup>. The medical legislation makes provision, however, for the registration of persons who possess certain medical qualifications<sup>2</sup>, and a person who practises medicine or surgery without being so registered is under considerable disabilities as compared with a registered practitioner. Thus he is forbidden to use any title or description implying that he is a registered practitioner or is recognised by law as a physician or surgeon or apothecary<sup>3</sup>; he is not entitled to recover in a court of law his charges for medical attendance or advice<sup>4</sup>; he may not hold appointments which are closed except to registered practitioners<sup>5</sup>; he is not entitled to possess or supply controlled drugs<sup>6</sup>; and he cannot give valid statutory certificates<sup>7</sup>. On the other hand a person can only become a registered practitioner by acquiring a recognised qualification<sup>8</sup>, and, once registered, he is subject to a strict disciplinary system in regard to his fitness to practise<sup>9</sup>, and his registration is liable to be suspended or made subject to conditions if he is considered unfit to practise on grounds of physical or mental health<sup>10</sup>.

1 See PARA 190 post.

2 See PARA 57 et seq post.

3 See the Medical Act 1983 s 49 (as amended); and PARA 190 post.

4 See *ibid* s 46(1), (2) (s 46(2) as amended); and PARA 222 post.

5 See *eg ibid* s 47(1) (as amended); and PARA 210 post.

6 As to the possession and supply of controlled drugs see MEDICINAL PRODUCTS AND DRUGS.

7 As to the giving of certificates see PARA 211 post.

8 See PARA 99 et seq post.

9 See PARA 138 et seq post.

10 See PARA 141 et seq post.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(1) REGULATION OF THE PROFESSION/3. Meaning of 'fully registered person'.

### 3. Meaning of 'fully registered person'.

In the Medical Act 1983, 'fully registered person' means a person for the time being registered as a fully registered medical practitioner under the provisions of the Act relating to registration of persons qualifying in the United Kingdom or elsewhere in the European Union<sup>1</sup>, or registration of EEA nationals holding acceptable overseas qualifications<sup>2</sup>, or registration of eligible specialists and qualified general practitioners<sup>3</sup>, or full registration of persons with limited registration<sup>4</sup>, or temporary full registration of visiting overseas specialists<sup>5</sup>, or registration as a visiting EEA practitioner<sup>6</sup>. Subject to limitations<sup>7</sup>, it also includes a person for the time being provisionally registered<sup>8</sup>; and, in relation to the particular employment or employment of a description for the purposes of which he is registered and to things done or omitted in the course of it and to any other thing incidental to his work in that employment which may not lawfully or validly be done except by a fully registered practitioner<sup>9</sup>, but not in relation to other matters, it also includes any person registered with limited registration<sup>10</sup>. The term 'fully registered' is to be construed accordingly<sup>11</sup>.

1    Ie under the Medical Act 1983 s 3 (as substituted): see PARA 99 post. For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

2    Ie under *ibid* s 19 (as substituted): see PARA 104 post. 'National', in relation to an EEA state, has the same meaning as in the Community Treaties, but does not include a person who by virtue of the Treaty of Accession Protocol No 3 (Channel Islands and Isle of Man) art 2 is not to benefit from Community provisions relating to the free movement of persons and services: Medical Act 1983 s 55(1) (definition amended by the European Primary Medical Qualifications Regulations 1996, SI 1996/1591, Sch 2 para 13(2)). For the meaning of 'the Community Treaties' see the European Communities Act 1972 s 1(2) (as applied by the Interpretation Act 1978 s 5, Sch 1). 'EEA state' means a state which is a contracting party to the EEA Agreement or Switzerland; 'EEA Agreement' means the agreement on the European Economic Area signed at Oporto on 2 May 1992 as adjusted by the protocol signed at Brussels on 17 March 1993 and as amended, so far as relevant to the Medical Act 1983, by Decisions of the EEA Joint Committee Nos 7/94 of 21 March 1994, 190/99 of 17 December 1999, 89/2000 of 27 October 2000, 84/2002 of 25 June 2002 and by the agreement on the participation of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic signed at Luxembourg on 14 October 2003: Medical Act 1983 s 3(3) (substituted by the European Primary Medical Qualifications Regulations 1996, SI 1996/1591, reg 3(1); and amended by the European Qualifications (Health Care Professions) Regulations 2003, SI 2003/3148, reg 9(1), (2)(a), (b); and the European Qualifications (Health and Social Care Professions and Accession of New Member States) Regulations 2004, SI 2004/1947, reg 3(1), (2)); Medical Act 1983 s 55(1) (definitions added by the European Primary Medical Qualifications Regulations 1996, SI 1996/1591, Sch 2 para 13).

3    Ie under the Medical Act 1983 s 21A (as added): see PARA 105 post.

4    Ie under *ibid* s 25 (as amended): see PARA 111 post.

5    Ie under *ibid* s 27 (as amended): see PARA 106 post.

6    Ibid s 55(1) (definition amended by the European Primary Medical Qualifications Regulations 1996, SI 1996/1591, reg 7, Sch 2 para 13; and the Medical Act (Amendment) Order 2002, SI 2002/3135, arts 2, 15(6)(b)). The text refers to registration as a visiting EEA practitioner under the Medical Act 1983 s 18 (as amended) (see PARA 100 post).

7    Ie so far as mentioned in *ibid* s 15(3) (as amended) (see PARA 102 post) (including that provision as applied by s 15A(4) (as added) (see PARA 103 post)) or in s 21 (as amended) (see PARA 108 post), but no further.

8    For the meaning of 'provisionally registered' see PARA 102 note 6 post.

9 le such things as are mentioned in the Medical Act 1983 s 22(7)(a)-(c): see PARA 109 text to notes 17-21 post.

10 Ibid s 55(1) (definition amended by the Medical Act 1983 (Provisional Registration) Regulations 2000, SI 2000/3041, regs 2, 4(6)(a)). For the meaning of 'limited registration' see the Medical Act 1983 s 22; and PARA 109 note 10 post.

11 Ibid s 55(1).

## **UPDATE**

### **3 Meaning of 'fully registered person'**

TEXT AND NOTES--'Fully registered person' now means a person for the time being registered under the Medical Act 1983 s 3, 14A, 18A, 19, 19A, 21B, 27A or 27B as a fully registered medical practitioner, or under Sch 2A as a visiting medical practitioner from a relevant European state, and so far as mentioned in s 15(3) (including s 15(3) as applied by s 15A(4), 21 or 21C, but not further, includes a person for the time being provisionally registered; and 'fully registered' is to be construed accordingly: s 55(1) (definition further amended by SI 2006/1914, SI 2007/3101, SI 2008/1774).

NOTES 1, 2--Medical Act 1983 s 3 amended: SI 2007/3101.

NOTE 2--As to the meaning of 'the Community Treaties' see EUROPEAN COMMUNITIES vol 51 PARA 1•22.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(1) REGULATION OF THE PROFESSION/4. Construction of statutory descriptions.

#### 4. Construction of statutory descriptions.

In any enactment<sup>1</sup> passed before 1 January 1979, 'legally qualified medical practitioner' or 'duly qualified medical practitioner' or any expression importing a person recognised by law as a medical practitioner or member of the medical profession is to be construed to mean a fully registered person, unless the contrary intention appears<sup>2</sup>; and references, however expressed, to a person registered under the Medical Acts<sup>3</sup> or as a medical practitioner are to be construed as references to a fully registered person unless the contrary intention appears<sup>4</sup>.

In any enactment passed after 1 January 1979, the expression 'registered medical practitioner' means a fully registered person, unless the contrary intention appears<sup>5</sup>.

The word 'doctor' is used in various enactments with the meaning 'registered medical practitioner'<sup>6</sup> or 'medical practitioner'<sup>7</sup>, and is also applied as a courtesy title<sup>8</sup>.

1 'Enactment' does not include an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament: Interpretation Act 1978 s 5, Sch 1 (definition added by the Scotland Act 1998 s 125, Sch 8 para 16(3)). As to the Scottish Parliament see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

2 Medical Act 1983 s 56, Sch 6 para 11(1). For the meaning of 'fully registered person' see PARA 3 ante. As from a day to be specified by the Secretary of State and notified in the London, Edinburgh and Belfast Gazettes, Sch 6 para 11(1) is amended so as to provide that in any enactment passed before 1 January 1979 the expression 'legally qualified medical practitioner', or 'duly qualified medical practitioner', or any expression importing a person recognised by law as a medical practitioner or member of the medical profession, is, unless the contrary intention appears, to be construed to mean a registered medical practitioner who holds a licence to practise: Sch 6 para 11(1) (Sch 6 para 11(1), (2) prospectively amended by the Medical Act (Amendment) Order 2002, SI 2002/3135, art 12(8); and the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003/1250, art 30(1)(b)). At the date at which this volume states the law no such day had been specified. For the meaning of 'licence to practise' see PARA 130 note 3 post. As to the Secretary of State see PARA 5 post.

3 I.e. the Acts which were, for the most part, consolidated in the Medical Act 1956.

4 Medical Act 1983 Sch 6 para 11(2). As from a day to be specified by the Secretary of State and notified in the London, Edinburgh and Belfast Gazettes, Sch 6 para 11(2) is amended so as to provide that in any enactment passed before 1 January 1979 references (however expressed) to a person registered under the Medical Acts or as a medical practitioner are, unless the contrary intention appears, to be construed as references to a registered medical practitioner who holds a licence to practise: Sch 6 para 11(2) (as prospectively amended: see note 2 supra). At the date at which this volume states the law no such day had been specified.

5 Interpretation Act 1978 ss 5, 22, 23, Sch 1, Sch 2 para 4 (amended by the Medical Act 1983 s 56(1), Sch 5 para 18; and the Family Law Reform Act 1987 s 33(1), (4), Sch 2 para 74, Sch 4).

As from a day to be appointed, the definition of 'registered medical practitioner' is substituted so that 'registered medical practitioner' means a fully registered person within the meaning of the Medical Act 1983 who holds a licence to practise under that Act: Interpretation Act 1978 Sch 1 (definition prospectively substituted by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, art 16(1), Sch 1 Pt I para 10). At the date at which this volume states the law no such day had been appointed. For the meaning of 'licence to practise' see PARA 130 note 3 post.

6 See eg the Medicines Act 1968 s 132(1) (as amended); and PARA 903 note 2 post. See also the Misuse of Drugs Act 1971 s 37(1) (amended by the Medical Act 1983 Sch 5 para 9); and the Poisons Act 1972 s 11(2) (amended by the Medical Act 1983 Sch 5 para 12).

7 See eg the National Health Service (Pharmaceutical Services) Regulations 1992, SI 1992/662, reg 2(1); and HEALTH SERVICES vol 54 (2008) PARA 345.

8 See PARA 192 post.

## **UPDATE**

### **4 Construction of statutory descriptions**

NOTE 5--Appointed day is 16 November 2009: London Gazette, 21 August 2009.

NOTE 7--In relation to England, SI 1992/662 reg 2(1) now National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 2(1) (amended by SI 2006/552, SI 2006/3373).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(1) REGULATION OF THE PROFESSION/5. Ministerial control and duties.

## **5. Ministerial control and duties.**

Much of the legislation and subordinate legislation concerned with the practice of medicine and the organisation and control of the national health service enacted up to 1968 contained references to the Minister of Health, whose office was established by the Ministry of Health Act 1919. In 1968 all functions of the Minister of Health were transferred to the Secretary of State for Social Services<sup>1</sup>, and the Ministry of Health was dissolved<sup>2</sup>. Most of the functions of the Secretary of State for Social Services relating to Wales were transferred to the Secretary of State for Wales in 1969<sup>3</sup>.

The Department of Health was established in 1988, and functions of the Secretary of State for Social Services relating to health and personal social services were transferred to the Secretary of State for Health<sup>4</sup>. In Wales certain functions of the Secretary of State relating to medical practice<sup>5</sup> have been transferred to the National Assembly for Wales<sup>6</sup>.

1 See the Secretary of State for Social Services Order 1968, SI 1968/1699, made pursuant to the Ministers of the Crown (Transfer of Functions) Act 1946 s 3 (repealed). For any reference to the Minister of Health in any enactment or instrument made or passed before this order came into operation there was to be substituted a reference to the Secretary of State: Secretary of State for Social Services Order 1968, SI 1968/1699, art 5(4)(a). In any enactment, 'Secretary of State' means one of Her Majesty's principal Secretaries of State: see the Interpretation Act 1978 s 5, Sch 1. As to the office of Secretary of State see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 355.

2 Secretary of State for Social Services Order 1968, SI 1968/1699, art 2.

3 See the Transfer of Functions (Wales) Order 1969, SI 1969/388, art 2.

4 See the Transfer of Functions (Health and Social Security) Order 1988, SI 1988/1843. In this title, unless the context otherwise requires, references to the Secretary of State are to be taken to be references to the Secretary of State for Health. As to the Department of Health and the Secretary of State for Health see further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 463-465.

5 The functions transferred include functions under the Abortion Act 1967 (see PARA 209 post); the Medicines Act 1968 s 108(2) (see MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 168); the Misuse of Drugs Act 1971 s 1 (see MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARAS 246-247); the Poisons Act 1972 (except s 1(2)) (see MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 284 et seq); the National Health Service Act 1977 (with specified exceptions) (see HEALTH SERVICES vol 54 (2008) PARA 295 et seq); the Mental Health Act 1983 (with specified exceptions) (see MENTAL HEALTH); the Health and Medicines Act 1988 (see HEALTH SERVICES vol 54 (2008) PARAS 339-340, 503, 715); and the Access to Health Records Act 1990 (see PARA 216 post).

6 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1. As to the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

## **UPDATE**

## **5 Ministerial control and duties**

TEXT--Ministry of Health Act 1919 repealed: National Health Service (Pre-consolidation Amendments) Order 2006, SI 2006/1407.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(1) REGULATION OF THE PROFESSION/6. The national health service.

## 6. The national health service.

The National Health Service Act 1977 imposes upon the Secretary of State<sup>1</sup> the duty to provide, to such extent as he considers necessary to meet all reasonable requirements, hospital accommodation<sup>2</sup>, other accommodation for the purpose of any service provided under the Act<sup>3</sup>, medical, dental, nursing and ambulance services<sup>4</sup>, such other facilities for the care of expectant and nursing mothers and young children as he considers are appropriate as part of the health service<sup>5</sup>, such facilities for the prevention of illness, the care of persons suffering from illness and the after-care of persons who have suffered from illness as he considers are appropriate as part of the health service<sup>6</sup>, and such other services as are required for the diagnosis and treatment of illness<sup>7</sup>. He also has a duty to provide for the medical inspection at appropriate intervals of pupils in attendance at schools maintained by local education authorities and for the medical treatment of such pupils<sup>8</sup>; to provide, to such extent as he considers necessary to meet all reasonable requirements, for the dental inspection of pupils at such schools, for the dental treatment of such pupils and for the education of such pupils in dental health<sup>9</sup>; and to arrange, to such extent as he considers necessary to meet all reasonable requirements, for the giving of advice on contraception, the medical examination of persons seeking advice on contraception, the treatment of such persons and the supply of contraceptive substances and appliances<sup>10</sup>.

1 As to the Secretary of State see PARA 5 ante. In relation to Wales, the functions of the Secretary of State under these provisions have been transferred to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; para 5 text and notes 5-6 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS; HEALTH SERVICES vol 54 (2008) PARAS 6, 74. As to the provision of health services see further HEALTH SERVICES vol 54 (2008) PARA 241 et seq.

2 National Health Service Act 1977 s 3(1)(a).

3 Ibid s 3(1)(b).

4 Ibid s 3(1)(c).

5 Ibid s 3(1)(d).

6 Ibid s 3(1)(e).

7 Ibid s 3(1)(f).

8 See ibid s 5(1)(a), Sch 1 (both as amended); and HEALTH SERVICES vol 54 (2008) PARA 33. See also EDUCATION vol 15(1) (2006 Reissue) PARA 554. As to local education authorities see EDUCATION vol 15(1) (2006 Reissue) PARA 20.

9 See ibid s 5(1A) (as added and amended), Sch 1 (as amended); and HEALTH SERVICES vol 54 (2008) PARA 291. As from a day to be appointed, this provision is repealed by the Health and Social Care (Community Health and Standards) Act 2003 ss 171(2), 196, Sch 14 Pt 4. At the date at which this volume states the law no such day had been appointed. See also EDUCATION vol 15(1) (2006 Reissue) PARA 554. As to the regulation of the dentistry profession see PARA 385 et seq post.

10 National Health Service Act 1977 s 5(1)(b). The provision of contraceptive treatment or advice to a girl under 16 without parental knowledge or consent is lawful in exceptional cases: *Gillick v West Norfolk and Wisbech Area Health Authority* [1986] AC 112, [1985] 3 All ER 402, HL. See also *Re R (a minor)* [1992] Fam 11, [1991] 4 All ER 177, CA (the principle in *Gillick v West Norfolk and Wisbech Area Health Authority* supra, which enables a child of sufficient maturity to consent to treatment, is not conclusive in respect of a ward of court who

refuses treatment which the court feels to be in her best interests). As to consent to treatment generally see PARA 198 post.

## **UPDATE**

### **6 The national health service**

TEXT AND NOTES--For consolidation of health service enactments see National Health Service Act 2006, National Health Service (Wales) Act 2006 and National Health Service (Consequential Provisions) Act 2006; and HEALTH SERVICES.

NOTE 4--National Health Service Act 1977 s 3(1)(c) amended: Health Act 2006 Sch 8 para 7(2).

NOTE 10--*Gillick*, cited, applied: *R (on the application of Axon) v Secretary of State for Health* [2006] EWHC 37 (Admin), [2006] QB 539, [2006] 1 FCR 175.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(1) REGULATION OF THE PROFESSION/7. Medical services under the national health service.

## **7. Medical services under the national health service.**

Each primary care trust in relation to England and each local health board in relation to Wales<sup>1</sup> must, to the extent that it considers necessary to meet all reasonable requirements, exercise its powers so as to provide primary medical services<sup>2</sup> within its area, or secure their provision within its area<sup>3</sup>. A primary care trust or local health board may, in addition to any other power conferred on it, provide primary medical services itself, whether within or outside its area<sup>4</sup>, and make such arrangements for their provision, whether within or outside its area, as it thinks fit, and may in particular make contractual arrangements with any person<sup>5</sup>. It is the duty of each primary care trust and of each health authority<sup>6</sup>, in accordance with regulations<sup>7</sup>, to administer the arrangements made in pursuance of the National Health Service Act 1977 for the provision of primary medical services for its area<sup>8</sup>, and to perform such management and other functions relating to those services as may be prescribed<sup>9</sup>.

A primary care trust or local health board may enter into a general medical services contract under which primary medical services are provided<sup>10</sup>. A general medical services contract may, subject to such conditions as may be prescribed<sup>11</sup>, be entered into with: a medical practitioner<sup>12</sup>; two or more individuals practising in partnership of whom at least one partner is a medical practitioner and where specified conditions are satisfied in respect of the remaining partners<sup>13</sup>; or a company limited by shares where at least one share in the company is legally and beneficially owned by a medical practitioner and specified conditions are satisfied in respect of any share which is not so owned<sup>14</sup>. Subject as provided<sup>15</sup>, a general medical services contract may make such provision as may be agreed between the trust or board and the contractor or contractors<sup>16</sup> in relation to the services to be provided under the contract, remuneration under the contract, and any other matters<sup>17</sup>. A general medical services contract must require the contractor or contractors to provide, for his or their patients, primary medical services of such descriptions as may be prescribed<sup>18</sup>. Provision is also made as to contract payments<sup>19</sup>, the prescription of drugs<sup>20</sup>, required terms<sup>21</sup>, disputes and enforcement<sup>22</sup>, and the provision of assistance and support by a trust or board<sup>23</sup>. Regulations may provide that a health care professional<sup>24</sup> of a prescribed description may not perform any primary medical service for which a primary care trust or local health board is responsible<sup>25</sup> unless he is included in a list maintained under the regulations by a trust or board<sup>26</sup>.

A strategic health authority<sup>27</sup> or a health authority may make one or more agreements with respect to its area under which primary medical services are provided otherwise than by the authority<sup>28</sup>. Such an agreement may be made only with one or more of the specified persons<sup>29</sup>, including a medical practitioner who meets the prescribed conditions<sup>30</sup>. The Secretary of State may by order make provision for any rights and liabilities arising under any such agreement to be transferred from strategic health authorities to primary care trusts and from primary care trusts to strategic health authorities<sup>31</sup>.

1 As to primary care trusts and local health boards see HEALTH SERVICES vol 54 (2008) PARAS 74 et seq, 111 et seq, .

2 'Primary medical services' means services which are primary medical services for the purposes of the National Health Service Act 1977 Pt I (ss 1-28Y) (as amended) (see HEALTH SERVICES vol 54 (2008) PARA 241 et seq): s 128(1) (definition added by the Health and Social Care (Community Health and Standards) Act 2003 s 184, Sch 11 paras 7, 39). Regulations may provide that services of a prescribed description are, or are not, to be regarded as primary medical services for the purposes of the National Health Service Act 1977 Pt I (as amended): s 16CC(4) (s 16CC added by the Health and Social Care (Community Health and Standards) Act 2003

s 174). At the date at which this volume states the law no such regulations had been made. 'Prescribed' means prescribed by regulations made by the Secretary of State under the National Health Service Act 1977 or the National Health Service and Community Care Act 1990 Pt I (ss 1-26) (see HEALTH SERVICES vol 54 (2008) PARA 241); National Health Service Act 1977 s 128(1) (definition amended by the National Health Service and Community Care Act 1990 s 26(2)(g)). As to the Secretary of State see PARA 5 ante.

3 National Health Service Act 1977 s 16CC(1) (as added: see note 2 supra). As from a day to be appointed similar provision is made as to primary dental services: see s 16CA (prospectively added by the Health and Social Care (Community Health and Standards) Act 2003 s 170); and HEALTH SERVICES vol 54 (2008) PARA 277 et seq. At the date at which this volume states the law no such day had been appointed. As to the profession of dentistry see PARA 385 et seq post. It is the duty of every primary care trust and of every health authority to make arrangements as respects its area for general ophthalmic services (see the National Health Service Act 1977 s 38 (as amended); and the National Health Service (Ophthalmic Services) Regulations 1986, SI 1986/975 (as amended)) and for pharmaceutical services (see s 41 (as amended); and the National Health Service (Pharmaceutical Services) Regulations 1992, SI 1992/662 (as amended)). See further HEALTH SERVICES vol 54 (2008) PARAS 295 et seq, 339 et seq. In relation to complaints regarding such services see the Health and Medicine Act 1988 s 17 (as amended); the National Health Service (Service Committees and Tribunals) Regulations 1992, SI 1992/664 (as amended); and HEALTH SERVICES vol 54 (2008) PARA 596 et seq. As to the power of primary care trusts and health authorities to establish local pharmaceutical services schemes see the National Health Services Act 1997 s 28j, Sch 8A (as added); and HEALTH SERVICES vol 54 (2008) PARA 339 et seq. As to pharmaceutical chemists and pharmacies see PARA 880 et seq post. As to opticians see PARA 803 et seq post.

4 National Health Service Act 1977 s 16CC(2)(a) (as added: see note 2 supra).

5 Ibid s 16CC(2)(b) (as added: see note 2 supra). 'Person' includes a body of persons corporate or unincorporate: Interpretation Act 1978 s 5, Sch 1. As to bodies corporate see COMPANIES; CORPORATIONS.

6 As to health authorities see HEALTH SERVICES vol 54 (2008) PARA 75 et seq.

7 National Health Service Act 1977 s 15(1) (amended by the Health Services Act 1980 ss 1, 2, Sch 1 Pt 1; the Health and Social Security Act 1984 s 24, Sch 8 Pt 1; the Health Authorities Act 1995 s 2(1), Sch 1 para 6(a)(i); and the National Health Service Reform and Health Care Professions Act 2002 s 2(5), Sch 2 Pt 1 paras 1, 2(1), (2)). As to the regulations made see HEALTH SERVICES vol 54 (2008) PARA 241.

8 National Health Service Act 1977 s 15(1)(a) (substituted by the Health and Social Security Act 1984 s 5; and amended by the Health Authorities Act 1995 s 2(1), Sch 1 para 6(a)(ii); and the Health and Social Care (Community Health and Standards) Act 2003 Sch 11 paras 7, 9). This duty also extends to the provision of primary dental services, general ophthalmic services and pharmaceutical services: see National Health Service Act 1977 s 15(1)(a) (as so substituted and amended); and HEALTH SERVICES vol 54 (2008) PARA 277 et seq.

9 Ibid s 15(1)(b) (amended by the National Health Service and Community Care Act 1990 s 12(1)(b)). A strategic health authority may give directions to a primary care trust about its exercise of any functions: National Health Service Act 1977 s 17B(1) (substituted by the Health Act 1999 s 12(1); and amended by the National Health Service Reform and Health Care Professions Act 2002 s 1(3), Sch 1 paras 1, 8; and the National Health Service Reform and Health Care Professions Act 2002 ss 3(1), (4), 37(2), Sch 9 Pt 1).

10 See the National Health Service Act 1977 s 28Q(1), (2) (ss 28Q-28W added by the Health and Social Care (Community Health and Standards) Act 2003 s 175(1)). General medical services contracts are to be entered into in accordance with the provisions of the National Health Service Act 1977 ss 28Q-28Y (as added): see s 28Q(1) (as so added); and HEALTH SERVICES vol 54 (2008) PARA 242 et seq. As from a day to be appointed similar provisions apply to primary dental services: see the National Health Service Act 1977 ss 28K-28P (all added by the Health and Social Care (Community Health and Standards) Act 2003 s 172(1)); and HEALTH SERVICES vol 54 (2008) PARA 278 et seq. At the date at which this volume states the law no such day had been appointed.

11 As to the prescribed conditions see the National Health Service (General Medical Services Contracts) Regulations 2004, SI 2004/291; the National Health Service (General Medical Services Contracts) (Wales) Regulations 2004, SI 2004/478; and HEALTH SERVICES vol 54 (2008) PARA 241 et seq.

12 See the National Health Service Act 1977 s 28S(1)(a) (as added: see note 10 supra). For these purposes, 'medical practitioner' means a registered medical practitioner within the meaning of the Interpretation Act 1978 Sch 1 (see PARA 4 ante); National Health Service Act 1977 s 128(1) (definition substituted by the Medical Act 1983 s 56(1), Sch 5 para 16).

13 See the National Health Service Act 1977 s 28S(1)(b) (as added: see note 10 supra). The conditions are those set out in s 28S(2) (as so added): see HEALTH SERVICES vol 54 (2008) PARA 243. Regulations may make provision as to the effect, in relation to a general medical services contract entered into by individuals

practising in partnership, of a change in the membership of the partnership: s 28S(4) (as so added). As to regulations made under s 28S (as added) see note 11 supra.

14 See *ibid* s 28S(1)(c) (as added: see note 10 supra). The conditions are those set out in s 28S(3) (as so added): see HEALTH SERVICES vol 54 (2008) PARA 243. As to companies limited by shares see COMPANIES.

15 *le* subject to any provision made by or under *ibid* ss 28Q-28Y (all as added): see HEALTH SERVICES vol 54 (2008) PARA 242 et seq.

16 'Contractor', in relation to a general medical services contract, means any person entering into the contract with the primary care trust or local health board: *ibid* s 28Q(5) (as added: see note 10 supra).

17 *Ibid* s 28Q(3) (as added: see note 10 supra). The services to be provided under a general medical services contract may include services which are not primary medical services and services to be provided outside the area of the primary care trust or local health board: s 28Q(4) (as so added).

18 *Ibid* s 28R(1) (as added: see note 10 supra). Regulations under s 28R(1) (as added) may in particular describe services by reference to the manner or circumstances in which they are provided: s 28R(2) (as so added). See the National Health Service (General Medical Services Contracts) Regulations 2004, SI 2004/291; the National Health Service (General Medical Services Contracts) (Wales) Regulations 2004, SI 2004/478; and HEALTH SERVICES vol 54 (2008) PARA 242.

19 See the National Health Service Act 1977 s 28T (as added); and HEALTH SERVICES vol 54 (2008) PARA 244.

20 See *ibid* s 28U (as added); the National Health Service (General Medical Services Contracts) (Prescription of Drugs etc) Regulations 2004, SI 2004/629; the National Health Service (General Medical Services Contracts) (Prescription of Drugs etc) (Wales) Regulations 2004, SI 2004/1022; and HEALTH SERVICES vol 54 (2008) PARA 245.

21 See the National Health Service Act 1977 s 28V (as added); the National Health Service (General Medical Services Contracts) Regulations 2004, SI 2004/291; the National Health Service (General Medical Services Contracts) (Wales) Regulations 2004, SI 2004/478; the Primary Medical Services (Sale of Goodwill and Restrictions on Sub-contracting) Regulations 2004, SI 2004/906; the Primary Medical Services (Sale of Goodwill and Restrictions on Sub-contracting) (Wales) Regulations 2004, SI 2004/1017; and HEALTH SERVICES vol 54 (2008) PARA 246.

22 See the National Health Service Act 1977 s 28W (as added); the National Health Service (General Medical Services Contracts) Regulations 2004, SI 2004/291; the National Health Service (General Medical Services Contracts) (Wales) Regulations 2004, SI 2004/478; and HEALTH SERVICES vol 54 (2008) PARA 247.

23 See the National Health Service Act 1977 s 28Y (as added); and HEALTH SERVICES vol 54 (2008) PARA 270.

24 For these purposes, 'health care professional' means a person who is a member of a profession regulated by a body for the time being mentioned in the National Health Service Reform and Health Care Professions Act 2002 s 25(3) (see PARA 294 note 8 post): National Health Service Act 1977 s 28X(3)(a) (s 28X added by the Health and Social Care (Community Health and Standards) Act 2003 s 179).

25 A primary care trust or local health board is responsible for a medical or dental service if it provides the service, or secures its provision, by or under any enactment: National Health Service Act 1977 s 28X(3)(b) (as added: see note 24 supra).

26 *Ibid* s 28X(1) (as added: see note 24 supra). See the National Health Service (Performers Lists) Regulations 2004, SI 2004/585; the National Health Service (Performers Lists) (Wales) Regulations 2004, SI 2004/1020; and HEALTH SERVICES vol 54 (2008) PARA 248 et seq.

27 As to strategic health authorities see HEALTH SERVICES vol 54 (2008) PARA 94 et seq.

28 National Health Service Act 1977 s 28C(1) (s 28C added by the National Health Service (Primary Care) Act 1997 s 21(1); and amended by the Health and Social Care (Community Health and Standards) Act 2003 s 184, Sch 11 paras 7, 14). Such agreements are to be made in accordance with the provisions of regulations under the National Health Service Act 1977 s 28E (as added): s 28C(1) (as so added); and see the National Health Service (Personal Medical Services Agreements) Regulations 2004, SI 2004/627; the Primary Medical Services (Sale of Goodwill and Restrictions on Sub-contracting) Regulations 2004, SI 2004/906; and HEALTH SERVICES vol 54 (2008) PARA 267 et seq. As from a day to be appointed similar provision is made in respect of primary dental services: see the National Health Service Act 1977 s 28C(1)(b) (as so added); and HEALTH SERVICES vol 54 (2008) PARA 288 et seq. At the date at which this volume states the law no such day had been appointed.

29 As to the specified persons see *ibid* s 28D(1) (as added); and HEALTH SERVICES vol 54 (2008) PARA 267.



30 See *ibid* s 28D(1)(b) (substituted by the Health and Social Care (Community Health and Standards) Act 2003 s 177(1), (2)); the National Health Service (Personal Medical Services Agreements) Regulations 2004, SI 2004/627; and HEALTH SERVICES vol 54 (2008) PARAS 267-268.

31 National Health Service Act 1977 s 28EE(2) (added by the Health Act 1999 s 6(2); and amended by the Health and Social Care (Community Health and Standards) Act 2003 Sch 11 paras 7, 16).

## UPDATE

### 7 Medical services under the national health service

TEXT AND NOTES--For consolidation of health service enactments see National Health Service Act 2006, National Health Service (Wales) Act 2006 and National Health Service (Consequential Provisions) Act 2006; and HEALTH SERVICES.

NOTE 3--In relation to England, SI 1992/662 replaced by National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641 (as amended): see HEALTH SERVICES vol 54 (2008) PARA 339 et seq.

TEXT AND NOTE 8--National Health Service Act 1977 s 15(1)(a) further amended: Health Act 2006 Sch 8 para 8, Sch 9.

NOTE 10--Similar provision has now been made in respect of primary dental services: see National Health Service (General Dental Services Contracts) Regulations 2005, SI 2005/3361; National Health Service (General Dental Services Contracts) (Wales) Regulations 2006, SI 2006/490; and HEALTH SERVICES vol 54 (2008) PARA 278 et seq.

NOTES 11, 18, 21, 22--SI 2004/478 amended: SI 2007/205, SI 2008/1329, SI 2008/1425, SI 2009/462, SI 2010/729.

NOTE 26--SI 2004/1020 further amended: SI 2006/945, SI 2008/1425, SI 2010/729.

NOTE 28--Similar provision has now been made in respect of primary dental services: see National Health Service (Personal Dental Services Agreements) Regulations 2005, SI 2005/3373 (amended by SI 2007/544, SI 2008/528, SI 2008/1514, SI 2009/309, SI 2009/462); National Health Service (Personal Dental Services Agreements) (Wales) Regulations 2006, SI 2006/489 (amended by SI 2009/462); and HEALTH SERVICES vol 54 (2008) PARA 288 et seq.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(1) REGULATION OF THE PROFESSION/8. Other controls on medical practice.

## **8. Other controls on medical practice.**

Other legislation<sup>1</sup> relating to the control of the practice of medicine includes the Anatomy Act 1984, which has for its object the provision of a supply of human bodies for anatomical examination and the prevention of crime committed to obtain bodies for that purpose<sup>2</sup>; the Human Tissue Act 1961, which makes provision with respect to the use of bodies or specified parts of the bodies of deceased persons for therapeutic purposes and purposes of medical education and research<sup>3</sup>; the Human Organ Transplants Act 1989, which creates offences relating to the supply for payment of organs for transplant, and to the removal of an organ from a living person who is not genetically related to the person into whom it is to be transplanted<sup>4</sup>. As from a day to be appointed all three of these Acts are repealed by the Human Tissue Act 2004 which introduces a new regime to regulate the areas covered by them and creates the Human Tissue Authority<sup>5</sup>.

The Human Fertilisation and Embryology Act 1990 introduced controls relating to human embryos and their subsequent development<sup>6</sup>, while the Human Reproductive Cloning Act 2001 seeks to prevent human reproductive cloning by prohibiting the placing in a woman of a human embryo created otherwise than by fertilisation<sup>7</sup>. The Female Genital Mutilation Act 2003 restates and amends the law relating to female genital mutilation<sup>8</sup>.

The Medical Research Council is a non-statutory body, incorporated by Royal Charter<sup>9</sup> with effect from 1 April 1920, whose principal function is the promotion of research on all aspects of health and disease<sup>10</sup>, but the Secretary of State<sup>11</sup> has been given certain statutory powers and duties in relation to the Council<sup>12</sup>, and legislation has transferred some of the Council's functions to other statutory bodies<sup>13</sup>. The National Biological Standards Board<sup>14</sup> performs functions specified by the Secretary of State<sup>15</sup> in relation to the establishment of standards for biological substances<sup>16</sup>, and in relation to the provision of standard preparations and the testing of such substances<sup>17</sup>. The Health Protection Agency<sup>18</sup> has responsibilities relating to the protection of the community against infectious disease and other dangers to health<sup>19</sup> and the prevention of the spread of infectious disease<sup>20</sup>, and it also has certain functions in relation to risks connected with radiation<sup>21</sup>.

1 As to the Medical Act 1983, the principal statute regulating the medical profession, see PARA 1 ante.

2 See PARAS 226-232 post. As to the unlawful disposal of dead bodies see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 732. As to the property in dead bodies see CREMATION AND BURIAL vol 10 (Reissue) PARA 905.

3 See PARA 225 post.

4 See the Human Organ Transplants Act 1989; para 225 post.

5 See further PARA 233 et seq post.

6 See further PARAS 278-290 post; and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 102 et seq.

7 See PARA 279 post.

8 See PARA 208 post.

9 As to incorporation by charter see CORPORATIONS vol 9(2) (2006 Reissue) PARAS 1128, 1132 et seq.

10 The Medical Research Council is financed by an annual parliamentary grant, and by gifts and bequests. It promotes research by financing research at the National Institute for Medical Research and at universities and hospitals, and appoints or administers a large number of research bodies. It makes an annual report. See further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 43; NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 967 et seq.

11 As to the Secretary of State generally see PARA 5 ante. The Secretary of State in this case is the Secretary of State for Trade and Industry: see the Transfer of Functions (Science) Order 1995, SI 1995/2985, art 3(2)(d).

12 See the Science and Technology Act 1965 s 1(1)(a); and NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 967 et seq.

13 Responsibility for the radiological protection service was transferred to the Radiological Protection Board: see the Radiological Protection Act 1970 s 1(3)(a) (repealed). See the text and note 21 infra; and FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1389 et seq.

The Chronically Sick and Disabled Persons Act 1970 imposes on the Secretary of State a duty to collate and present evidence to the Medical Research Council on the need for an institute for hearing research to co-ordinate and promote research on hearing and assistance to the deaf and hard of hearing: see s 24. So far as it is exercisable in relation to Wales this function has been transferred to the National Assembly for Wales: see National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(1), Sch 1. The Institute of Hearing Research has been created as a unit within the Medical Research Council. As to the dispensing of hearing aids see PARA 867 et seq post.

14 The National Biological Standards Board is a body corporate: see the Biological Standards Act 1975 s 1(1). As to bodies corporate see COMPANIES; CORPORATIONS. Provision is made with regard to: (1) the composition of the Board, and its proceedings and staff (s 2(1), (2), (5), Schedule); (2) occupation of land by the Board (s 2(3)); (3) exemption of the Board from income and corporation tax (s 2(4)); (4) defrayment of expenses, application of funds, and accounts (s 4). If any person discloses any information obtained by him in the course of and by virtue of his membership of or employment by the Board and relating to a manufacturing process or trade secret, he is, unless the disclosure is made in the performance of the duties of his office or employment, guilty of an offence: s 5(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding the prescribed sum and on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both: s 5(2) (amended by the Magistrates' Courts Act 1980 s 32(2)). The 'prescribed sum' means £5,000 or such sum as is for the time being substituted in this definition by order under the Magistrates' Courts Act 1980 s 143(1) (as substituted): see s 32(9) (amended by the Criminal Justice Act 1991 s 17(2)); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 141.

15 In this case the Secretary of State acts jointly with the head of the Department of Health and Social Services for Northern Ireland, referred to together as 'the ministers': see the Biological Standards Act 1975 s 8. The Board must in the performance of its functions comply with any directions given to it by the ministers: s 1(3).

16 'Biological substances' are substances the purity or potency of which, in the opinion of the Secretary of State, cannot be adequately tested by chemical means: *ibid* s 8.

17 *Ibid* s 1(2). The functions of the Board are: (1) to devise and draw up standards for the purity and potency of biological substances, to design appropriate test procedures and to advise on these matters; (2) to provide or to arrange for the provision of laboratory facilities for the testing of biological substances, to carry out such testing, to examine records of manufacture and quality control of biological substances and to report on the results of such testing or examination; (3) to prepare, approve, hold and distribute standard preparations of biological substances; (4) to collaborate with the World Health Organisation, the European Pharmacopoeia Commission and other international organisations or bodies in relation to the establishment of standards for, the provision of standard preparations of, and the testing of biological substances; (5) to carry out or arrange for the carrying out of research in connection with the functions referred to in heads (1)-(4) above; and (6) to do all other things incidental or conducive to the discharge of the above functions: National Biological Standards Board (Functions) Order 1976, SI 1976/917, art 2.

18 See the Health Protection Agency Act 2004 s 1, Sch 1. These provisions came into force on 1 April 2005: see s 12(1); and the Health Protection Agency Act 2004 (Commencement) Order 2005, SI 2005/121, art 2. As to the Health Protection Agency see further HEALTH SERVICES vol 54 (2008) PARA 213 et seq.

19 See *ibid* s 2(1)(a); and HEALTH SERVICES vol 54 (2008) PARA 224. The Agency also has such other functions in relation to health as the Secretary of State after consultation with the National Assembly for Wales directs, or as the National Assembly after consultation with the Secretary of State directs: see s 2(2). As to the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

20 See *ibid* s 2(1)(b); and HEALTH SERVICES vol 54 (2008) PARA 224. See note 19 supra.

21 See *ibid* s 3; and HEALTH SERVICES vol 54 (2008) PARA 225. These functions include such of the functions which are exercisable by the National Radiological Protection Board at the date of commencement of s 3 as are specified in a direction given by the appropriate authority: see s 3(2). See also note 13 *supra*. The appropriate authority is generally the Secretary of State or, in relation to any function which is exercisable in relation to Wales by the National Assembly for Wales acting alone, the National Assembly for Wales: see s 6. As to radiation protection see also PARA 10 *post*.

## **UPDATE**

### **8 Other controls on medical practice**

TEXT AND NOTE 6--See also Human Fertilisation and Embryology Act 2008.

TEXT AND NOTES 14-17--National Biological Standards Board abolished and Biological Standards Act 1975 repealed accordingly: Health and Social Care Act 2008 s 159(1), Sch 15 Pt 7. The functions of the Health Protection Agency now include functions in relation to biological substances: see the Health Protection Agency Act 2004 s 2A (added by the Health and Social Care Act 2008 s 159(3)). 'Biological substance' means a substance whose purity of potency cannot, in the opinion of the Secretary of State, be adequately tested by chemical means: Health Protection Agency Act 2004 s 2A(5).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(1) REGULATION OF THE PROFESSION/9. Discrimination in the provision of medical services.

## **9. Discrimination in the provision of medical services.**

It is unlawful<sup>1</sup> for any person concerned with the provision, whether for payment or not, of professional services to the public or a section of the public to discriminate on the grounds of sex or race<sup>2</sup> against a person who seeks to obtain or use those services by: (1) refusing or deliberately omitting to provide him with them<sup>3</sup>; or (2) refusing or deliberately omitting to provide him with facilities of the same quality, in the same manner and on the same terms as are normal in relation to other members of the public or other members of that section of the public<sup>4</sup>. It is also unlawful for a provider of professional services, whether for payment or not, to the public or a section of the public to discriminate against a disabled person<sup>5</sup>: (a) in refusing to provide, or deliberately not providing, to the disabled person any service which he provides, or is prepared to provide; (b) in failing to comply with any duty imposed on him to make adjustments so as to make his services accessible to disabled persons<sup>6</sup>, where the effect of that failure is to make it impossible or unreasonably difficult for the disabled person to make use of any such service; (c) in the standard of service which he provides to the disabled person or the manner in which he provides it to him; or (d) in the terms on which he provides a service to the disabled person<sup>7</sup>.

1 As to enforcement see the Sex Discrimination Act 1975 Pt VII (ss 62-76) (as amended); and DISCRIMINATION vol 13 (2007 Reissue) PARA 413 et seq. See also the Race Relations Act 1976 Pt VIII (ss 53-69) (as amended); and DISCRIMINATION vol 13 (2007 Reissue) PARAS 498-504.

2 I.e. under the Sex Discrimination Act 1975 s 1 (as substituted), s 2, or s 4 (as amended) (see s 5(1)(a)), or under the Race Relations Act 1976 s 1 or s 2 (see s 3(3)). As to sex discrimination generally see DISCRIMINATION vol 13 (2007 Reissue) PARA 337 et seq. As to race discrimination generally see DISCRIMINATION vol 13 (2007 Reissue) PARA 436 et seq.

3 See the Sex Discrimination Act 1975 s 29(1)(a), (2)(g); and the Race Relations Act 1976 s 20(1)(a), (2)(g). A person who provides at any place facilities or services restricted to men does not for that reason contravene the Sex Discrimination Act 1975 s 29(1) if the place is, or is part of, a hospital or other establishment for persons requiring special care, supervision or attention: see s 35(1)(a); and DISCRIMINATION vol 13 (2007 Reissue) PARA 383.

4 See the Sex Discrimination Act 1975 s 29(1)(b), (2)(g); and the Race Relations Act 1976 s 20(1)(b), (2)(c).

5 As to who is a disabled person see the Disability Discrimination Act 1995 s 1, Sch 1; and DISCRIMINATION vol 13 (2007 Reissue) PARA 511 et seq.

6 I.e. the duty imposed by *ibid* s 21: see DISCRIMINATION vol 13 (2007 Reissue) PARA 587.

7 See *ibid* s 19(1), (2), (3)(h). As to such discrimination generally see DISCRIMINATION vol 13 (2007 Reissue) PARA 301 et seq. As to enforcement and remedies see s 25 (as amended); and DISCRIMINATION vol 13 (2007 Reissue) PARA 644.

## **UPDATE**

## **9 Discrimination in the provision of medical services**

NOTE 3--Sex Discrimination Act 1975 s 35(1)(a) replaced, see now s 35(1A): SI 2008/963.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(1) REGULATION OF THE PROFESSION/10. Other statutory provisions relevant to medical practice.

## **10. Other statutory provisions relevant to medical practice.**

The restrictions imposed by the Medicines Act 1968<sup>1</sup> on the manufacture of and dealings in medicinal products do not apply to doctors in certain circumstances<sup>2</sup>. Doctors are also exempted, except in certain circumstances, from the restrictions imposed by that Act<sup>3</sup> on the sale or supply of medicinal products<sup>4</sup>. Sales to doctors for the purposes of their profession are exempted from the restrictions contained in the Poisons Act 1972<sup>5</sup> against the sales of certain non-medicinal poisons<sup>6</sup>. Doctors are exempted in certain circumstances from the provisions of the Misuse of Drugs Act 1971 and of regulations under that Act restricting dealings in controlled drugs<sup>7</sup>. Certain of the provisions of the Rehabilitation of Offenders Act 1974 are excluded in relation to the appointment and dismissal of medical practitioners and disciplinary proceedings concerning medical practitioners<sup>8</sup>.

Supplies of services (and supplies of goods in certain cases) in connection with the treatment of health are exempt from value added tax<sup>9</sup>, and the supply of drugs, medicines and aids for the handicapped is, for the most part, zero-rated for the purposes of that tax<sup>10</sup>. If a medical practitioner has more than one place of employment he may in certain circumstances deduct from his income taxable under Schedule E the expenses of travelling from his home to and from a hospital on emergency calls<sup>11</sup>.

Radiation protection is governed by regulations which lay down basic safety standards for the health protection of the general public and workers against the dangers of ionising radiations<sup>12</sup>. Regulations also make provision in respect of the exposure of individuals to ionising radiation in connection with medical diagnosis or treatment; occupational health surveillance; health screening programmes; medical or biomedical, diagnostic or therapeutic research programmes; or as part of medico-legal procedures<sup>13</sup>.

1    Ie by the Medicines Act 1968 ss 7, 8 (both as amended): see MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARAS 44-47.

2    See *ibid* s 9(1). For the meaning of 'doctor' see PARA 4 ante. There are also exemptions from this legislation, in certain circumstances, for dentists, veterinary surgeons, veterinary practitioners, pharmacists, nurses and midwives: see ss 9(1), (2), 10, 11 (ss 10, 11 as amended); and MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARAS 50-52.

3    Ie by *ibid* ss 52, 53: see MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARAS 134-135.

4    Ibid s 55(1). There are also exemptions from this legislation, in certain circumstances, for dentists, nurses, midwives, veterinary surgeons and veterinary practitioners: see s 55(1)-(3) (s 55(2) (as amended); and MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 137.

5    See the Poisons Act 1972 s 3(1), (2); and MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 300.

6    See *ibid* s 4(c). This provision also contains exemptions for sales to dentists, veterinary surgeons or veterinary practitioners for the purposes of their profession. See MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 300.

7    See the Misuse of Drugs Act 1971 s 7(3), (4). These provisions also contain exemptions for dentists, veterinary practitioners, veterinary surgeons and pharmacists. See also the Misuse of Drugs Regulations 2001, SI 2001/3998 (as amended); and MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 259.

8    See the Rehabilitation of Offenders Act 1974 ss 4(4), 7(4); and the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023 (amended by SI 1986/1249; SI 1986/2268; SI 2001/1192; SI 2001/3816; SI 2002/441; SI 2003/965; SI 2003/1590). The Rehabilitation of Offenders Act 1974 s 4(1) (restrictions in

proceedings before a judicial authority on the admission of evidence concerning spent convictions) does not apply to proceedings in respect of a person's admission to the medical profession or disciplinary proceedings against a member of the medical profession: Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 5(1)(a), Sch 1 Pt I, Sch 3 para 1 (art 5 substituted by SI 1986/2268). The Rehabilitation of Offenders Act 1974 s 4(2) (restrictions on questions concerning spent convictions otherwise than in proceedings before a judicial authority) does not apply in relation to any question asked by or on behalf of any person in the course of the duties of his office or employment in order to assess the suitability of a person for admission to the medical profession where the person is told that spent convictions are to be disclosed: Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(a)(i), Sch 1 Pt I. The Rehabilitation of Offenders Act 1974 s 4(3)(b) (spent convictions or a failure to disclose spent convictions not a proper ground for dismissing or excluding a person from any office etc, or for prejudicing him in any way in any occupation etc) does not apply to the dismissal or exclusion of any person from the medical profession: see the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 4(a), Sch 1 Pt I. Similar exceptions relate to the professions of dentist, dental hygienist, dental auxiliary, veterinary surgeon, nurse, midwife, ophthalmic optician, dispensing optician, pharmaceutical chemist; any profession to which the Health Professions Order 2001, SI 2002/254, applies and which is undertaken following registration under that Order (see PARA 324 et seq post); and registered osteopath and registered chiropractor: see the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt I (prospectively amended by SI 2005/848). As to the effect of the Rehabilitation of Offenders Act 1974 see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 660 et seq.

9 See the Value Added Tax Act 1994 s 31, Sch 9 Pt II Group 7 (as amended); and VALUE ADDED TAX.

10 See *ibid* s 30(2), Sch 8 Pt II Group 12 (as amended); and VALUE ADDED TAX vol 49(1) (2005 Reissue) PARAS 174, 177, 186.

11 *Owen v Pook (Inspector of Taxes)* [1970] AC 244, [1969] 2 All ER 1, HL; cf *Sargent (Inspector of Taxes) v Barnes* [1978] 2 All ER 737, [1978] 1 WLR 823. The expenses must be wholly and exclusively expended for professional purposes: see INCOME TAXATION vol 23(1) (Reissue) PARAS 201, 629.

12 See the Ionising Radiation Regulations 1985, SI 1985/1333 (amended by SI 1986/392; SI 1999/3232); the Ionising Radiation Regulations 1999, SI 1999/3232 (amended by SI 2001/2975); the Justification of Practices Involving Ionising Radiation Regulations 2004, SI 2004/1769; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 647 et seq. As to protection from the risks connected with radiation see also PARA 8 text and note 21 ante.

13 See the Ionising Radiation (Medical Exposure) Regulations 2000, SI 2000/1059 (as amended); and FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1474.

## UPDATE

### 10 Other statutory provisions relevant to medical practice

NOTE 8--SI 1975/1023 further amended: SI 2005/617, SI 2005/1082, SI 2005/2011, SI 2007/289, SI 2007/2149, SI 2008/3259, SI 2009/1182, SI 2009/1818.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(1) REGULATION OF THE PROFESSION/11. Termination of agreement with the Republic of Ireland.

## **11. Termination of agreement with the Republic of Ireland.**

After the establishment of the Irish Free State (now the Republic of Ireland) and Northern Ireland, an agreement was made between Great Britain and those countries as to the registration and control of medical practitioners<sup>1</sup> and the agreement was made part of the law of each of those countries<sup>2</sup>. Upon the United Kingdom<sup>3</sup> and the Republic of Ireland becoming members of the European Community the agreement was no longer required, and provision was accordingly made for its termination<sup>4</sup>.

In consequence of or in connection with the termination of the agreement on 30 April 1979, Her Majesty by Order in Council effected specified repeals or modifications in the Medical and Dentists Acts Amendment Act 1927 and in the Medical Acts 1956 to 1978 which are now incorporated in the Medical Act 1983<sup>5</sup>. A person, other than a national of a member state of the European Community, registered or entitled to be registered under the Medical Act 1956 immediately before 30 April 1979 in right of a qualification awarded in the Republic of Ireland did not cease to be so entitled by reason only of any such repeal or modification<sup>6</sup>, and a person who, before 30 April 1985, was awarded a qualification in the Republic of Ireland which, but for any such repeal, would have entitled him to be provisionally registered under the Medical Act 1956<sup>7</sup> and, on satisfying the requirements of that Act as to experience<sup>8</sup>, to be fully registered<sup>9</sup> was, on appropriate application, eligible for such provisional registration and subsequently for such full registration as if the relevant provisions<sup>10</sup> applied to his qualifications and as if the statutory provision as to a registrable qualification granted by a university or other body in the Republic of Ireland<sup>11</sup> remained in force<sup>12</sup>.

An application for registration or provisional registration by a person to whom these provisions<sup>13</sup> applied had to be made to the registrar of the General Medical Council; and, if it was for provisional registration, had to be made not later than 30 April 1986 and, if for full registration, not later than 30 April 1987<sup>14</sup>.

The members of the General Medical Council elected under the Medical Act 1956 by fully registered persons resident in Ireland<sup>15</sup>, and members appointed under the provisions of that Act by universities or other bodies in Ireland<sup>16</sup>, did not, by reason only of any such repeal or modification, cease to be such members<sup>17</sup>, but the present constitution of the General Medical Council does not include provision for members representing the Republic of Ireland<sup>18</sup>.

1 The agreement is set out in the Medical and Dentists Acts Amendment Act 1927 Schedule Pt I (repealed). A corresponding agreement relating to dentists is set out in Schedule Pt II (repealed). As to the dental profession see PARA 385 et seq post.

2 As to Great Britain and Northern Ireland see *ibid* ss 1, 3, Schedule Pt I (repealed); and the Medical Act 1956 s 11(3) (repealed). As to the Republic of Ireland see the Medical Practitioners Act 1927 (No 25 of 1927) s 2, Sch 1 (repealed); the Medical Practitioners Act 1951 (No 29 of 1951) s 12 (repealed); and the Medical Practitioners Act 1955 (No 1 of 1955) s 6(5) (repealed).

3 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

4 As to Great Britain and Northern Ireland see the Medical Act 1978 s 4 (repealed). As to the Republic of Ireland see the Medical Practitioners Act 1978 (No 4 of 1978) s 68.

5 See the Irish Republic (Termination of 1927 Agreement) Order 1979, SI 1979/289, made under the Medical Act 1978 s 4 (repealed).



- 6 Irish Republic (Termination of 1927 Agreement) Order 1979, SI 1979/289, art 3(1).
- 7 le under the Medical Act 1956 s 17 (repealed). See now the Medical Act 1983 ss 15, 16(1); and PARA 102 post.
- 8 le the Medical Act 1956 Pt II (ss 7-17) (repealed). See now the Medical Act 1983 Pt II (ss 3-18); and PARA 99 et seq post.
- 9 le under the Medical Act 1956 s 7 (repealed). See now the Medical Act 1983 s 3; and PARA 99 post.
- 10 le the Medical Act 1956 Pt II (repealed). See now the Medical Act 1983 Pt II.
- 11 le the Medical Act 1956 s 17(4) (repealed).
- 12 Irish Republic (Termination of 1927 Agreement) Order 1979, SI 1979/289, art 3(2).
- 13 le those contained in ibid art 3(1) or art 3(2): see the text to notes 6-12 supra.
- 14 Ibid art 3(3).
- 15 le under the Medical Act 1956 s 4(1)(c) (repealed).
- 16 le under ibid s 3(1) (repealed).
- 17 Irish Republic (Termination of 1927 Agreement) Order 1979, SI 1979/289, art 4.
- 18 See the Medical Act 1983 s 1, Sch 1 Pt I; and PARA 13 et seq post.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(1) REGULATION OF THE PROFESSION/12. Effect of EC legislation on medical practice.

## **12. Effect of EC legislation on medical practice.**

In order to make it easier for persons to take up and pursue activities as self-employed persons, the Council of the European Communities must issue directives for the mutual recognition of diplomas, certificates and other evidence of formal qualifications<sup>1</sup>. In the case of the medical profession, allied professions, and the pharmaceutical profession, the progressive abolition of restrictions is dependent upon co-ordination of the conditions for their exercise in the various member states<sup>2</sup>. A directive<sup>3</sup> has been issued to facilitate the free movement of doctors and the mutual recognition of their diplomas, certificates and other evidence of formal qualifications. The Medical Act 1983<sup>4</sup> and related statutory instruments<sup>5</sup> implement these provisions.

1 Treaty Establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) art 47(1) (art 47 formerly art 57; renumbered by virtue of the Treaty of Amsterdam: see *Treaty Citation (No 2) (Note)* [1999] All ER (EC) 646, ECJ).

2 EEC Treaty art 57(3) (as renumbered: see note 1 supra).

3 EC Council Directive 93/16 (OJ L165, 7.7.1993, p 1).

4 See eg the Medical Act 1983 s 17, Sch 2 (both as substituted); and PARA 98 post.

5 See the European Specialist Medical Qualifications Order 1995, SI 1995/3208 (as amended; prospectively revoked); the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250 (as amended); and PARA 39 et seq post.

### **UPDATE**

## **12 Effect of EC legislation on medical practice**

NOTE 3--Directive 93/16 replaced: European Parliament and EC Council Directive 2005/36 on the recognition of professional qualifications.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(2) THE GENERAL MEDICAL COUNCIL/(i) Constitution, Members and Officers/13. Constitution, functions and powers of the General Medical Council.

## **(2) THE GENERAL MEDICAL COUNCIL**

### **(i) Constitution, Members and Officers**

#### **13. Constitution, functions and powers of the General Medical Council.**

The General Medical Council<sup>1</sup> is a body corporate having the functions assigned to it by the Medical Act 1983<sup>2</sup>. It is within its capacity as a corporation to do such things and enter into such transactions as are in its opinion incidental to or conducive to the performance of its functions, including the borrowing of money<sup>3</sup>. The main objective of the Council in exercising its functions is to protect, promote and maintain the health and safety of the public<sup>4</sup>. In exercising its functions, the Council must co-operate wherever appropriate and reasonably practicable with public authorities or other bodies or persons concerned with: (1) the employment, whether or not under a contract of service, of registered medical practitioners<sup>5</sup>; (2) the education of medical practitioners, prospective medical practitioners or other health care professionals<sup>6</sup>; (3) the regulation of other health or social care professions<sup>7</sup>; or (4) the regulation of health services<sup>8</sup>. For the purposes of ensuring that registered medical practitioners and the public are informed about the Council and the exercise by it of its functions, the Council must publish or provide in such manner as it thinks fit information about the Council and the exercise of its functions<sup>9</sup>.

The Council's powers include that of providing, in such manner as it thinks fit, advice for members of the medical profession on standards of professional conduct, standards of professional performance, or medical ethics<sup>10</sup>. For the purpose of enabling the Council to compile or assist in the compilation of statistics relating to medical practice and practitioners it may from time to time issue to persons registered under the Medical Act 1983, other than visiting EEA practitioners<sup>11</sup>, requests for information on matters which in its opinion are relevant for that purpose<sup>12</sup>.

The Council consists<sup>13</sup> of elected members<sup>14</sup>, appointed members<sup>15</sup>, and nominated members<sup>16</sup>. There must be not more than 35 members<sup>17</sup>, and the numbers of elected members, appointed members and nominated members must be such that the number of the elected members exceeds the number of the appointed and nominated members<sup>18</sup>. The quorum of the Council is 25<sup>19</sup>. A person is not qualified to be a member of the Council if he has attained the age of 70 years<sup>20</sup>.

1 The Council was first established under the name 'The General Council of Medical Education and Registration of the United Kingdom' by the Medical Act (1858) s 3 (repealed), and was incorporated under the same name by the Medical Council Act 1862 s 1 (repealed). Its name was changed to the 'General Medical Council' pursuant to the Medical Act 1950 ss 13, 36(1) (repealed). The Council is now established under the Medical Act 1983 s 1, Sch 1.

2 Ibid s 1(1). As to bodies corporate see COMPANIES; CORPORATIONS.

3 Ibid s 1(4), Sch 1 para 9. As to finance and accounts see PARAS 27-28 post.

4 Ibid s 1(1A) (added by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 3).

5 Medical Act 1983 Sch 1 para 9A(a) (Sch 1 paras 9A, 9B added by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 15(7)(a)). As to the registration of medical practitioners see PARA 99 et seq post. As to employment and contracts of service see EMPLOYMENT.

6 Medical Act 1983 Sch 1 para 9A(b) (as added: see note 5 supra). As to the education of medical practitioners see PARA 57 et seq post.

7 Ibid Sch 1 para 9A(c) (as added: see note 5 supra). As to the regulation of health care professions see PARA 294 et seq post.

8 Ibid Sch 1 para 9A(d) (as added: see note 5 supra). As to the regulation of health services see HEALTH SERVICES.

9 Ibid Sch 1 para 9B(1) (as added: see note 5 supra). Nothing in this provision authorises or requires the publication or provision of information if the publication or provision of that information is prohibited by any enactment or would constitute, or be punishable as, a contempt of court: Sch 1 para 9B(2) (as so added). 'Enactment' includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament, and any provision of, or any instrument made under, Northern Ireland legislation: Sch 1 para 9B(3) (as so added). As to contempt of court see CONTEMPT OF COURT. As to the Scottish Parliament and Northern Ireland legislation see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

10 Ibid s 35 (substituted by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 1(2), (3), 2, 13).

11 Ie those registered under the Medical Act 1983 s 18: see PARA 100 post.

12 Ibid Sch 1 para 10.

13 The Council is constituted as provided by Her Majesty by Order in Council subject to the provisions of ibid Sch 1 Pt I paras 1-8: s 1(2). Such an Order in Council may contain such incidental, consequential, transitional or supplementary provisions as appear to Her Majesty to be necessary or expedient: Sch 1 para 5. As to the order that has been made see the General Medical Council (Constitution) Order 2002, SI 2002/3136; and PARAS 14-15, 17, 22 post. As to Orders in Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 907.

14 Medical Act 1983 Sch 1 para 1(1)(a). 'Elected member' means a member of the General Medical Council elected under Sch 1 para 2 (see PARA 14 post): s 55(1). Notwithstanding Sch 1 para 1(2) (see the text and note 18 infra), an Order in Council: (1) may make provision permitting elections to fill casual vacancies among the elected members to be held together; but (2) may not permit a casual vacancy among the elected members to be left unfilled for a period exceeding six months, except in accordance with head (3) infra; and (3) may make provision that a casual vacancy among the elected members need not be filled if the unexpired term of the elected member giving rise to the vacancy is less than 12 months: Sch 1 para 7(1) (Sch 1 para 7 substituted by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 4(1), (7)). The 'unexpired term' means the period beginning with the date on which the member ceased to be a member and ending with the date on which his full term of office would have expired: Medical Act 1983 Sch 1 para 7(2) (as so substituted). 'Month' means calendar month: Interpretation Act 1978 s 5, Sch 1. As to the filling of casual vacancies among the elected members see PARA 14 post.

15 Ibid Sch 1 para 1(1)(b). 'Appointed member' means a member of the General Medical Council chosen by a university or other body designated as an appointing body by an Order in Council under s 1: s 55(1). As to appointed members see PARA 15 post.

16 Ibid Sch 1 para 1(1)(c). 'Nominated member' means a member of the General Medical Council nominated by Her Majesty under Sch 1 para 4 (see PARA 16 post): s 55(1).

17 Ibid Sch 1 para 1(3) (added by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 4(1), (2)).

18 Medical Act 1983 Sch 1 para 1(2). The Council consists of 19 elected members, 2 appointed members, and 14 nominated members: General Medical Council (Constitution) Order 2002, SI 2002/3136, art 2.

19 Ibid art 8.

20 Medical Act 1983 Sch 1 para 6(1). The Council may by rules provide that this provision has effect with the substitution of such age less than 70 years as is specified in the rules: Sch 1 para 6(2). No such rules are to come into force until approved by order of the Privy Council: Sch 1 para 6(3). At the date at which this volume states the law no such rules had been made. As to the exercise by the Privy Council of its powers under the Medical Act 1983 see PARA 32 post. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

**UPDATE****13-33 The General Medical Council**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to take over responsibility for the adjudication of fitness to practice cases from the General Medical Council: see ss 98(2), 99, Sch 7 (not yet in force). As to the OHPA generally, see further PARA 189A.

**13-23 Constitution, Members and Officers**

Medical Act 1983 Sch 1 paras 1-8 now Sch 1 paras 1A-1C (substituted by SI 2008/1774). The General Medical Council is to be reconstituted as provided for by an order of the Privy Council: see the Medical Act 1983 s 1(2) (see PARA 13). For general provision as to membership of the General Council see now Sch 1 para 1A which provides that all members of the General Council are to be appointed by the Privy Council. As to the matters which an order of the Privy Council under s 1(2) constituting the General Council must include see Sch 1 para 1B; and as to the registration of members' private interests see Sch 1 para 1C. Detailed provision for the constitution of the General Medical Council is now made by the General Medical Council (Constitution) Order 2008, SI 2008/2554, which provides specifically for (1) the composition of the Council (reg 2); (2) the terms of office of members (reg 3); (3) the education and training of members (reg 4); (4) disqualification from appointment as a member (reg 5); (5) removal of members from office (reg 6); (6) suspension of members from office (reg 7); (7) the appointment, term of office and cessation of office of the chair (reg 8); (8) deputising arrangements in respect of the chair (reg 10); (9) the quorum of the Council (reg 11); and (10) the effect of vacancies on the validity of proceedings (reg 12).

**13 Constitution, functions and powers of the General Medical Council**

NOTE 2--The Council has been designated as the competent authority in the United Kingdom for the purposes of European Parliament and EC Council Directive 2005/36 on the recognition of professional qualifications so far as relating to the medical profession: see Medical Act 1983 s 49B, Sch 4A (added by SI 2007/3101; 1983 Act s 49B amended by SI 2008/1774).

TEXT AND NOTES 5-8--Medical Act 1983 Sch 1 para 9A substituted: SI 2008/1774.

NOTES 11, 12--Medical Act 1983 Sch 1 para 10 amended: SI 2007/3101.

TEXT AND NOTES 13-16--Definitions of 'elected member', 'appointed member' and 'nominated member' omitted: SI 2008/1774.

NOTE 13--Medical Act 1983 s 1(2) substituted: SI 2008/1774. SI 2002/3136 revoked: SI 2008/1774.

TEXT AND NOTES 18, 19--SI 2002/3136 revoked: SI 2008/1774.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(2) THE GENERAL MEDICAL COUNCIL/(i) Constitution, Members and Officers/14. Elected members.

#### **14. Elected members.**

Elections of elected members of the General Medical Council<sup>1</sup> are conducted in accordance with an electoral scheme<sup>2</sup> providing for the election of members for the four constituencies<sup>3</sup> of: (1) England, the Channel Islands and the Isle of Man<sup>4</sup>; (2) Wales<sup>5</sup>; (3) Scotland<sup>6</sup>; and (4) Northern Ireland<sup>7</sup>. The persons qualified to elect the elected members for any constituency are those who, on a date determined in accordance with the electoral scheme are: (a) resident<sup>8</sup> in the constituency for which the election is held<sup>9</sup>; and (b) fully registered<sup>10</sup>, provisionally registered<sup>11</sup> or registered with limited registration<sup>12</sup>. As from a day to be appointed, they must also be holders of licences to practise<sup>13</sup>. A person is not qualified to be elected as an elected member unless he is fully registered, provisionally registered or registered with limited registration<sup>14</sup>. As from a day to be appointed, he must also hold a licence to practise<sup>15</sup>. An electoral scheme must make provision for the disclosure to those qualified to vote at an election of information, including information concerning fitness to practise<sup>16</sup>, relating to a person seeking election<sup>17</sup>.

The term of office of an elected member is four years<sup>18</sup>, and a person who is or has previously been a member may be elected as a member for a further term<sup>19</sup>. An elected member may at any time resign his office by letter addressed to the president of the General Medical Council<sup>20</sup>. When an elected member dies, resigns or otherwise ceases to be a member<sup>21</sup> before completing his term of office, a person must be elected to hold office from the date on which he is entitled to take office until the end of the unexpired term<sup>22</sup>. However, elections to fill casual vacancies among the elected members may be postponed and held together, but no casual vacancy must be left unfilled for a period exceeding six months<sup>23</sup>, except that where the unexpired term of the elected member giving rise to the casual vacancy is less than 12 months then the vacancy need not be filled<sup>24</sup>.

1 For the meaning of 'elected members' see PARA 13 note 14 ante. There are 19 elected members: see the General Medical Council (Constitution) Order 2002, SI 2002/3136, art 2; and PARA 13 note 18 ante. As to the constitution etc of the General Medical Council see PARA 13 ante.

2 An electoral scheme must be made, with the approval of the Privy Council, by the General Medical Council after consultation with such bodies as appear to the General Medical Council to be representative of medical practitioners: Medical Act 1983 s 1(4), Sch 1 para 2(2). An electoral scheme may be amended by the General Medical Council with the approval of the Privy Council and after consultation with such bodies as are mentioned in Sch 1 para 2(2): Sch 1 para 2(3). As to the General Medical Council see PARA 13 ante. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

3 The provision that may be made by an electoral scheme includes provision for any of the constituencies listed in ibid Sch 1 para 2(1)(a)-(d) (see heads (1)-(4) in the text) to be divided into two or more separate constituencies: Sch 1 para 2(1A) (added by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 4(1), (3)(a)).

4 Medical Act 1983 Sch 1 para 2(1)(a).

5 Ibid Sch 1 para 2(1)(b).

6 Ibid Sch 1 para 2(1)(c).

7 Ibid Sch 1 para 2(1)(d).

8 A person is taken to be resident at his address in the register: ibid Sch 1 para 2(6). For the meaning of 'the register' see PARA 34 note 3 post.

9 Ibid Sch 1 para 2(4)(a) (Sch 1 para 2(4), (5) substituted, and Sch 1 para 2(5A) added, by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 4(1), (3)(b), (c)).

10 For the meaning of 'fully registered' see PARA 3 ante.

11 For the meaning of 'provisionally registered' see PARA 102 note 6 post.

12 Medical Act 1983 Sch 1 para 2(4)(b) (as substituted: see note 9 supra). For the meaning of 'limited registration' see PARA 109 note 10 post.

13 Ibid Sch 1 para 2(4)(c) (as substituted: see note 9 supra). Schedule 1 para 2(4)(c) (as substituted) is to come into force on a day to be appointed: see the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, art 1(2), (3). At the date at which this volume states the law no such day had been appointed. For the meaning of 'licence to practise' see PARA 130 note 3 post.

14 Medical Act 1983 Sch 1 para 2(5)(a) (as substituted: see note 9 supra).

15 Ibid Sch 1 para 2(5)(b) (as substituted: see note 9 supra). Schedule 1 para 2(5)(b) (as substituted) is to come into force on a day to be appointed: see the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, art 1(2), (3). At the date at which this volume states the law no such day had been appointed.

16 As to fitness to practise see PARA 138 et seq post.

17 Medical Act 1983 Sch 1 para 2(5A) (as added: see note 9 supra).

18 General Medical Council (Constitution) Order 2002, SI 2002/3136, art 3(1).

19 Ibid art 3(2). However, no person who has served as a member for an aggregate of at least 8 years during the period of 11 years ending with the last occasion on which he left office (excluding in calculating that aggregate any time prior to 1 July 2003) is eligible, for a period of 4 years after leaving office, to be elected for a further term: arts 1(3), 3(3). However, a person who holds the office of president of the General Medical Council when his term of office as a member expires, and who, by reason of art 3(3) would not otherwise be eligible to stand for a further term of office, may nonetheless be elected as a member for a further term until one of the specified events occurs: art 7(4). The specified events are either that he ceases to hold the office of president, or that his further term of office has expired: art 7(5). As to the president of the General Medical Council see PARA 22 post.

20 Ibid art 3(4).

21 As to the suspension and removal of members see PARA 20 post.

22 General Medical Council (Constitution) Order 2002, SI 2002/3136, art 3(5).

23 Ibid art 3(6).

24 Ibid art 3(7).

## UPDATE

### 13-33 The General Medical Council

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to take over responsibility for the adjudication of fitness to practice cases from the General Medical Council: see ss 98(2), 99, Sch 7 (not yet in force). As to the OHPA generally, see further PARA 189A.

### 13-23 Constitution, Members and Officers

Medical Act 1983 Sch 1 paras 1-8 now Sch 1 paras 1A-1C (substituted by SI 2008/1774). The General Medical Council is to be reconstituted as provided for by an order of the Privy Council: see the Medical Act 1983 s 1(2) (see PARA 13). For general provision as to membership of the General Council see now Sch 1 para 1A which

provides that all members of the General Council are to be appointed by the Privy Council. As to the matters which an order of the Privy Council under s 1(2) constituting the General Council must include see Sch 1 para 1B; and as to the registration of members' private interests see Sch 1 para 1C. Detailed provision for the constitution of the General Medical Council is now made by the General Medical Council (Constitution) Order 2008, SI 2008/2554, which provides specifically for (1) the composition of the Council (reg 2); (2) the terms of office of members (reg 3); (3) the education and training of members (reg 4); (4) disqualification from appointment as a member (reg 5); (5) removal of members from office (reg 6); (6) suspension of members from office (reg 7); (7) the appointment, term of office and cessation of office of the chair (reg 8); (8) deputising arrangements in respect of the chair (reg 10); (9) the quorum of the Council (reg 11); and (10) the effect of vacancies on the validity of proceedings (reg 12).

#### **14 Elected members**

TEXT AND NOTES 10-12--1983 Act Sch 1 para 2(4)(b) substituted: SI 2006/1914.

TEXT AND NOTE 14--1983 Act Sch 1 para 2(5)(a) substituted: SI 2006/1914.

TEXT AND NOTES 18-24--SI 2002/3136 revoked: SI 2008/1774.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(2) THE GENERAL MEDICAL COUNCIL/(i) Constitution, Members and Officers/15. Appointed members.

## 15. Appointed members.

Appointed members of the General Medical Council<sup>1</sup> are chosen by such bodies as are designated for the time being as appointing bodies<sup>2</sup>. A person is not qualified to be chosen as an appointed member unless he is fully registered<sup>3</sup>, provisionally registered<sup>4</sup> or registered with limited registration<sup>5</sup>. As from a day to be appointed, he must also hold a licence to practise<sup>6</sup>.

1 For the meaning of 'appointed member' see PARA 13 note 15 ante. There are two appointed members: see the General Medical Council (Constitution) Order 2002, SI 2002/3136, art 2; and PARA 13 note 18 ante. As to the term of office of appointed members see PARA 17 post. As to the constitution etc of the General Medical Council see PARA 13 ante.

2 I.e. by an Order in Council under the Medical Act 1983 s 1 (see PARA 13 note 13 ante): s 1(4), Sch 1 para 3(1) (Sch 1 para 3(1), (2) substituted by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 4(1), (4)). Such an Order in Council may give an appointing body the power to choose more than one appointed member or to choose an appointed member in combination with another appointing body or bodies: Medical Act 1983 Sch 1 para 3(3). No recommendation may be made to Her Majesty to amend or revoke an Order in Council under s 1 so far as it relates to the appointing bodies except in pursuance of a representation made to the Privy Council by the General Medical Council: Sch 1 para 8. 'Appointing body' means a university or other body having, by virtue of an Order in Council under s 1, power to choose an appointed member or members of the General Medical Council: s 55(1). As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

The universities and other bodies listed below are designated as appointing bodies, and each appointing body must, in combination with the other appointing bodies with which it is grouped, choose the number of appointed members specified against that group: General Medical Council (Constitution) Order 2002, SI 2002/3136, art 5(1), (2). Group 1, which appoints one member, comprises: the University of Aberdeen; the Queen's University of Belfast; the University of Birmingham; the University of Brighton; the University of Bristol; the University of Cambridge; the University of Dundee; the University of East Anglia; the University of Edinburgh; the University of Exeter; the University of Glasgow; the University of Hull; the University of Leeds; the University of Leicester; the University of Liverpool; the University of London; the University of Manchester; the University of Newcastle Upon Tyne; the University of Nottingham; the University of Oxford; the University of Plymouth; the University of Sheffield; the University of Southampton; the University of Sussex; the University of Wales; the University of York; and the Society of Apothecaries of London: art 5, Schedule. Group 2, which appoints one member, comprises: the Royal College of Anaesthetists; the Royal College of General Practitioners; the Royal College of Obstetricians and Gynaecologists; the Royal College of Ophthalmologists; the Royal College of Paediatrics and Child Health; the Royal College of Pathologists; the Royal College of Physicians of Edinburgh; the Royal College of Physicians of London; the Royal College of Physicians and Surgeons of Glasgow; the Royal College of Psychiatrists; the Royal College of Radiologists; the Royal College of Surgeons of England; the Royal College of Surgeons of Edinburgh; the Faculty of Occupational Medicine; and the Faculty of Public Health Medicine: art 5, Schedule. As to the Society of Apothecaries of London see PARA 938 post. As to the medical Royal Colleges see PARA 64 post.

3 For the meaning of 'fully registered' see PARA 3 ante.

4 For the meaning of 'provisionally registered' see PARA 102 note 6 post.

5 Medical Act 1983 Sch 1 para 3(2)(a) (as substituted: see note 2 supra). For the meaning of 'limited registration' see PARA 109 note 10 post.

6 Ibid Sch 1 para 3(2)(b) (as substituted: see note 2 supra). Schedule 1 para 3(2)(b) is to come into force on a day to be appointed: see the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, art 1(2), (3). At the date at which this volume states the law no such day had been appointed. For the meaning of 'licence to practise' see PARA 130 note 3 post.

## UPDATE

### **13-33 The General Medical Council**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to take over responsibility for the adjudication of fitness to practice cases from the General Medical Council: see ss 98(2), 99, Sch 7 (not yet in force). As to the OHPA generally, see further PARA 189A.

### **13-23 Constitution, Members and Officers**

Medical Act 1983 Sch 1 paras 1-8 now Sch 1 paras 1A-1C (substituted by SI 2008/1774). The General Medical Council is to be reconstituted as provided for by an order of the Privy Council: see the Medical Act 1983 s 1(2) (see PARA 13). For general provision as to membership of the General Council see now Sch 1 para 1A which provides that all members of the General Council are to be appointed by the Privy Council. As to the matters which an order of the Privy Council under s 1(2) constituting the General Council must include see Sch 1 para 1B; and as to the registration of members' private interests see Sch 1 para 1C. Detailed provision for the constitution of the General Medical Council is now made by the General Medical Council (Constitution) Order 2008, SI 2008/2554, which provides specifically for (1) the composition of the Council (reg 2); (2) the terms of office of members (reg 3); (3) the education and training of members (reg 4); (4) disqualification from appointment as a member (reg 5); (5) removal of members from office (reg 6); (6) suspension of members from office (reg 7); (7) the appointment, term of office and cessation of office of the chair (reg 8); (8) deputising arrangements in respect of the chair (reg 10); (9) the quorum of the Council (reg 11); and (10) the effect of vacancies on the validity of proceedings (reg 12).

### **15 Appointed members**

NOTES 1, 2--SI 2002/3136 revoked: SI 2008/1774.

NOTE 2--Definition of 'appointing body' omitted: SI 2008/1774.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(2) THE GENERAL MEDICAL COUNCIL/(i) Constitution, Members and Officers/16. Nominated members.

## **16. Nominated members.**

Nominated members of the General Medical Council<sup>1</sup> are nominated by the Privy Council<sup>2</sup>. One member at least must be nominated for England, for Wales, for Scotland and for Northern Ireland<sup>3</sup>. A nominated member must be a person who is neither fully registered<sup>4</sup> nor a holder of any qualification<sup>5</sup> registrable under the Medical Act 1983<sup>6</sup>.

1 For the meaning of 'nominated member' see PARA 13 note 16 ante. There are 14 nominated members: see the General Medical Council (Constitution) Order 2002, SI 2002/3136, art 2; and PARA 13 note 18 ante. As to the term of office of nominated members see PARA 17 post. As to the constitution etc of the General Medical Council see PARA 13 ante.

2 Medical Act 1983 s 1(4), Sch 1 para 4(1) (amended by the Health and Social Care (Community Health and Standards) Act 2003 s 187(8), Sch 12 para 2(1), (2)). As to the exercise by the Privy Council of its powers under the Medical Act 1983 see PARA 32 post. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

If, under the Health and Social Care (Community Health and Standards) Act 2003 s 187, the Secretary of State has given a direction to a special health authority to exercise any function of a Minister of the Crown relating to the making of appointments to a body mentioned therein, the Privy Council may direct the special health authority to exercise to the extent specified in the direction its functions under the Medical Act 1983 Sch 1 para 4 (amended) in relation to the nomination of persons to be nominated members of the General Medical Council: Sch 1 para 4ZA(1), (2) (added by the Health and Social Care (Community Health and Standards) Act 2003 s 187(8), Sch 12 para 2(1), (3)). As to the Secretary of State see PARA 5 ante. As to special health authorities see HEALTH SERVICES vol 54 (2008) PARA 136 et seq.

3 Medical Act 1983 Sch 1 para 4(2).

4 For the meaning of 'fully registered' see PARA 3 ante.

5 For the meaning of 'qualification' see PARA 34 note 2 post.

6 Medical Act 1983 Sch 1 para 4(3) (substituted by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 4(1), (5)). As to the registration of qualifications see PARAS 99, 102, 107, 109, 111 post.

## **UPDATE**

### **13-33 The General Medical Council**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to take over responsibility for the adjudication of fitness to practice cases from the General Medical Council: see ss 98(2), 99, Sch 7 (not yet in force). As to the OHPA generally, see further PARA 189A.

### **13-23 Constitution, Members and Officers**

Medical Act 1983 Sch 1 paras 1-8 now Sch 1 paras 1A-1C (substituted by SI 2008/1774). The General Medical Council is to be reconstituted as provided for by an order of the Privy Council: see the Medical Act 1983 s 1(2) (see PARA 13). For general provision as to membership of the General Council see now Sch 1 para 1A which provides that all members of the General Council are to be appointed by the Privy

Council. As to the matters which an order of the Privy Council under s 1(2) constituting the General Council must include see Sch 1 para 1B; and as to the registration of members' private interests see Sch 1 para 1C. Detailed provision for the constitution of the General Medical Council is now made by the General Medical Council (Constitution) Order 2008, SI 2008/2554, which provides specifically for (1) the composition of the Council (reg 2); (2) the terms of office of members (reg 3); (3) the education and training of members (reg 4); (4) disqualification from appointment as a member (reg 5); (5) removal of members from office (reg 6); (6) suspension of members from office (reg 7); (7) the appointment, term of office and cessation of office of the chair (reg 8); (8) deputising arrangements in respect of the chair (reg 10); (9) the quorum of the Council (reg 11); and (10) the effect of vacancies on the validity of proceedings (reg 12).

## **16 Nominated members**

NOTE 1--SI 2002/3136 revoked: SI 2008/1774.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(2) THE GENERAL MEDICAL COUNCIL/(i) Constitution, Members and Officers/17. Terms of office of appointed and nominated members.

## **17. Terms of office of appointed and nominated members.**

The term of office of a person appointed<sup>1</sup> or nominated<sup>2</sup> to the General Medical Council<sup>3</sup> is for a period not exceeding four years<sup>4</sup>. A person who is, or has previously been, a member may be appointed or nominated as a member for a further term<sup>5</sup>. An appointed or nominated member may at any time resign his office by letter addressed to the president of the Council<sup>6</sup>. When an appointed or nominated member dies, resigns or otherwise ceases<sup>7</sup> to be a member before completing his term of office, a person must be appointed or nominated, as the case may be, to hold office in his place for a term not exceeding four years<sup>8</sup>.

1 For the meaning of 'appointed member' see PARA 13 note 15 ante.

2 For the meaning of 'nominated member' see PARA 13 note 16 ante.

3 As to the constitution etc of the General Medical Council see PARA 13 ante.

4 General Medical Council (Constitution) Order 2002, SI 2002/3136, art 4(1).

5 Ibid art 4(2). No person who has served as a member for an aggregate of at least 8 years during the period of 11 years ending with the last occasion on which he left office (excluding in calculating that aggregate any time prior to 1 July 2003) is eligible, for a period of 4 years after leaving office, to be elected for a further term: art 4(3). However, a person who holds the office of president of the General Medical Council when his term of office as a member expires, and who by reason of art 4(3) would not otherwise be eligible to stand for a further term of office, may nonetheless be appointed or nominated as a member for a further term until one of the specified events occurs: art 7(4). The specified events are either that he ceases to hold the office of president, or that his further term of office has expired: art 7(5).

6 Ibid art 4(4). As to the president of the General Medical Council see PARA 22 post.

7 As to the suspension and removal of members see PARA 20 post.

8 General Medical Council (Constitution) Order 2002, SI 2002/3136, art 4(5).

## **UPDATE**

### **13-33 The General Medical Council**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to take over responsibility for the adjudication of fitness to practice cases from the General Medical Council: see ss 98(2), 99, Sch 7 (not yet in force). As to the OHPA generally, see further PARA 189A.

### **13-23 Constitution, Members and Officers**

Medical Act 1983 Sch 1 paras 1-8 now Sch 1 paras 1A-1C (substituted by SI 2008/1774). The General Medical Council is to be reconstituted as provided for by an order of the Privy Council: see the Medical Act 1983 s 1(2) (see PARA 13). For general provision as to membership of the General Council see now Sch 1 para 1A which provides that all members of the General Council are to be appointed by the Privy Council. As to the matters which an order of the Privy Council under s 1(2) constituting

the General Council must include see Sch 1 para 1B; and as to the registration of members' private interests see Sch 1 para 1C. Detailed provision for the constitution of the General Medical Council is now made by the General Medical Council (Constitution) Order 2008, SI 2008/2554, which provides specifically for (1) the composition of the Council (reg 2); (2) the terms of office of members (reg 3); (3) the education and training of members (reg 4); (4) disqualification from appointment as a member (reg 5); (5) removal of members from office (reg 6); (6) suspension of members from office (reg 7); (7) the appointment, term of office and cessation of office of the chair (reg 8); (8) deputising arrangements in respect of the chair (reg 10); (9) the quorum of the Council (reg 11); and (10) the effect of vacancies on the validity of proceedings (reg 12).

### **17 Terms of office of appointed and nominated members**

TEXT AND NOTES--SI 2002/3136 revoked: SI 2008/1774.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(2) THE GENERAL MEDICAL COUNCIL/(i) Constitution, Members and Officers/18. Branch councils.

## **18. Branch councils.**

There is a branch council of the General Medical Council<sup>1</sup> for England, for Wales, for Scotland and for Northern Ireland<sup>2</sup>. The branch council for each area is constituted as provided by the Council<sup>3</sup>, and some or all members of a branch council may be persons who are not members of the Council<sup>4</sup>. The Council may delegate to a branch council such of its functions, other than those relating to fraud or error in relation to registration<sup>5</sup>, as it thinks fit<sup>6</sup>. The Council must furnish each branch council with such sums as the branch council may require for defraying any expenses incurred by the branch council with the approval of the Council; and each branch council must furnish the Council with such evidence as it may reasonably require of all payments made by the branch council out of sums so furnished<sup>7</sup>. There must be paid to the members of the branch councils such remuneration and such travelling, subsistence or other expenses as the Council may allow<sup>8</sup>. Each branch council must appoint a registrar<sup>9</sup>.

1 As to the constitution etc of the General Medical Council see PARA 13 et seq ante.

2 Medical Act 1983 s 1(4), Sch 1 para 26(1). These councils were created by the Medical Act 1978 (repealed) and came into existence on 27 September 1979, replacing the branch councils formed under the Medical Act (1858) (repealed) and continued under the Medical Act 1956 s 6 (repealed).

3 Medical Act 1983 Sch 1 para 26(2) (Sch 1 paras 26(2), 29 substituted, and Sch 1 para 26(2A) added, by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 15(7)(d), (e)).

4 Medical Act 1983 Sch 1 para 26(2A) (as added: see note 3 supra).

5 ie those conferred by ibid s 39: see PARA 189 post.

6 Ibid Sch 1 para 26(3).

7 Ibid Sch 1 para 28. As to the finance and accounts of the Council see PARAS 27-28 post.

8 Ibid Sch 1 para 29 (as substituted: see note 3 supra).

9 See ibid Sch 1 para 27; and PARA 23 post.

## **UPDATE**

### **13-33 The General Medical Council**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to take over responsibility for the adjudication of fitness to practice cases from the General Medical Council: see ss 98(2), 99, Sch 7 (not yet in force). As to the OHPA generally, see further PARA 189A.

### **13-23 Constitution, Members and Officers**

Medical Act 1983 Sch 1 paras 1-8 now Sch 1 paras 1A-1C (substituted by SI 2008/1774). The General Medical Council is to be reconstituted as provided for by an order of the Privy Council: see the Medical Act 1983 s 1(2) (see PARA 13). For general

provision as to membership of the General Council see now Sch 1 para 1A which provides that all members of the General Council are to be appointed by the Privy Council. As to the matters which an order of the Privy Council under s 1(2) constituting the General Council must include see Sch 1 para 1B; and as to the registration of members' private interests see Sch 1 para 1C. Detailed provision for the constitution of the General Medical Council is now made by the General Medical Council (Constitution) Order 2008, SI 2008/2554, which provides specifically for (1) the composition of the Council (reg 2); (2) the terms of office of members (reg 3); (3) the education and training of members (reg 4); (4) disqualification from appointment as a member (reg 5); (5) removal of members from office (reg 6); (6) suspension of members from office (reg 7); (7) the appointment, term of office and cessation of office of the chair (reg 8); (8) deputising arrangements in respect of the chair (reg 10); (9) the quorum of the Council (reg 11); and (10) the effect of vacancies on the validity of proceedings (reg 12).



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(2) THE GENERAL MEDICAL COUNCIL/(i) Constitution, Members and Officers/19. Registration of members' private interests.

## **19. Registration of members' private interests.**

The General Medical Council<sup>1</sup> must establish and maintain a system for the declaration and registration of private interests of members of the Council<sup>2</sup>. The Council must publish entries recorded in the register of members' private interests<sup>3</sup>.

1 As to the constitution etc of the General Medical Council see PARA 13 et seq ante.

2 Medical Act 1983 s 1(4), Sch 1 para 4B(1) (Sch 1 para 4B added by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 4(1), (6)).

3 Medical Act 1983 Sch 1 para 4B(2) (as added: see note 2 supra).

### **UPDATE**

#### **13-33 The General Medical Council**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to take over responsibility for the adjudication of fitness to practice cases from the General Medical Council: see ss 98(2), 99, Sch 7 (not yet in force). As to the OHPA generally, see further PARA 189A.

#### **13-23 Constitution, Members and Officers**

Medical Act 1983 Sch 1 paras 1-8 now Sch 1 paras 1A-1C (substituted by SI 2008/1774). The General Medical Council is to be reconstituted as provided for by an order of the Privy Council: see the Medical Act 1983 s 1(2) (see PARA 13). For general provision as to membership of the General Council see now Sch 1 para 1A which provides that all members of the General Council are to be appointed by the Privy Council. As to the matters which an order of the Privy Council under s 1(2) constituting the General Council must include see Sch 1 para 1B; and as to the registration of members' private interests see Sch 1 para 1C. Detailed provision for the constitution of the General Medical Council is now made by the General Medical Council (Constitution) Order 2008, SI 2008/2554, which provides specifically for (1) the composition of the Council (reg 2); (2) the terms of office of members (reg 3); (3) the education and training of members (reg 4); (4) disqualification from appointment as a member (reg 5); (5) removal of members from office (reg 6); (6) suspension of members from office (reg 7); (7) the appointment, term of office and cessation of office of the chair (reg 8); (8) deputising arrangements in respect of the chair (reg 10); (9) the quorum of the Council (reg 11); and (10) the effect of vacancies on the validity of proceedings (reg 12).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(2) THE GENERAL MEDICAL COUNCIL/(i) Constitution, Members and Officers/20. Suspension or removal of members from office.

## **20. Suspension or removal of members from office.**

The General Medical Council<sup>1</sup> must by rules make provision for the suspension or removal from office of a member by the Council in such circumstances as may be specified in the rules<sup>2</sup>. Such rules must provide for an elected member<sup>3</sup> or an appointed member<sup>4</sup> to be removed from office if he ceases to be registered<sup>5</sup> or, as from a day to be appointed, if he ceases to hold a licence to practise<sup>6</sup>. Standing orders of the Council must make provision for the procedure by which a member may be suspended or removed from office<sup>7</sup>.

A member<sup>8</sup> must be removed from office<sup>9</sup> if:

- 1 (1) he has been convicted of a criminal offence in the British Islands<sup>10</sup> or has been convicted of an offence elsewhere which, if committed in England or Wales, would constitute a criminal offence, and in either case has had passed on him a sentence of imprisonment, whether suspended or not, for a period of not less than three months without the option of a fine and which has not been quashed on appeal<sup>11</sup>;
- 2 (2) he has been removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commissioners or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which he was responsible or to which he was privy, or which he by his conduct contributed to or facilitated<sup>12</sup>; or, in Scotland, he has been removed from being concerned in the management or control of any body<sup>13</sup>;
- 3 (3) his attendance at meetings of the Council or Council committees falls below a minimum level as set out in standing orders of the Council and the Council is satisfied that this is not for reasonable cause<sup>14</sup>;
- 4 (4) the Council is satisfied that he has become incapable of performing his duties by reason of his physical or mental health<sup>15</sup>;
- 5 (5) he has been subject to an investigation or proceedings concerning his professional conduct by any licensing body<sup>16</sup> anywhere in the world where the final outcome<sup>17</sup> was adverse, and the Council is satisfied that the licensing body's findings were such that it would be unsuitable for the member to continue to hold office<sup>18</sup>; or
- 6 (6) the Council is satisfied that his continued membership is liable to undermine confidence in the regulation of the medical profession<sup>19</sup>.

A member may be suspended from office whilst the Council considers whether to remove him from office under head (1), (2), (4), (5) or (6) above<sup>20</sup>. The Council must notify the member of a decision to remove or suspend him from office<sup>21</sup>, and a decision to remove or suspend a member from office takes effect when written notice<sup>22</sup> of the decision has been served upon the member<sup>23</sup>.

A period of suspension must not exceed six months<sup>24</sup>. The Council may at any time review a suspension, and it must review a suspension after three months if so requested by the member<sup>25</sup>. Where the Council reviews a suspension, it may revoke the suspension, in which case it ceases to have effect<sup>26</sup>, or suspend the member from office for a further period of not more than six months from the expiry of the current period of suspension<sup>27</sup>.

Where a medical member<sup>28</sup> ceases to be a registered medical practitioner<sup>29</sup>, or his registration is suspended by virtue of a direction made under the Medical Act 1983<sup>30</sup>, he must be removed from office with effect from the date when he ceased to be registered or his registration was suspended<sup>31</sup>.

A person must not be restored to membership of the Council if: (a) his term of office has come to an end<sup>32</sup>; or (b) immediately after the suspension comes to an end his name is erased from the register<sup>33</sup> or he is suspended under the Medical Act 1983<sup>34</sup>.

1 As to the constitution etc of the General Medical Council see PARA 13 et seq ante.

2 Medical Act 1983 s 1(4), Sch 1 para 4A(1) (Sch 1 para 4A added by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 4(1), (6)). No such rules are to come into force until approved by order of the Privy Council: Medical Act 1983 Sch 1 para 4A(4) (as so added). As to the rules that have been made see the General Medical Council (Suspension and Removal of Members from Office) Rules 2004, approved by the General Medical Council (Suspension and Removal of Members from Office) Rules Order of Council 2004, SI 2004/215. As to the exercise by the Privy Council of its powers under the Medical Act 1983 see PARA 32 post. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

3 For the meaning of 'elected member' see PARA 13 note 14 ante.

4 For the meaning of 'appointed member' see PARA 13 note 15 ante.

5 Medical Act 1983 Sch 1 para 4A(2)(a) (as added: see note 2 supra). As to registration see PARA 99 et seq post.

6 Ibid Sch 1 para 4A(2)(b) (as added: see note 2 supra). Schedule 1 para 4A(2)(b) is to come into force on a day to be appointed: see the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, art 1(2), (3). At the date at which this volume states the law no such day had been appointed. For the meaning of 'licence to practise' see PARA 130 note 3 post.

7 Medical Act 1983 Sch 1 para 4A(3) (as added: see note 2 supra). As to standing orders see PARA 24 post.

8 'Member' means a person duly elected, appointed or nominated to the General Medical Council in accordance with the provisions of *ibid* Sch 1 (see PARAS 14-16 ante): General Medical Council (Suspension and Removal of Members from Office) Rules Order of Council 2004, SI 2004/215, r 2(1).

9 Where under the General Medical Council (Suspension and Removal of Members from Office) Rules Order of Council 2004, SI 2004/215, a person is removed from office, they must also be removed from membership of any committee of the Council and any position to which the member has been appointed by the Council or one of its committees: r 2(2). As to the committees of the Council see PARAS 25-26 post. As to the president, chairman and treasurer of the Council see PARA 22 post.

10 'British Islands' means the United Kingdom, the Channel Islands and the Isle of Man: Interpretation Act 1978 s 5, Sch 1. For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

11 General Medical Council (Suspension and Removal of Members from Office) Rules Order of Council 2004, SI 2004/215, r 4(a).

12 Ibid r 4(b)(i). As to the removal from office of a charity trustee or trustee for a charity see CHARITIES vol 8 (2010) PARAS 294, 566. As to the Charity Commissioners see CHARITIES vol 8 (2010) PARA 538 et seq.

13 *Ie* under the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 s 7 (powers of Court of Session to deal with management of charities): General Medical Council (Suspension and Removal of Members from Office) Rules Order of Council 2004, SI 2004/215, r 4(b)(ii).

14 Ibid r 4(c). As to proceedings of the General Medical Council see PARA 24 post.

15 Ibid r 4(d).

16 'Licensing body' means any body other than the General Medical Council that licenses or regulates any profession: *ibid* r 2(1).

17 'Final outcome' means the outcome following the exhaustion of any right of appeal: *ibid* r 2(1).

18 Ibid r 4(e).

19 Ibid r 4(f). As to the exercise by the Council of its functions so as to protect, promote and maintain the health and safety of the public see PARA 13 ante.

20 Ibid r 5.

21 Ibid r 6(1).

22 For this purpose, written notice may be served by the registrar giving or sending it to the member by personal delivery, or by sending it to him by a registered post service, or by a postal service which provides for delivery or receipt to be recorded, at his usual address: *ibid* r 6(3). Where an Act authorises or requires any document to be served by post (whether the expression 'serve' or the expression 'give' or 'send' or any other expression is used) then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document; and, unless the contrary is proved, is deemed to have been effected at the time at which the letter would be delivered in the ordinary course of post: Interpretation Act 1978 s 7. 'Writing' includes typing, printing, lithography, photography and other modes of representing or reproducing words in a visible form, and expressions referring to writing are to be construed accordingly: s 5, Sch 1. For the meaning of 'the registrar' see PARA 23 note 1 post.

23 General Medical Council (Suspension and Removal of Members from Office) Rules Order of Council 2004, SI 2004/215, r 6(2).

24 Ibid r 7(1).

25 Ibid r 7(3). The Council must review any suspension, including a period of suspension under r 7(4)(b) (see the text to note 27 *infra*), before the period of suspension expires, if at the end of that period the member would, unless a further period of suspension is directed, have resumed office: r 7(2). For the purposes of r 7, 'member' includes a member who has been suspended from office: r 2(1).

26 Ibid r 7(4)(a).

27 Ibid r 7(4)(b). See also note 25 *supra*. Where the Council makes a decision to suspend the member under r 7(4)(b), then r 6 (see the text to notes 21-23 *supra*) applies as it applies to a suspension under r 5: r 7(5).

28 'Medical member' means an elected member or an appointed member: *ibid* r 2(1).

29 Ibid r 3(1)(a). For the meaning of 'registered medical practitioner' see PARA 4 ante.

30 *Ie* by virtue of a direction made under the Medical Act 1983 Pt V (ss 35-45) (see PARA 138 *et seq post*), except by virtue of a direction made under ss 38, 41A, (s 38 as substituted; s 41A as added and substituted) (see PARAS 146, 148 *post*) or under rules made under Sch 4 para 5A (as added) (see PARA 183 *post*): General Medical Council (Suspension and Removal of Members from Office) Rules Order of Council 2004, SI 2004/215, r 3(1)(b) (amended by SI 2004/2608).

31 General Medical Council (Suspension and Removal of Members from Office) Rules Order of Council 2004, SI 2004/215, r 3(1). Subject to r 3(3) (see the text to notes 32-34 *infra*), where the registration of a medical member is suspended by virtue of a direction made under the Medical Act 1983 ss 38, 41A, (s 38 as substituted; s 41A, as added and substituted) (see PARAS 146, 148 *post*) or under rules made under Sch 4 para 5A (as added) (see PARA 183 *post*), he must be suspended from office with effect from the date when his registration is suspended until his suspension from registration is terminated: General Medical Council (Suspension and Removal of Members from Office) Rules Order of Council 2004, SI 2004/215, r 3(2).

32 Ibid r 3(3)(a).

33 Ibid r 3(3)(b)(i). For the meaning of 'the register' see PARA 34 note 3 *post*. As to erasure from the register see PARA 144 *post*.

34 *Ie* under the Medical Act 1983 ss 36, 36A, 37 (all repealed): General Medical Council (Suspension and Removal of Members from Office) Rules Order of Council 2004, SI 2004/215, r 3(3)(b)(ii) (amended by SI 2004/2608).

## UPDATE

### 13-33 The General Medical Council

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to take over responsibility for the adjudication of fitness to practice cases from the General Medical Council: see ss 98(2), 99, Sch 7 (not yet in force). As to the OHPA generally, see further PARA 189A.

### **13-23 Constitution, Members and Officers**

Medical Act 1983 Sch 1 paras 1-8 now Sch 1 paras 1A-1C (substituted by SI 2008/1774). The General Medical Council is to be reconstituted as provided for by an order of the Privy Council: see the Medical Act 1983 s 1(2) (see PARA 13). For general provision as to membership of the General Council see now Sch 1 para 1A which provides that all members of the General Council are to be appointed by the Privy Council. As to the matters which an order of the Privy Council under s 1(2) constituting the General Council must include see Sch 1 para 1B; and as to the registration of members' private interests see Sch 1 para 1C. Detailed provision for the constitution of the General Medical Council is now made by the General Medical Council (Constitution) Order 2008, SI 2008/2554, which provides specifically for (1) the composition of the Council (reg 2); (2) the terms of office of members (reg 3); (3) the education and training of members (reg 4); (4) disqualification from appointment as a member (reg 5); (5) removal of members from office (reg 6); (6) suspension of members from office (reg 7); (7) the appointment, term of office and cessation of office of the chair (reg 8); (8) deputising arrangements in respect of the chair (reg 10); (9) the quorum of the Council (reg 11); and (10) the effect of vacancies on the validity of proceedings (reg 12).

### **20 Suspension or removal of members from office**

NOTE 22--As to the service of notifications by post under the Dentists Act 1984, see ss 50A, 53(2A) (added by SI 2005/2011).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(2) THE GENERAL MEDICAL COUNCIL/(i) Constitution, Members and Officers/21. Remuneration and allowances to members.

## **21. Remuneration and allowances to members.**

The members of the General Medical Council<sup>1</sup> are paid such remuneration and such travelling, subsistence or other expenses as the Council may allow, including payments for duties undertaken as trustees of the Council<sup>2</sup>. The members of the branch councils<sup>3</sup> are paid such remuneration and such travelling, subsistence or other expenses as the Council may allow<sup>4</sup>.

1 As to the General Medical Council and its membership see PARA 13 et seq ante.

2 Medical Act 1983 s 1(4), Sch 1 para 17 (substituted by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 15(7)(c)). As to finance and accounts see PARAS 27-28 post.

3 As to branch councils see PARA 18 ante.

4 Medical Act 1983 Sch 1 para 29 (substituted by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 15(7)(e)).

## **UPDATE**

### **13-33 The General Medical Council**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to take over responsibility for the adjudication of fitness to practice cases from the General Medical Council: see ss 98(2), 99, Sch 7 (not yet in force). As to the OHPA generally, see further PARA 189A.

### **13-23 Constitution, Members and Officers**

Medical Act 1983 Sch 1 paras 1-8 now Sch 1 paras 1A-1C (substituted by SI 2008/1774). The General Medical Council is to be reconstituted as provided for by an order of the Privy Council: see the Medical Act 1983 s 1(2) (see PARA 13). For general provision as to membership of the General Council see now Sch 1 para 1A which provides that all members of the General Council are to be appointed by the Privy Council. As to the matters which an order of the Privy Council under s 1(2) constituting the General Council must include see Sch 1 para 1B; and as to the registration of members' private interests see Sch 1 para 1C. Detailed provision for the constitution of the General Medical Council is now made by the General Medical Council (Constitution) Order 2008, SI 2008/2554, which provides specifically for (1) the composition of the Council (reg 2); (2) the terms of office of members (reg 3); (3) the education and training of members (reg 4); (4) disqualification from appointment as a member (reg 5); (5) removal of members from office (reg 6); (6) suspension of members from office (reg 7); (7) the appointment, term of office and cessation of office of the chair (reg 8); (8) deputising arrangements in respect of the chair (reg 10); (9) the quorum of the Council (reg 11); and (10) the effect of vacancies on the validity of proceedings (reg 12).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(2) THE GENERAL MEDICAL COUNCIL/(i) Constitution, Members and Officers/22. President, chairman and treasurers.

## **22. President, chairman and treasurers.**

The members of the General Medical Council<sup>1</sup> must elect from among their number a president of the Council and may so elect a chairman and a treasurer or treasurers of the Council<sup>2</sup>.

A member serving as president must cease to hold the office of president upon ceasing to be a member<sup>3</sup>. Where a person holds the office of president when his term of office as a member expires<sup>4</sup>, and he is elected, appointed or nominated as a member for a further term<sup>5</sup>, he is eligible for re-election as president<sup>6</sup>. However, no member may serve as president for more than an aggregate total of six years<sup>7</sup>.

Any chairman or treasurer must be elected for a term not extending beyond the expiration of the term for which he has been elected, chosen or nominated to be a member of the Council<sup>8</sup>.

1 As to the General Medical Council and its membership see PARA 13 et seq ante.

2 Medical Act 1983 s 1(4), Sch 1 para 16(1). As to finance and accounts see PARAS 27-28 post.

3 General Medical Council (Constitution) Order 2002, SI 2002/3136, art 7(1). As to the tenure of office of members of the General Medical Council see PARAS 14, 17 ante. As to the suspension or removal from office of members see PARA 20 ante.

4 Ibid art 7(2)(a).

5 Ibid art 7(2)(b).

6 Ibid art 7(2). A person who holds the office of president when his term of office as a member expires, and who by reason of art 3(3) (see PARA 14 note 19 ante) or art 4(3) (see PARA 17 note 5 ante) would not otherwise be eligible to stand for a further term of office, may nonetheless be elected, appointed or nominated as a member for a further term until one of the specified events occurs: art 7(4). The specified events are either that he ceases to hold the office of president, or that his further term of office has expired: art 7(5).

7 Ibid art 7(3).

8 Medical Act 1983 Sch 1 para 16(2) (amended by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, art 15(7)(b)(i)).

## **UPDATE**

### **13-33 The General Medical Council**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to take over responsibility for the adjudication of fitness to practice cases from the General Medical Council: see ss 98(2), 99, Sch 7 (not yet in force). As to the OHPA generally, see further PARA 189A.

### **13-23 Constitution, Members and Officers**

Medical Act 1983 Sch 1 paras 1-8 now Sch 1 paras 1A-1C (substituted by SI 2008/1774). The General Medical Council is to be reconstituted as provided for by an order of the Privy Council: see the Medical Act 1983 s 1(2) (see PARA 13). For general

provision as to membership of the General Council see now Sch 1 para 1A which provides that all members of the General Council are to be appointed by the Privy Council. As to the matters which an order of the Privy Council under s 1(2) constituting the General Council must include see Sch 1 para 1B; and as to the registration of members' private interests see Sch 1 para 1C. Detailed provision for the constitution of the General Medical Council is now made by the General Medical Council (Constitution) Order 2008, SI 2008/2554, which provides specifically for (1) the composition of the Council (reg 2); (2) the terms of office of members (reg 3); (3) the education and training of members (reg 4); (4) disqualification from appointment as a member (reg 5); (5) removal of members from office (reg 6); (6) suspension of members from office (reg 7); (7) the appointment, term of office and cessation of office of the chair (reg 8); (8) deputising arrangements in respect of the chair (reg 10); (9) the quorum of the Council (reg 11); and (10) the effect of vacancies on the validity of proceedings (reg 12).

## **22 President, chairman and treasurers**

TEXT AND NOTES 1, 2, 8--Medical Act 1983 Sch 1 para 16(1), (2) now Sch 1 para 16(1A) (substituted by SI 2008/1774) by virtue of which standing orders of the General Medical Council may make provision with regard to the appointment of a treasurer of the Council.

TEXT AND NOTES 3-7--SI 2002/3136 revoked: SI 2008/1774.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(2) THE GENERAL MEDICAL COUNCIL/(i) Constitution, Members and Officers/23. Registrar.

### **23. Registrar.**

The General Medical Council must appoint a person to be registrar of the Council, and may appoint such deputy and assistant registrars as it thinks fit<sup>1</sup>. The registrar has, in addition to the functions specifically mentioned in the Medical Act 1983, such other functions as the Council may think fit to direct him to perform or delegate to him, whether or not in rules or standing orders<sup>2</sup>.

Each branch council<sup>3</sup> must appoint a registrar<sup>4</sup>, but the person appointed to be registrar of the Council must also be registrar of the branch council for England<sup>5</sup>, and may also be registrar of all or any of the other branch councils<sup>6</sup>.

1 Medical Act 1983 s 1(4), Sch 1 para 16(3). The registrar of the General Medical Council is referred to in the Medical Act 1983 as 'the registrar': see ss 2(1), 55(1). Where a deputy or assistant registrar is authorised by the registrar to act for him in any matter, any reference in the Medical Act 1983 to the registrar or in a direction or delegation to him under Sch 1 para 16(4) (see the text to note 2 *infra*) includes a reference to that deputy or assistant where the reference relates to that matter: Sch 1 para 16(3) (Sch 1 para 16(3) amended, and Sch 1 para 16(4) added, by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 15(7)(b)(ii), (iii)). As to the constitution etc of the General Medical Council see PARA 13 *ante*.

2 Medical Act 1983 Sch 1 para 16(4) (as added: see note 1 *supra*). This provision is stated to be subject to Sch 4 para 6: see PARA 189 *post*. As to standing orders see PARA 24 *post*.

3 As to branch councils see PARA 18 *ante*.

4 Medical Act 1983 Sch 1 para 27.

5 *Ibid* Sch 1 para 27(a).

6 *Ibid* Sch 1 para 27(b).

## **UPDATE**

### **13-33 The General Medical Council**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to take over responsibility for the adjudication of fitness to practice cases from the General Medical Council: see ss 98(2), 99, Sch 7 (not yet in force). As to the OHPA generally, see further PARA 189A.

### **13-23 Constitution, Members and Officers**

Medical Act 1983 Sch 1 paras 1-8 now Sch 1 paras 1A-1C (substituted by SI 2008/1774). The General Medical Council is to be reconstituted as provided for by an order of the Privy Council: see the Medical Act 1983 s 1(2) (see PARA 13). For general provision as to membership of the General Council see now Sch 1 para 1A which provides that all members of the General Council are to be appointed by the Privy Council. As to the matters which an order of the Privy Council under s 1(2) constituting the General Council must include see Sch 1 para 1B; and as to the registration of

members' private interests see Sch 1 para 1C. Detailed provision for the constitution of the General Medical Council is now made by the General Medical Council (Constitution) Order 2008, SI 2008/2554, which provides specifically for (1) the composition of the Council (reg 2); (2) the terms of office of members (reg 3); (3) the education and training of members (reg 4); (4) disqualification from appointment as a member (reg 5); (5) removal of members from office (reg 6); (6) suspension of members from office (reg 7); (7) the appointment, term of office and cessation of office of the chair (reg 8); (8) deputising arrangements in respect of the chair (reg 10); (9) the quorum of the Council (reg 11); and (10) the effect of vacancies on the validity of proceedings (reg 12).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(2) THE GENERAL MEDICAL COUNCIL/(ii) Business and Finance/24. Proceedings.

## **(ii) Business and Finance**

### **24. Proceedings.**

The General Medical Council<sup>1</sup> may by standing order make provision with respect to the meetings and proceedings of and the discharge of its functions<sup>2</sup> by the Council and any committees of the Council<sup>3</sup>, with respect to the composition of committees of the Council and with respect to the functions of the officers of the Council<sup>4</sup>. Any standing order may be varied or revoked by a subsequent standing order<sup>5</sup>.

The validity of any proceedings of the Council is not affected by any vacancy among the members or by any defect in the nomination, appointment or election of any member<sup>6</sup>. The quorum of the Council is prescribed by Her Majesty by Order in Council<sup>7</sup>. All acts of the Council are decided by the votes of a majority of the members present at any meeting and, if the votes are equal, the person who presides at the meeting has a casting vote in addition to his vote as a member of the Council<sup>8</sup>.

1 As to the constitution etc of the General Medical Council see PARA 13 ante.

2 As to the functions of the Council see PARA 13 ante.

3 As to the committees of the Council see PARA 25 post.

4 Medical Act 1983 s 1(4), Sch 1 para 15(1). These provisions do not apply in relation to the statutory committees other than the education committee nor may standing orders be made in relation to the discharge of the Council's functions under s 39 (see PARA 189 post) or in relation to any committee to which those functions may be delegated: Sch 1 para 15(3). For the meaning of 'the statutory committees' see PARA 26 note 2 post. As to the education committee see PARA 57 post. As to the officers of the Council see PARAS 22-23 ante.

5 Ibid Sch 1 para 15(2).

6 Ibid Sch 1 para 12. As to the election, appointment and nomination of members and the filling of vacancies in membership see PARAS 14-17 ante.

7 I.e. an Order in Council made under ibid s 1 (see PARA 13 note 13 ante): Sch 1 para 13 (substituted by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 4(1), (8)). The quorum of the Council is 25: General Medical Council (Constitution) Order 2002, SI 2002/3136, art 8. As to Orders in Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 907.

8 Medical Act 1983 Sch 1 para 14.

## **UPDATE**

### **13-33 The General Medical Council**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to take over responsibility for the adjudication of fitness to practice cases from the General Medical Council: see ss 98(2), 99, Sch 7 (not yet in force). As to the OHPA generally, see further PARA 189A.

### **24 Proceedings**

NOTE 4--Medical Act 1983 Sch 1 para 15(1A) added, Sch 1 para 15(3) amended: SI 2008/1774.

TEXT AND NOTES 6, 7--Medical Act 1983 Sch 1 paras 12, 13 repealed: SI 2008/1774. As to the validity of proceedings see now the General Medical Council (Constitution) Order 2008, SI 2008/2554, reg 12.

NOTE 7--SI 2002/3136 revoked: SI 2008/1774. The quorum of the Council is now 14: SI 2008/2554 reg 11.

TEXT AND NOTE 8--Medical Act 1983 Sch 1 para 14 amended: SI 2008/1774.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(2) THE GENERAL MEDICAL COUNCIL/(ii) Business and Finance/25. Committees.

## **25. Committees.**

The General Medical Council<sup>1</sup> may constitute one or more committees<sup>2</sup>, and may delegate to any committee such of the Council's functions<sup>3</sup> as it thinks fit<sup>4</sup>. Any committee may consist of or include persons who are not members of the Council<sup>5</sup>. A committee may, if authorised to do so by the Council, co-opt such persons, whether or not members of the Council, as the committee thinks fit<sup>6</sup>. Except where rules<sup>7</sup> make provision as to quorum in the case of any of the statutory committees<sup>8</sup>, the quorum of a committee is such as the Council may from time to time determine<sup>9</sup>. The members of the committees are paid such remuneration and such travelling, subsistence or other expenses as the Council may allow<sup>10</sup>.

1 As to the constitution etc of the General Medical Council see PARA 13 ante.

2 Medical Act 1983 s 1(4), Sch 1 para 25(1) (amended by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 5(1), (4)(a)).

3 As to the functions of the Council see PARA 13 ante.

4 Medical Act 1983 Sch 1 para 25(3). However, the determination of the remuneration payable to visitors appointed by the education committee under s 7(1) (see PARA 59 text to notes 1-3 post) or s 13(1) (see PARA 63 text to notes 1-3 post) or to inspectors appointed by that committee under s 6(2) (see PARA 61 text to notes 1-4 post) is subject to the approval of the Council: Sch 1 para 25(3).

5 Ibid Sch 1 para 25(1A) (added by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 5(1), (4)(b)).

6 Medical Act 1983 Sch 1 para 25(2) (substituted by the Medical Act 1983 (Amendment) Order 2000, SI 2000/1803, arts 2, 15(f); and amended by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 5(1), (4)(c)). This provision is stated to be subject to and in accordance with the Medical Act 1983 Sch 1 para 23 (as substituted) (see PARA 26 note 11 post).

7 I.e. rules made by virtue of the Medical Act 1983 Sch 1 para 23B (as added): see PARA 26 text to notes 13, 14 post.

8 For the meaning of 'the statutory committees' see PARA 26 note 2 post.

9 Medical Act 1983 Sch 1 para 25(4) (Sch 1 para 25(4) substituted, and Sch 1 para 25(5) added, by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 5(1), (4)(d)).

10 Medical Act 1983 Sch 1 para 25(5) (as added: see note 9 supra).

## **UPDATE**

### **13-33 The General Medical Council**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to take over responsibility for the adjudication of fitness to practice cases from the General Medical Council: see ss 98(2), 99, Sch 7 (not yet in force). As to the OHPA generally, see further PARA 189A.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(2) THE GENERAL MEDICAL COUNCIL/(ii) Business and Finance/26. Statutory committees.

## 26. Statutory committees.

The General Medical Council<sup>1</sup> has the following statutory committees<sup>2</sup>: (1) the education committee<sup>3</sup>; (2) one or more interim orders panels<sup>4</sup>; (3) one or more registration decisions panels<sup>5</sup>; (4) one or more registration appeals panels<sup>6</sup>; (5) the investigation committee<sup>7</sup>; (6) one or more fitness to practise panels<sup>8</sup>.

Subject to the specified restrictions on membership<sup>9</sup> and to the power to co-opt members<sup>10</sup>, an interim orders panel, a registration appeals panel, and a fitness to practise panel are constituted as provided by rules made by the Council<sup>11</sup>. Subject to the power to co-opt members, a registration decisions panel and the investigation committee are constituted as provided by rules made by the Council<sup>12</sup>. Any rules made<sup>13</sup> may make provision as to quorum<sup>14</sup>. Rules do not come into force until approved by order of the Privy Council<sup>15</sup>.

1 As to the constitution etc of the General Medical Council see PARA 13 ante.

2 Medical Act 1983 s 1(3) (ss 1(3), 55(1), Sch 1 paras 23, 24 all substituted, and s 1(3A), Sch 1 para 23B both added, by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 5(1)-(3), 15(6)(c)). The committees are constituted in accordance with the Medical Act 1983 Sch 1 Pt III paras 19-25 and have the functions assigned to them by or under the Medical Act 1983: s 1(3) (as so substituted). The committees are referred to as 'the statutory committees': see s 1(3A) (as so added); and s 55(1) (definition as so substituted).

3 Ibid s 1(3)(a) (as substituted: see note 2 supra). As to the education committee and its general function see PARA 57 post.

4 Ibid s 1(3)(b) (as substituted: see note 2 supra). As to the constitution of interim orders panels see PARAS 138-140 post. As to interim orders and the procedure in relation to them see PARAS 148, 186 et seq post.

5 Ibid s 1(3)(c) (as substituted: see note 2 supra). As to the constitution of registration decisions panels see PARAS 138-140 post.

6 Ibid s 1(3)(d) (as substituted: see note 2 supra). As to the constitution of registration appeals panels see PARAS 138-140 post.

7 Ibid s 1(3)(e) (as substituted: see note 2 supra). As to the constitution of the investigation committee see PARAS 138-140 post. As to the functions of the investigation committee see PARAS 141-142 post.

8 Ibid s 1(3)(f) (as substituted: see note 2 supra). Fitness to practise panels were introduced on 1 November 2004, replacing the Professional Conduct Committee, the Committee on Professional Performance and the Health Committee. For transitional provisions see the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, art 16(2), Sch 2. As to the constitution of fitness to practise panels see PARAS 138-140 post. As to the functions of fitness to practise panels see PARA 144 et seq post. As to proceedings relating to fitness to practise and the procedure before fitness to practise panels see PARA 151 et seq post.

9 Ie the restrictions on membership specified in the Medical Act 1983 Sch 1 para 23 (as substituted): see note 11 infra.

10 Ie the power under ibid Sch 1 para 25: see PARA 25 text to note 6 ante.

11 Ibid s 1(4), Sch 1 paras 19A, 19C, 19E (Sch 1 para 19A added by the Medical Act 1983 (Amendment) Order 2000, SI 2000/1803, arts 2, 15(a); and the Medical Act 1983 Sch 1 para 19A substituted, and Sch 1 paras 19B-19E added, by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 5(3), 15(6)(c)). Rules under the Medical Act 1983 Sch 1 paras 19A, 19C, 19E (all as added; Sch 1 para 19A as substituted) must secure that: (1) only persons who are not members of the General Medical Council are members of an interim orders panel, a registration appeals panel or a fitness to practise panel (Sch 1 para 23(a) (as substituted: see note 2 supra)); (2) a person who sits as a member of an interim orders panel or fitness to practise panel that

has made an interim order in proceedings on any case must not sit as a member of a fitness to practise panel in any subsequent proceedings in that case (Sch 1 para 23(b) (as so substituted)); and (3) a person who is a member of the investigation committee or a registration decisions panel may not at the same time be a member of an interim orders panel, a registration appeals panel or a fitness to practise panel (Sch 1 para 23(c) (as so substituted)).

12 Medical Act 1983 Sch 1 paras 19B, 19D (both as added: see note 11 supra). As to the rules that have been made see the General Medical Council (Constitution of Panels and Investigation Committee) Rules Order of Council 2004, SI 2004/2611; and PARA 138 et seq post.

13 le under the Medical Act 1983 Sch 1 paras 19A-19E (Sch 1 para 19A as added and substituted; and Sch 1 paras 19B-19E as added): see the text to notes 11, 12 supra.

14 Ibid Sch 1 para 23B (as added: see note 2 supra).

15 Ibid Sch 1 para 24 (as substituted: see note 2 supra). As to the exercise by the Privy Council of its powers under the Medical Act 1983 see PARA 32 post. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

## **UPDATE**

### **13-33 The General Medical Council**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to take over responsibility for the adjudication of fitness to practice cases from the General Medical Council: see ss 98(2), 99, Sch 7 (not yet in force). As to the OHPA generally, see further PARA 189A.

### **26 Statutory committees**

NOTE 2--1983 Act s 1(3A) amended: SI 2008/3131.

TEXT AND NOTE 3--Omitted: SI 2008/3131.

TEXT AND NOTE 5--1983 Act s 1(3)(c) amended: SI 2006/1914.

NOTE 11--1983 Act Sch 1 para 23(c) amended: SI 2006/1914.

TEXT AND NOTE 12--1983 Act Sch 1 para 19B amended: SI 2006/1914.

TEXT AND NOTES 13, 14--Rules under any of the provisions mentioned in the Medical Act 1983 Sch 1 para 23B may also make provision for a body (including a committee of the General Medical Council which is not one of the statutory committees) to assist the Council in connection with the exercise of any function relating to the appointment of members or particular members of any of the panels or the committee to which those provisions relate, including any function relating to tenure of office or suspension or removal from office: Sch 1 para 23C (added by SI 2008/1774).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(2) THE GENERAL MEDICAL COUNCIL/(ii) Business and Finance/27. Finance.

## **27. Finance.**

Any fees or other sums payable in connection with registration<sup>1</sup> must be paid to the General Medical Council<sup>2</sup>, and any expenses of the Council must be defrayed out of the sums received by it either on account of those fees and sums, or from the sale of registers<sup>3</sup> or otherwise<sup>4</sup>. The Council must furnish each branch council<sup>5</sup> with such sums as the branch council may require for defraying any expenses incurred by it with the approval of the Council, and each branch council must furnish the Council with such evidence as the Council may reasonably require of payments made by the branch council out of sums so furnished<sup>6</sup>.

1 As to fees payable in connection with registration see PARAS 117-118 post. As to registration generally see PARA 99 et seq post.

2 As to the constitution etc of the General Medical Council see PARA 13 ante.

3 As to the registers see PARA 34 post.

4 Medical Act 1983 s 1(4), Sch 1 para 18(1).

5 As to branch councils see PARA 18 ante.

6 Medical Act 1983 Sch 1 para 28.

## **UPDATE**

### **13-33 The General Medical Council**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to take over responsibility for the adjudication of fitness to practice cases from the General Medical Council: see ss 98(2), 99, Sch 7 (not yet in force). As to the OHPA generally, see further PARA 189A.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(2) THE GENERAL MEDICAL COUNCIL/(ii) Business and Finance/28. Accounts.

## **28. Accounts.**

The General Medical Council<sup>1</sup> must keep proper accounts of all sums received or paid by it<sup>2</sup>, and proper records in relation to those accounts, including records of the evidence furnished by branch councils<sup>3</sup>; and its accounts for each of its financial years must be audited by auditors<sup>4</sup> appointed by the Council<sup>5</sup>.

As soon as may be after the accounts have been audited, the Council must cause them to be published and must send a copy of them to the Privy Council together with a copy of any report of the auditors; and the Privy Council must lay a copy of the accounts and of any auditors' report before each House of Parliament<sup>6</sup>.

1 As to the constitution etc of the General Medical Council see PARA 13 ante.

2 As to the receipts and payments of the Council see PARA 27 ante.

3 Ie under the Medical Act 1983 s 1(4), Sch 1 para 28: see PARA 27 text to notes 5, 6 ante. As to branch councils see PARA 18 ante.

4 No person may be appointed auditor unless he is eligible for appointment as a company auditor under the Companies Act 1989 s 25 (see COMPANIES vol 15 (2009) PARA 969): Medical Act 1983 Sch 1 para 18(3) (substituted by the Companies Act 1989 (Eligibility for Appointment as Company Auditor) (Consequential Amendments) Regulations 1991, SI 1991/1997, reg 2, Schedule para 50).

5 Medical Act 1983 Sch 1 para 18(2).

6 Ibid Sch 1 para 18(4). As to the laying of documents before Parliament see PARLIAMENT vol 34 (Reissue) PARA 941. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

## **UPDATE**

### **13-33 The General Medical Council**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to take over responsibility for the adjudication of fitness to practice cases from the General Medical Council: see ss 98(2), 99, Sch 7 (not yet in force). As to the OHPA generally, see further PARA 189A.

## **28 Accounts**

NOTE 4--For 'company auditor under the Companies Act 1989 s 25' read 'statutory auditor under the Companies Act 2006 Pt 42 (ss 1209-1264)': 1983 Act Sch 1 para 18(3) (amended by SI 2008/948).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(2) THE GENERAL MEDICAL COUNCIL/(ii) Business and Finance/29. Annual reports.

## **29. Annual reports.**

The General Medical Council<sup>1</sup> must publish at least once in each calendar year a statistical report which indicates the efficiency and effectiveness of the arrangements the Council has put in place to protect the public from persons whose fitness to practise is impaired, together with the Council's observations on the report<sup>2</sup>. The General Medical Council, within such time as may be specified by the Privy Council<sup>3</sup>, must submit a report to the Privy Council on the exercise of its functions<sup>4</sup> during the period specified by the Privy Council<sup>5</sup>, and thereafter must submit such a report once in each year in respect of the period since its last such report<sup>6</sup>. The Privy Council must lay before each House of Parliament a copy of the report so submitted by the General Medical Council<sup>7</sup>.

1 As to the constitution etc of the General Medical Council see PARA 13 ante.

2 Medical Act 1983 s 52A(1) (s 52A added by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 15(4)). As to the compilation of statistics by the General Medical Council see PARA 13 text to notes 11, 12 ante. As to fitness to practise see PARA 138 et seq post.

3 As to the exercise by the Privy Council of its powers under the Medical Act 1983 see PARA 32 post. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

4 As to the functions of the General Medical Council see PARA 13 ante.

5 Medical Act 1983 s 52A(2)(a) (as added: see note 2 supra).

6 Ibid s 52A(2)(b) (as added: see note 2 supra).

7 Ibid s 52A(3) (as added: see note 2 supra). As to the laying of documents before Parliament see PARLIAMENT vol 34 (Reissue) PARA 941.

## **UPDATE**

### **13-33 The General Medical Council**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to take over responsibility for the adjudication of fitness to practice cases from the General Medical Council: see ss 98(2), 99, Sch 7 (not yet in force). As to the OHPA generally, see further PARA 189A.

## **29 Annual reports**

TEXT AND NOTES--1983 Act s 52A substituted: SI 2008/1774.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(2) THE GENERAL MEDICAL COUNCIL/(ii) Business and Finance/30. Proof of certain instruments.

### **30. Proof of certain instruments.**

A copy of any of the following instruments which:

- 7 (1) purports to be printed by the Queen's printers, or by any other printers in pursuance of authority given by the General Medical Council<sup>1</sup>; or
- 8 (2) is certified to be a true copy by the registrar<sup>2</sup> or by any other person appointed by the Council, either in addition to or in place of the registrar, to certify any such instrument<sup>3</sup>,

is admissible in evidence<sup>4</sup>. The instruments referred to are: (a) any order of the Privy Council<sup>5</sup> relating to registrable qualifications or qualifying examinations<sup>6</sup>; (b) regulations made by the General Medical Council<sup>7</sup> with respect to the register or registration fees<sup>8</sup>; (c) an order<sup>9</sup> of a fitness to practise panel that a person's registration be suspended forthwith<sup>10</sup>; and (d) a direction of the General Medical Council<sup>11</sup> that an entry in the register fraudulently procured or incorrectly made be erased from the register<sup>12</sup>.

1 Medical Act 1983 s 53(1)(a). As to the constitution etc of the General Medical Council see PARA 13 ante.

2 For the meaning of 'the registrar' see PARA 23 note 1 ante.

3 Medical Act 1983 s 53(1)(b).

4 Ibid s 53(1). As to the statutory admissibility in evidence of certified copy documents see CIVIL PROCEDURE vol 11 (2009) PARA 887.

5 Ie under ibid s 9: see PARAS 60, 62 post.

6 Ibid s 53(2)(a). As to the exercise by the Privy Council of its powers under the Medical Act 1983 see PARA 32 post. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

7 Ie under ibid ss 31, 32: see PARAS 35, 117 post.

8 Ibid s 53(2)(b).

9 Ie under ibid s 38 (as substituted): see PARA 146 post.

10 Ibid s 53(2)(c) (substituted by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 15(5)).

11 Ie under the Medical Act 1983 s 39: see PARA 189 post.

12 Ibid s 53(2)(d).

## **UPDATE**

### **13-33 The General Medical Council**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to take over responsibility for the adjudication of fitness to

practice cases from the General Medical Council: see ss 98(2), 99, Sch 7 (not yet in force). As to the OHPA generally, see further PARA 189A.

### **30 Proof of certain instruments**

TEXT AND NOTES 5, 6--Medical Act 1983 s 53(2)(a) repealed: SI 2008/1774.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(2) THE GENERAL MEDICAL COUNCIL/ (iii) Powers of Privy Council/31. Default powers.

### **(iii) Powers of Privy Council**

#### **31. Default powers.**

If at any time it appears to the Privy Council<sup>1</sup> that: (1) the education committee<sup>2</sup> has failed to secure the maintenance of the prescribed standard of proficiency<sup>3</sup> at examinations<sup>4</sup>; or (2) with certain exceptions<sup>5</sup>, the General Medical Council<sup>6</sup> or the education committee ought to exercise any power, perform any duty or do any act vested in, imposed on or authorised to be done by it by the Medical Act 1983<sup>7</sup>, then the Privy Council may notify its opinion to the General Medical Council or to the education committee, as the case requires<sup>8</sup>. If the General Medical Council or the education committee fails to comply with any directions of the Privy Council relating to such notification, the Privy Council may itself give effect to them, and for that purpose may exercise any power vested in the General Medical Council or the committee or do any act or thing authorised to be done by the General Medical Council or the committee and may of its own motion do any act or thing which under the Medical Act 1983 it is authorised to do in pursuance of a representation or suggestion from the General Medical Council<sup>9</sup>.

1 As to the exercise by the Privy Council of its powers under the Medical Act 1983 see PARA 32 post. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

2 As to the education committee and its general function see PARA 57 post.

3 For the meaning of 'the prescribed standard of proficiency' see PARA 57 note 6 post.

4 Medical Act 1983 s 50(1)(a). As to the duty of the education committee in this respect see PARAS 61-62 post.

5 This provision does not apply to any power vested, duty imposed or act or thing authorised to be done by *ibid* ss 7, 13 (appointment of visitors: see PARAS 59, 63 post), ss 10, 11 (experience required for full registration: see PARA 95 post), s 12 (employment in health centres: see PARA 95 note 8 post), s 32(1)-(3), (7)-(9) (registration fees: see PARA 117 post), or s 43, Sch 4 para 7 (both as substituted) (legal assessors: see PARA 154 post): s 50(1) (b).

6 As to the constitution etc of the General Medical Council see PARA 13 ante.

7 Medical Act 1983 s 50(1)(b) (amended by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 15(3)(a), (b)).

8 Medical Act 1983 s 50(1).

9 *Ibid* s 50(2), (3).

#### **UPDATE**

#### **13-33 The General Medical Council**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to take over responsibility for the adjudication of fitness to practice cases from the General Medical Council: see ss 98(2), 99, Sch 7 (not yet in force). As to the OHPA generally, see further PARA 189A.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(2) THE GENERAL MEDICAL COUNCIL/ (iii) Powers of Privy Council/32. Exercise of powers.

### **32. Exercise of powers.**

Any power vested in the Privy Council by the Medical Act 1983 may be exercised by any two or more of the lords and others of the Privy Council<sup>1</sup>. Any act of the Privy Council under the Medical Act 1983 is sufficiently signified by an instrument signed by the clerk of the Privy Council, and an order or act signified by an instrument purporting to be signed by the clerk of the Privy Council is deemed to have been duly made or done by the Privy Council, and an instrument so signed must be received in evidence in all courts and proceedings without proof of the authority or signature of the clerk of the Privy Council or other proof<sup>2</sup>.

Any power of the Privy Council to make orders under the provisions of the Medical Act 1983<sup>3</sup> is exercisable by statutory instrument<sup>4</sup>. With certain exceptions<sup>5</sup>, any statutory instrument containing an Order in Council or order of the Privy Council under any provision of the Act is subject to annulment in pursuance of a resolution of either House of Parliament<sup>6</sup>.

1 Medical Act 1983 s 52(1). As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

2 Ibid s 52(2). As to the statutory admissibility in evidence of certified copy documents see CIVIL PROCEDURE vol 11 (2009) PARA 887.

3 Ie except ibid s 9(2), (5): see PARAS 60 text to notes 5-7, 62 text to note 5 post.

4 Ibid s 51(1).

5 This provision does not apply to an Order in Council under ibid s 8(2) (see PARA 94 text to note 14 post) or an order of the Privy Council under s 31(10) (see PARA 35 text to note 14 post), s 32(8) (see PARA 117 note 2 post) or an order under s 11(5) (see PARA 95 note 4 post); but no order under s 11(5) may be made unless a draft of it has been laid before Parliament and has been approved by a resolution of each House of Parliament: s 51(3). As to Orders in Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 907. As to the laying of documents before Parliament see PARLIAMENT vol 34 (Reissue) PARA 941.

6 Ibid s 51(2). As to the annulment of statutory instruments see STATUTES vol 44(1) (Reissue) PARA 1516.

## **UPDATE**

### **13-33 The General Medical Council**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to take over responsibility for the adjudication of fitness to practice cases from the General Medical Council: see ss 98(2), 99, Sch 7 (not yet in force). As to the OHPA generally, see further PARA 189A.

### **32 Exercise of powers**

TEXT AND NOTES 3, 4--1983 Act s 51(1) amended: SI 2008/1774.

NOTE 5--1983 Act s 51(3) amended: SI 2008/1774.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(2) THE GENERAL MEDICAL COUNCIL/ (iv) External Regulation of the Profession/33. External regulation.

## **(iv) External Regulation of the Profession**

### **33. External regulation.**

The General Medical Council<sup>1</sup> is subject to the oversight of the Council for the Regulation of Health Care Professionals<sup>2</sup> and must in the exercise of its functions co-operate with that Council<sup>3</sup>. Where it considers that it would be desirable for the protection of members of the public, the Council for the Regulation of Health Care Professionals has powers to refer to the High Court<sup>4</sup>: (1) a direction by a fitness to practise panel of the General Medical Council<sup>5</sup> that the fitness to practise of a medical practitioner was impaired otherwise than by reason of his physical or mental health, if it considers the decision to be unduly lenient<sup>6</sup>; (2) a decision of the General Medical Council, or one of its committees or officers, to restore a person to the register following his removal from it<sup>7</sup>.

Her Majesty may by Order in Council<sup>8</sup> make provision modifying the regulation of the medical profession<sup>9</sup> so far as appears to Her to be necessary or expedient for the purpose of securing or improving the regulation of the profession or the services which the profession provides or to which it contributes<sup>10</sup>, and modifying, as respects the General Medical Council, the range of functions of that body in relation to which the Council for the Regulation of Health Care Professionals performs its functions<sup>11</sup>.

The provisions of the Competition Act 1998 prohibiting agreements which have as their object the prevention, restriction or distortion of competition within the United Kingdom apply to rules made by professional bodies<sup>12</sup>.

1 As to the constitution etc of the General Medical Council see PARA 13 ante.

2 See the National Health Service Reform and Health Care Professions Act 2002 s 25(3)(a); and PARA 294 note 8 post. As to the Council for the Regulation of Health Care Professionals, its duties and powers see PARA 294 et seq post.

3 See *ibid* s 27(1); and PARA 304 text to notes 1-2 post. As to the power of the Council for the Regulation of Health Care Professionals to give directions requiring the General Medical Council to make rules where it considers that it would be desirable to do so for the protection of members of the public see PARA 304 post. As to the power of the Secretary of State to make provision in regulations about the investigation by the Council for the Regulation of Health Care Professionals of complaints made to it about the way in which the General Medical Council has exercised any of its functions see PARA 305 post. As to the Secretary of State see PARA 5 ante.

4 See *ibid* s 29; and PARA 306 post.

5 I.e a direction under the Medical Act 1983 s 35D (as added) (see PARAS 144-145 post). As to the constitution of fitness to practise panels see PARAS 138-140 post. As to fitness to practise panels as statutory committees see PARA 26 ante. As to the functions of fitness to practise panels see PARA 144 et seq post. As to proceedings relating to fitness to practise, and the procedure before fitness to practise panels, see PARA 151 et seq post.

6 See the National Health Service Reform and Health Care Professions Act 2002 s 29(1)(c) (substituted by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, art 16(1), Sch 1 Pt I para 13); and PARA 306 text to notes 5-7 post.

7 See the National Health Service Reform and Health Care Professions Act 2002 s 29(2)(c); and PARA 306 text to note 26 post. The text refers to restoration following removal in accordance with any measure referred to in s 29(1)(c) (as substituted) (see the text to notes 5-6 supra).



- 8 As to Orders in Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 907.
- 9 le the profession regulated by the Medical Act 1983.
- 10 See the Health Act 1999 s 60(1)(a), (2); and PARA 291 post.
- 11 See ibid s 60(1)(e); and PARA 291 text to note 7 post. As to the scope of such orders and the procedure for making them see PARAS 292-293 post.
- 12 See the Competition Act 1998 Ch 1 (ss 1-11) (as amended); and COMPETITION vol 18 (2009) PARA 116 et seq.

## **UPDATE**

### **13-33 The General Medical Council**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to take over responsibility for the adjudication of fitness to practice cases from the General Medical Council: see ss 98(2), 99, Sch 7 (not yet in force). As to the OHPA generally, see further PARA 189A.

### **33 External regulation**

TEXT AND NOTES--Council for the Regulation of Health Care Professionals renamed as the Council for Healthcare Regulatory Excellence: see the Health and Social Care Act 2008 s 113(1).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/ (3) REGISTRATION, TRAINING AND QUALIFICATION/(i) The Registers/A. THE MEDICAL REGISTERS/34. The medical registers and lists.

### **(3) REGISTRATION, TRAINING AND QUALIFICATION**

#### **(i) The Registers**

##### **A. THE MEDICAL REGISTERS**

##### **34. The medical registers and lists.**

The registrar of the General Medical Council<sup>1</sup> must keep two registers of medical practitioners registered under the Medical Act 1983 containing the names of those registered and the qualifications<sup>2</sup> they are entitled to have registered under the Act<sup>3</sup>. The two registers referred to are:

- 9 (1) the register of medical practitioners, consisting of three lists, namely<sup>4</sup>: (a) the principal list<sup>5</sup>; (b) the visiting overseas doctors list<sup>6</sup>; and (c) the visiting EEA practitioners list<sup>7</sup>; and
- 10 (2) the register of medical practitioners with limited registration<sup>8</sup>.

Medical practitioners must be registered as fully registered<sup>9</sup> medical practitioners or provisionally or with limited registration<sup>10</sup> and in the appropriate list of the register of medical practitioners or in the register of medical practitioners with limited registration<sup>11</sup>.

The register of medical practitioners must include<sup>12</sup>: (a) in the principal list, the names of persons entitled to be registered under the general provisions relating to registration and provisional registration<sup>13</sup>, or directed to be registered<sup>14</sup>; (b) in the visiting overseas doctors list, the names of persons from time to time directed to be registered<sup>15</sup>; and (c) in the visiting EEA practitioners list, the names of persons entitled to be registered from time to time<sup>16</sup>. The register of medical practitioners with limited registration must include the names of persons granted limited registration<sup>17</sup>. Each register must also include the addresses and dates of registration of the persons registered in it, such of their qualifications as they are entitled to have registered<sup>18</sup> and such other particulars, if any, of those persons as may be prescribed<sup>19</sup> for that register<sup>20</sup>.

It is the duty of the registrar to keep the registers correct in accordance with the provisions of the Medical Act 1983 and regulations made by the General Medical Council, to erase the names of persons who have died<sup>21</sup>, and from time to time to make the necessary alterations in the addresses, qualifications and other registered particulars of registered persons<sup>22</sup>. The registrar may, by letter addressed to any person registered in either register at his address on the register, inquire whether he has changed his address and, if no answer is received to the inquiry within six months<sup>23</sup> from the posting of the letter, may erase from the register any entry relating to that person<sup>24</sup>.

1 For the meaning of 'the registrar' see PARA 23 note 1 ante. As to the General Medical Council see PARA 13 et seq ante.

2 'Qualification', except where the context otherwise requires, means any diploma, degree, fellowship, membership, licence, authority to practise, letters testimonial, certificate or other status or document granted

in respect of any branch or branches of medicine by any university, corporation, college or other body or by any department of, or persons acting under the authority of, the government of any country or place: *ibid* s 55(1).

3 *Ibid* s 2(1). 'The register' means the register of medical practitioners (see head (1) in the text), except that, in relation to a person registered with limited registration, it means the register of medical practitioners with limited registration (see head (2) in the text): s 55(1).

4 *Ibid* s 2(2) (amended by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 9(1)(a)).

5 Medical Act 1983 s 2(2)(a).

6 *Ibid* s 2(2)(c).

7 *Ibid* s 2(2)(d) (amended by the European Primary Medical Qualifications Regulations 1996, SI 1996/1591, reg 7, Sch 2 para 1).

8 Medical Act 1983 s 2(2).

9 For the meaning of 'fully registered' see PARA 3 ante.

10 *Ie* as provided in the Medical Act 1983 Pt II (ss 3-18) (as amended) (see PARA 99 et seq post), Pt III (ss 19-29) (as amended) (see PARA 104 et seq post).

11 *Ie* as provided in *ibid* Pt IV (ss 30-34B) (as amended) (see *supra*): s 2(3).

12 *Ibid* s 30(1) (amended by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 7(1), (2) (a)(i)). As to the transitional provisions relating to registration of persons registered under previous legislation see the Medical Act 1983 s 56(1), Sch 6 paras 20, 23, 24.

13 *Ie* under *ibid* s 3 (as substituted) (see PARA 99 post), s 15 (as amended) (see PARA 102 post), s 15A (as added) (see PARA 103 post).

14 *Ie* under *ibid* s 19 (as amended) (see PARA 104 post), s 21 (as amended) (see PARA 108 post), s 21A (as added) (see PARA 105 post), s 25 (as amended) (see PARA 111 post): s 30(1)(a) (amended by the Medical Act 1983 (Provisional Registration) Regulations 2000, SI 2000/3041, regs 2, 4(2); and the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 7(1), (2)(a)(ii)).

15 *Ie* under the Medical Act 1983 s 27 (as amended) (see PARA 106 post): s 30(1)(c).

16 *Ie* under *ibid* s 18 (as amended) (see PARA 100 post): s 30(1)(d) (amended by the European Primary Medical Qualifications Regulations 1996, SI 1996/1591, reg 7, Sch 2 para 7).

17 *Ie* under the Medical Act 1983 s 22 (as amended) (see PARA 109 post): s 30(2) (s 30(2), (3) amended by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 7(1), (2)(b)).

18 *Ie* under the Medical Act 1983 s 16 (as amended) (see PARA 99 post), s 26 (as amended) (see PARA 107 post).

19 'Prescribed' means prescribed by regulations made under *ibid* s 31 (see PARA 35 post): s 30(7).

20 *Ibid* s 30(3) (as amended: see note 17 *supra*). As from a day to be appointed, s 30(3) is substituted so as to provide that each register must also include, in respect of each of the persons entered in it, a statement of the following: (1) the person's address; (2) the person's date of registration; (3) whether the person holds a licence to practise or not; (4) any qualifications which the person is entitled to have registered under ss 16, 26 (see PARAS 99, 107 post); and (5) any other particulars prescribed in the case of a person entered in that register: s 30(3) (prospectively substituted by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 12(1)). At the date at which this volume states the law no such day had been appointed. For the meaning of 'licence to practise' see PARA 130 note 3 post.

21 On registering the death of a person registered in either medical register, a registrar of births and deaths must, without charge, send forthwith by post to the registrar of the General Medical Council a copy certified under his hand of the entry in the register of deaths relating to the death: Medical Act 1983 s 30(6). As to references to service by post see PARA 20 note 22 ante. As to the registration of deaths see REGISTRATION CONCERNING THE INDIVIDUAL vol 39(2) (Reissue) PARA 501 et seq.

22 Medical Act 1983 s 30(4).

23 For the meaning of 'month' see PARA 13 note 14 ante.

24 Medical Act 1983 s 30(5).

## **UPDATE**

### **34 The medical registers and lists**

TEXT AND NOTES--Notwithstanding any other provision of the Medical Act 1983, the registrar is not under an obligation to make any entry in the register in respect of any person who is one of a group of persons registered by virtue of the emergency powers doctors list (ie registered under s 18A(1)(b) (see PARA 103A head (2)) until the registrar has been able to ascertain the person's name and address: s 30A(1) (s 30A added by SI 2008/1774). The registrar may make available information identifying any group of persons registered by virtue of s 18A(1)(b) in such manner as the registrar sees fit: s 30A(2).

TEXT AND NOTES 1-3--1983 Act s 2(1) amended: SI 2006/1914.

NOTE 3--Definition of 'the register' amended: SI 2006/1914.

TEXT AND NOTES 4-8--Medical Act 1983 s 2(2) further amended: SI 2006/1914, SI 2007/3101, SI 2008/1774.

TEXT AND NOTES 9-11--1983 Act s 2(3) amended: SI 2006/1914.

TEXT AND NOTES 12-16--Medical Act 1983 s 30(1) further amended: SI 2008/1774.

TEXT AND NOTES 14, 16--Medical Act 1983 s 30(1)(a) amended, s 30(1)(d) substituted: SI 2007/3101.

TEXT AND NOTE 17--1983 Act s 30(2) omitted: SI 2006/1914.

NOTE 20--Appointed day is 16 November 2009: London Gazette, 21 August 2009.

TEXT AND NOTES 21-24--1983 Act s 30(4)-(6) amended: SI 2006/1914.

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### **35. Power to make regulations with respect to the registers.**

Subject to the provisions of the Medical Act 1983, the General Medical Council<sup>1</sup> may make regulations with respect to the form and keeping of the registers<sup>2</sup> and the making of entries, alterations and corrections in them<sup>3</sup>. Such regulations may provide for the registers to be kept either by making entries in bound books or by recording the matters in question in any other manner, and if either register is not kept by making entries in bound books, adequate precautions must be taken for guarding against, and facilitating the discovery of, falsification<sup>4</sup>. Different regulations may be made in relation to the register of medical practitioners and the register of medical practitioners with limited registration<sup>5</sup>.

The regulations may make provision with respect to the restoration to the registers or a particular list in the register of medical practitioners in which he was registered of the name of any person whose name has been erased from it<sup>6</sup>. Such regulations may include provision: (1) for authorising the registrar<sup>7</sup>, notwithstanding anything in the Act, to refuse to restore to the register<sup>8</sup> or a particular list in it the name of any such person unless he furnishes to the registrar such evidence of his identity and good character as may be prescribed<sup>9</sup>; and (2) for securing that, in such circumstances as may be prescribed, such a person's name is not so restored unless the General Medical Council or a committee of the Council so direct after making such investigation into his fitness to practise as it thinks fit<sup>10</sup>, the practitioner's licence to practise is restored in accordance with the regulations<sup>11</sup>, or both such conditions are met<sup>12</sup>. Such regulations<sup>13</sup> do not have effect until approved by order of the Privy Council<sup>14</sup>.

1 As to the General Medical Council see PARA 13 et seq ante.

2 As to the registers see PARA 34 ante.

3 Medical Act 1983 s 31(1). The regulations must provide for the marking of the register of medical practitioners so as to distinguish those provisionally registered under s 15 (as amended) (see PARA 102 post) or s 15A (as added) (see PARA 103 post) and those provisionally registered under s 21 (as amended) (see PARA 108 post): s 31(4) (amended by the Medical Act 1983 (Provisional Registration) Regulations 2000, SI 2000/3041, regs 2, 4(3)). As to the regulations made under the Medical Act 1983 s 31 see the General Medical Council (Restoration following Administrative Erasure) Regulations Order of Council 2004, SI 2004/2612; and PARAS 119-120 post.

4 Medical Act 1983 s 31(2).

5 Ibid s 31(3).

6 Erased by virtue of ibid s 30(5) (see PARA 34 text to notes 23-25 ante) or of any regulations made in pursuance of s 32(2) (see PARA 117 note 6 post): s 31(8) (amended by Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 7(1), (3)(b)).

7 For the meaning of 'the registrar' see PARA 23 note 1 ante.

8 For the meaning of 'the register' see PARA 34 note 3 ante.

9 Medical Act 1983 s 31(9)(a). 'Prescribed' means prescribed by regulations under s 31 (see note 3 supra): s 31(11).

10 Ibid s 31(9)(b)(i) (s 31(9)(b) substituted by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 12(2)).

11 Medical Act 1983 s 31(9)(b)(ii) (as substituted: see note 10 supra). For the meaning of 'licence to practise' see PARA 130 note 3 post.

12 Ibid s 31(9)(b)(iii) (as substituted: see note 10 supra).

13 le made in pursuance of ibid s 31(8), (9) (see the text to notes 6-12 supra).

14 Ibid s 31(10) (amended by Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 7(1), (3)(d)). As to the making of orders by the Privy Council see PARA 32 ante. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

## **UPDATE**

### **35 Power to make regulations with respect to the registers**

TEXT AND NOTES 1-4--1983 Act s 31(1), (2) amended: SI 2006/1914.

TEXT AND NOTE 5--1983 Act s 31(3) omitted: SI 2006/1914.

TEXT AND NOTES 6-9--1983 Act s 31(8), (9)(a) amended: SI 2006/1914.

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### **36. Publication of the registers.**

The registrar<sup>1</sup> must cause to be published from time to time, electronically or otherwise, a list of all persons who, on a date specified by him at the time of publication, appear in the register of medical practitioners<sup>2</sup>, or the register of medical practitioners with limited registration<sup>3</sup>. The list must include in respect of each practitioner information about his registered qualifications<sup>4</sup>, and such other particulars, if any, as the General Medical Council<sup>5</sup> may direct in relation to that list<sup>6</sup>. As from a day to be appointed, the list must also include a statement about whether or not he holds a licence to practise<sup>7</sup>.

1 For the meaning of 'the registrar' see PARA 23 note 1 ante.

2 Medical Act 1983 s 34(1)(a) (s 34 substituted by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 7(1), (4)). As to the register of medical practitioners see PARA 34 ante.

3 Medical Act 1983 s 34(1)(b) (as substituted: see note 2 supra). As to the register of medical practitioners with limited registration see PARA 34 ante.

4 Ibid s 34(2)(a) (as substituted: see note 2 supra). For the meaning of 'qualification' see PARA 34 note 2 ante.

5 As to the General Medical Council see PARA 13 et seq ante.

6 Medical Act 1983 s 34(2)(c) (as substituted: see note 2 supra).

7 See ibid s 34(2)(b) (as substituted: see note 2 supra). At the date at which this volume states the law, no day had been appointed for the commencement of this provision. For the meaning of 'licence to practise' see PARA 130 note 3 post.

### **UPDATE**

### **36 Publication of the registers**

TEXT AND NOTES 1-3--1983 Act s 34(1) amended: SI 2006/1914.

NOTE 7--Appointed day is 16 November 2009: London Gazette, 21 August 2009.

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### **37. Proof of registration.**

The registrar<sup>1</sup> may issue a certificate that a person: (1) is registered<sup>2</sup>; (2) is not registered<sup>3</sup>; (3) was registered at a specified date or during a specified period<sup>4</sup>; (4) was not registered at a specified date or during a specified period<sup>5</sup>; or (5) has never been registered<sup>6</sup>. As from a day to be appointed, a certificate may also state that a person: (a) holds a licence to practise<sup>7</sup>; (b) does not hold a licence to practise<sup>8</sup>; (c) held a licence to practise at a specified date or during a specified period<sup>9</sup>; (d) did not hold a licence to practise at a specified date or during a specified period<sup>10</sup>; or (e) has never held a licence to practise<sup>11</sup>.

Such a certificate is evidence of the matters certified<sup>12</sup>.

1 For the meaning of 'the registrar' see PARA 23 note 1 ante.

2 Medical Act 1983 s 34A(1)(a) (s 34A(1)(a)-(e), (2) added by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 7(1), (5)). As to the medical registers see PARA 34 ante. As to registration see PARA 99 et seq post.

3 Medical Act 1983 s 34A(1)(b) (as added: see note 2 supra).

4 Ibid s 34A(1)(c) (as added: see note 2 supra).

5 Ibid s 34A(1)(d) (as added: see note 2 supra).

6 Ibid s 34A(1)(e) (as added: see note 2 supra).

7 Ibid s 34A(1)(f) (s 34A(1)(f)-(j) prospectively added by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 1(2), (3), 2, 7(1), (5)). At the date at which this volume states the law no day had been appointed for the commencement of these provisions. For the meaning of 'licence to practise' see PARA 130 note 3 post.

8 Medical Act 1983 s 34A(1)(g) (prospectively added: see note 7 supra).

9 Ibid s 34A(1)(h) (prospectively added: see note 7 supra).

10 Ibid s 34A(1)(i) (prospectively added: see note 7 supra).

11 Ibid s 34A(1)(j) (prospectively added: see note 7 supra).

12 Ibid s 34A(2) (as added: see note 2 supra).

## **UPDATE**

### **37 Proof of registration**

NOTE 7--Appointed day is 16 November 2009: London Gazette, 21 August 2009.



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### 38. Certificate of registration.

Subject as provided<sup>1</sup>: (1) on an application for the registration of a person<sup>2</sup> the appropriate registrar<sup>3</sup>, if satisfied that the applicant is entitled to be registered in accordance with the application<sup>4</sup> must issue to the applicant a certificate of registration<sup>5</sup> and must do so before the end of the requisite period<sup>6</sup>; and (2) on an application for the registration of a qualification<sup>7</sup>, the appropriate registrar if satisfied that the applicant is entitled to have the qualification registered in accordance with the application must issue to the applicant a certificate of registration<sup>8</sup>. Similarly on registering a person<sup>9</sup> the registrar<sup>10</sup> must issue to the applicant the certificate of registration<sup>11</sup>. A certificate of registration must be in the form prescribed<sup>12</sup> for entries in the register in question and state the name of the applicant and such other particulars as may be prescribed<sup>13</sup>.

On issuing a certificate of registration the appropriate registrar must: (a) if he is the registrar of a branch council<sup>14</sup>, but is not also the registrar, with all convenient speed send a copy of the certificate certified under his hand to the registrar, who must forthwith cause an appropriate entry or alteration to be made in the register in question<sup>15</sup>; or (b) if he is the registrar, forthwith cause an appropriate entry or alteration to be made in the register in question<sup>16</sup>. Such an entry or alteration made in a register must bear the same date as the certificate of registration by virtue of which it is made<sup>17</sup>. The particulars stated in any certificate of registration issued under these provisions are deemed for all purposes to have been duly registered on the date of issue of the certificate except in so far as they were actually registered before that date<sup>18</sup>.

1    le subject to the Medical Act 1983 s 33, Sch 3 paras 1-4: see PARAS 114-115 post.

2    le under *ibid* s 3 (as substituted), s 15 (as amended), s 15A (as added): see PARAS 99, 102-103 post.

3    For the meaning of 'the appropriate registrar' see PARA 115 note 3 post.

4    Medical Act 1983 Sch 3 para 5(1) (substituted by the European Primary Medical Qualifications Regulations 1996, SI 1996/1591, reg 7, Sch 2 para 14(2); and amended by the Medical Act 1983 (Provisional Registration) Regulations 2000, SI 2000/3041, regs 2, 4(7)(c)).

5    Medical Act 1983 Sch 3 para 5(1)(a) (as substituted: see note 4 *supra*).

6    Ibid Sch 3 para 5(1)(b) (as substituted (see note 4 *supra*); and amended by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 1(2), (3), 2, 9(5)(a)).

In the Medical Act 1983 Sch 3 para 5(1), 'the requisite period' means:

- 1    (1)   the period of three months beginning with the date on which the appropriate registrar received all the documents enabling him to be satisfied of the applicant's entitlement to be registered in accordance with the application (Sch 3 para 5(1A)(a) (Sch 3 para 5(1A) added by the European Primary Medical Qualifications Regulations 1996, SI 1996/1591, Sch 2, PARA 14(2))); or
- 2    (2)   in a case to which EC Council Directive 93/16 (OJ L165, 7.7.1993, p 1) applies, such longer period as is permitted by art 15 (Medical Act 1983 Sch 3 para 5(1A)(b) (as so added; and substituted by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 1(2), (3), 2, 9(5)(b)).

For the meaning of 'month' see PARA 13 note 14 ante.

7    le under the Medical Act 1983 s 16 (see PARA 99 post), s 26 (see PARA 107 post). For the meaning of 'qualification' see PARA 34 note 2 ante.

8 Ibid Sch 3 para 5(3). A certificate of registration required to be issued under Sch 3 para 5(2) (as amended) (see the text to notes 9-11 *infra*) or Sch 3 para 5(3) must be issued before the end of the requisite period: Sch 3 para 5(4A) (added by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 1(2), (3), 2, 9(5)(d)). See also note 6 *supra*.

9 *Ie* under *ibid* s 19 (see PARA 104 *post*), s 21 (see PARA 108 *post*), s 21A (see PARA 105 *post*), s 22 (see PARA 109 *post*), s 25 (see PARA 111 *post*), s 27 (see PARA 106 *post*).

10 For the meaning of 'the registrar' see PARA 23 note 1 *ante*.

11 Medical Act 1983 Sch 3 para 5(2) (amended by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 9(5)(c)). See also note 8 *supra*.

12 *Ie* by regulations under the Medical Act 1983 s 31: see PARA 35 *ante*.

13 Ibid Sch 3 para 5(4). At the date at which this volume states the law no such regulations had been made.

14 As to branch councils see PARA 18 *ante*.

15 Medical Act 1983 Sch 3 para 6(2)(a). For the meaning of 'the register' see PARA 34 note 3 *ante*.

16 Ibid Sch 3 para 6(2)(b).

17 Ibid Sch 3 para 6(3).

18 Ibid Sch 3 para 6(1). References in the Medical Act 1983 to registration are to be construed accordingly: Sch 3 para 6(1). Schedule 3 para 6(1) is stated to be without prejudice to Sch 3 para 6(2): see the text to notes 14-16 *supra*.

## **UPDATE**

### **38 Certificate of registration**

NOTES 1-6--Medical Act 1983 Sch 3 para 5(1) amended, Sch 3 para 5(1A) substituted: SI 2007/3101. Directive 93/16 replaced: European Parliament and EC Council Directive 2005/36 on the recognition of professional qualifications.

TEXT AND NOTES 12, 13--1983 Act Sch 3 para 5(4) amended: SI 2006/1914.

TEXT AND NOTES 14-17--1983 Act Sch 3 para 6(2), (3) amended: SI 2006/1914.

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## **B. THE SPECIALIST REGISTER AND THE GENERAL PRACTITIONER REGISTER**

### **(A) THE SPECIALIST REGISTER**

*(a) The Register required under the European Specialist Medical Qualifications Order 1995*

#### **39. The specialist register.**

The General Medical Council<sup>1</sup> must keep and publish a register of specialists<sup>2</sup>. The register must contain<sup>3</sup> the names of persons who hold a certificate of completion of specialist training<sup>4</sup> awarded by the specialist training authority<sup>5</sup>, and other eligible specialists<sup>6</sup>. A person is entitled to have his name included in the specialist register if he applies to the registrar<sup>7</sup> for the purpose, paying any fee<sup>8</sup> determined by the Council, and satisfies the registrar of his entitlement<sup>9</sup> and that he is a registered medical practitioner<sup>10</sup>. The specialist register must indicate: (1) the specialty in respect of which each person's name is included in the register<sup>11</sup>; and (2) where the specialist training authority is satisfied that he has particular expertise in a field within that specialty and he so requests in his application or subsequently, the name or a description of that field<sup>12</sup>. The Council must tell anyone who asks it, and pays any fee determined by the Council, whether or not a particular person's name is included in the register, and must do so in writing<sup>13</sup> if required, stating the date on which that person's name was entered in the register, the information included in the register<sup>14</sup> and any registration number identifying the entry<sup>15</sup>.

A person may not take up appointment to any post as consultant in the national health service<sup>16</sup> in a medical specialty<sup>17</sup> other than general practice, or any more specialised field within such a specialty, unless his name is included in the specialist register<sup>18</sup>.

1 As to the General Medical Council see PARA 13 et seq ante.

2 European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 8(1) (prospectively revoked). As from a day to be appointed, the European Specialist Medical Qualifications Order 1995, SI 1995/3208 (as amended) is revoked by the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250: see arts 1(2), (3), 31(5), Sch 10 Pt 2. At the date at which this volume states the law no such day had been appointed. As to the provisions intended to replace the European Specialist Medical Qualifications Order 1995, SI 1995/3208 (as amended) see PARAS 45-48, 53-56 post.

3 le subject to ibid art 8(3) (prospectively revoked): see the text to notes 7-10 infra.

4 As to the award of certificates of completion of specialist training see PARA 67 post.

5 European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 8(2)(a) (prospectively revoked). For the meaning of 'specialist training authority' see PARA 66 note 2 post.

6 le as specified in ibid art 9 (see PARA 41 post): art 8(2)(b) (prospectively revoked).

7 For the meaning of 'the registrar' see PARA 23 note 1 ante.

8 Any reference to a fee is to be construed in accordance with the European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 5 (prospectively revoked): art 2(3) (prospectively revoked). The Council and the specialist training authority may each charge such reasonable fees as it determines to cover the cost of providing services in the course of the performance of any of its functions under or by virtue of the European Specialist Medical Qualifications Order 1995, SI 1995/3208 (as amended): art 5(1) (prospectively revoked). The Council and the specialist training authority may each set those fees at levels such that (taken together) the fees also cover the cost of such of its overheads as are reasonably attributable to the performance of all of its functions under or by virtue of the order; but the fees must not include any element of profit: art 5(2) (prospectively revoked). The fee charged by the Council or the specialist training authority for any particular service must not include more than a reasonable proportion of the total cost of its overheads referred to in art 5(2) (prospectively revoked): art 5(3) (prospectively revoked). Article 5 (prospectively revoked) does not prevent the Council, where it has power to do so, from setting any other fee which it has power to charge at a level designed to include costs referred to in art 5 (prospectively revoked); but any costs recovered that way cannot also be recovered by way of fees under art 5 (prospectively revoked): art 5(4) (prospectively revoked).

9 le by virtue of *ibid* art 8(2) (see the text to notes 3-6 *supra*): art 8(3)(a) (prospectively revoked).

10 *Ibid* art 8(3)(b) (prospectively revoked). In the case of an oral and maxillo-facial surgeon, that the person must satisfy the registrar that he is also a registered dentist: see art 8(3)(b) (prospectively revoked). 'Registered medical practitioner' means a medical practitioner registered under the Medical Act 1983 with full or with limited (but not with provisional) registration: European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 2(2) (prospectively revoked). For the meaning of 'registered dentist' see PARA 433 note 7 *post*; definition applied by art 2(2) (prospectively revoked). As to registration under the Medical Act 1983 see PARA 34 *ante*. As to the transitional provisions relating to inclusion in the specialist register see the European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 12 (amended by SI 1997/2928; prospectively revoked).

11 European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 8(4)(a) (prospectively revoked).

12 *Ibid* art 8(4)(b) (prospectively revoked). In order to satisfy the specialist training authority that a doctor has particular expertise in a field such that he is entitled to have that expertise indicated in the register, the doctor must satisfy the specialist training authority that he has satisfactorily completed: (1) a specialist training authority approved sub-speciality training scheme in the United Kingdom; or (2) any other sub-speciality training scheme outside the United Kingdom that the specialist training authority is satisfied is equivalent to such an approved sub-speciality training scheme: art 8(4A) (added by SI 2002/849; prospectively revoked). For the meaning of 'United Kingdom' see PARA 1 note 3 *ante*.

13 For the meaning of 'writing' see PARA 20 note 22 *ante*.

14 le pursuant to the European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 8(4) (prospectively revoked): see the text to notes 11-12 *supra*.

15 *Ibid* art 8(5) (prospectively revoked).

16 Any reference to a consultant in the national health service is a reference to a consultant other than a locum consultant (but including an honorary consultant) employed for the purposes of providing any service as part of the health service continued under the National Health Service Act 1977 s 1(1) (see *HEALTH SERVICES* vol 54 (2008) PARA 87): European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 2(3)(a) (prospectively revoked).

17 Any reference to a 'medical' specialty includes a surgical specialty, and includes in particular the specialties listed in *ibid* Sch 2 (see PARA 41 note 7 *post*): art 2(3)(c) (prospectively revoked).

18 *Ibid* art 11(1), Sch 5 (both prospectively revoked). This provision does not apply to any person who held a post as a consultant in oral and maxillo-facial surgery in the national health service immediately before 1 January 1997: art 11(2) (prospectively revoked).

## UPDATE

### **39-56 The specialist register ... Access to the registers; certificates as to registration**

Day now appointed in respect of provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250: *London Gazette*, 26 August 2005.

### **39 The specialist register**

NOTE 10--See *Malone v Specialist Training Authority of the Medical Royal Colleges* [2005] EWHC 2470 (Admin), (2006) 87 BMLR 108 (time limit in transitional case).

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#### 40. Exempt persons.

In the case of an exempt person<sup>1</sup>, the registrar<sup>2</sup> must, within the specified period<sup>3</sup>, give the applicant notice: (1) of the decision on the application<sup>4</sup>; and (2) where the decision is that the registrar is not satisfied<sup>5</sup>, of the reasons for the decision<sup>6</sup> and the applicant's right to appeal<sup>7</sup>. Where an exempt person must satisfy the specialist training authority as to certain matters<sup>8</sup> before the registrar is able to give a decision<sup>9</sup>, the authority must deal expeditiously with the matters before it to enable the registrar to give notice under heads (1) and (2) above within the specified period<sup>10</sup>. Failure to notify an applicant who is an exempt person of a decision within the specified period is treated as a decision from which the applicant may appeal<sup>11</sup>. If the registrar decides in respect of an exempt person that he is not satisfied in relation to an application<sup>12</sup>, the applicant may appeal against the decision to a registration appeals panel<sup>13</sup>.

1 'Exempt person' means a person who: (1) is a national of an EEA state who is exercising an enforceable Community right; or (2) is not a national of an EEA state, but is, by virtue of a right conferred by EC Council Regulation 1612/68 on freedom of movement for workers (OJ L257, 19.10.1968, p 2) art 11 or any other enforceable Community right, entitled to be treated, for the purposes of access to the medical profession, no less favourably than a national of such a state: European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 8A(7) (art 8A added by SI 2003/3148; prospectively revoked). As from a day to be appointed, the European Specialist Medical Qualifications Order 1995, SI 1995/3208 (as amended) is revoked by the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250 (as amended): see arts 1(2), (3), 31(5), Sch 10 Pt 2. At the date at which this volume states the law no such day had been appointed. As to the provisions intended to replace the European Specialist Medical Qualifications Order 1995, SI 1995/3208 (as amended) see PARAS 45-48, 53-56 post.

'National', in relation to an EEA state, means the same as it does for the purposes of the Community Treaties but does not include a person who by virtue of the Treaty of Accession Protocol No 3 (Channel Islands and Isle of Man) art 2 is not to benefit from Community provisions relating to the free movement of persons and services; 'EEA state' means a state which is a contracting party to the EEA Agreement or Switzerland; 'EEA Agreement' means the agreement on the European Economic Area signed at Oporto on 2 May 1992 as adjusted by the Protocol signed at Brussels on 17 March 1993 and as amended by Decisions of the EEA Joint Committee Nos 7/94 of 21 March 1994, 190/1999 of 17 December 1999, 89/2000 of 27 October 2000, 84/2002 of 25 June 2002, and by the agreement on the participation of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic signed at Luxembourg on 14 October 2003; and 'EEA' means the European Economic Area, which is to be read as including Switzerland: European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 2(2) (definitions amended by SI 2003/3148, and SI 2004/1947; prospectively revoked). For the meaning of 'the Community Treaties' see the Interpretation Act 1978 s 5, Sch 1; and the European Communities Act 1972 s 1(2). As to the meaning of 'enforceable Community right' see the Interpretation Act 1978 Sch 1; and the European Communities Act 1972 s 2(1).

2 For the meaning of 'the registrar' see PARA 23 note 1 ante.

3 'The specified period' means:

3 (1) the period of three months: (a) beginning with the date on which the registrar receives the application together with full supporting documentation (European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 8A(3)(a)(i) (as added (see note 1 supra); prospectively revoked); or (b) if earlier, in a case mentioned in art 8A(4) (as added; prospectively revoked) (see the text to notes 8-10 infra), beginning with the date on which the specialist training authority receives all the documents enabling it to determine whether the applicant is an eligible specialist (art 8A(3)(a)(ii) (as so added; prospectively revoked); or

- 4 (2) such longer period as is permitted by art 15 of the Directive (art 8A(3)(b) (as so added; prospectively revoked).

The European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 8A(3) (as added; prospectively revoked) is not yet in force in so far as it relates to art 8A(1)(b)(ii), (2) (as added; prospectively revoked) (see the text to notes 7, 11 infra): see the European Qualifications (Health Care Professions) Regulations 2003, SI 2003/3148, art 1(1)(a)(ii).

In calculating the period of three months referred to in the European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 8A(3) (as added; prospectively revoked), the period beginning with the date on which the specialist training authority gives the applicant notice under art 9(5) (prospectively revoked) (see PARA 41 text to notes 18-19 post) and ending with the date on which the registrar receives all the documents enabling him to be satisfied of the applicant's entitlement to have his name included in the specialist register in accordance with art 8(3) (prospectively revoked) (see PARA 39 text to notes 7-10 ante) is disregarded: art 8A(5) (as added (see note 1 supra); prospectively revoked).

'The Directive' means EC Council Directive 93/16 (OJ L165, 7.7.1993, p 1) to facilitate the free movement of doctors and the mutual recognition of their diplomas, certificates and other evidence of formal qualifications: (i) as adapted by the EEA Agreement Annex VII para 4(b)-(d) (where the specialist medical qualifications awarded in certain EEA states and the names given to specialties in those states are set out); and (ii) as amended by: (A) the Act annexed to the Treaty relating to the accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the European Union signed at Corfu on 24 June 1994, as adjusted by the decision of the Council of the European Union of 1 January 1995 adjusting the instruments concerning the accession of new member states to the European Union; (B) EC Council Directive 97/50 (OJ L291, 24.10.1997, p 35), EC Commission Directive 98/21 (OJ L119, 22.4.1998, p 15), EC Commission Directive 98/63 (OJ L253, 15.9.1998, p 24), EC Commission Directive 1999/46 (OJ L139, 2.6.1999, p 25) and EC Directive 2001/19 (OJ L206, 31.7.2001, p 1); (C) the agreement between the European Community and its member states, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, signed at Luxembourg on 21 June 1999; and (D) the Act annexed to the Treaty relating to the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the Adjustments to the Treaties on which the European Union is founded signed at Athens on 16 April 2003: European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 2(1) (amended by SI 2003/3148, and SI 2004/1947; prospectively revoked).

4 Ie referred to in the European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 8(3) (prospectively revoked) (see PARA 39 text to notes 7-10 ante): art 8A(1)(a) (as added (see note 1 supra); amended by SI 2004/1947; and prospectively revoked).

5 Ie as mentioned in the European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 8(3) (prospectively revoked): see PARA 39 text to notes 7-10 ante.

6 Ibid art 8A(1)(b)(i) (as added (see note 1 supra); amended by SI 2004/1947; and prospectively revoked).

7 Ie under the European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 8A(6) (as added; prospectively revoked) (see the text to notes 12, 13 infra): art 8A(1)(b)(ii) (as added (see note 1 supra); prospectively revoked). Article 8A(1)(b)(ii) (as added; prospectively revoked) is not yet in force: see the European Qualifications (Health Care Professions) Regulations 2003, SI 2003/3148, art 1(1)(a)(i).

8 Ie the matters referred to in the European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 9(2), (3) (prospectively revoked): see PARA 41 text to notes 5-13 post. For the meaning of 'specialist training authority' see PARA 66 note 2 post.

9 Ie under ibid art 8(3) (prospectively revoked): see PARA 39 text to notes 7-10 ante.

10 Ibid art 8A(4) (as added (see note 1 supra); prospectively revoked).

11 Ie under ibid art 8A(6) (as added; prospectively revoked) (see the text to notes 12, 13 infra): art 8A(2) (as added (see note 1 supra); prospectively revoked). Article 8A(2) (as added; prospectively revoked) is not yet in force: see the European Qualifications (Health Care Professions) Regulations 2003, SI 2003/3148, art 1(1)(a)(i).

12 Ie as mentioned in the European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 8(3) (prospectively revoked): see PARA 39 text to notes 7-10 ante.

13 Ibid art 8A(6) (as added (see note 1 supra); prospectively revoked). Article 8A(6) (as added; prospectively revoked) is not yet in force: see the European Qualifications (Health Care Professions) Regulations 2003, SI 2003/3148, art 1(1)(a)(iii). The Medical Act 1983 Sch 3A (as added) (see PARA 126 et seq post) applies to such an appeal, with the necessary modifications, as if the appeal were an appeal under Sch 3A para 4 (as added): European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 8A(6) (as so added; prospectively

revoked). As to registration appeals panels as statutory committees see PARA 26 ante. As to the constitution of registration appeals panels see PARAS 138-140 post.

## **UPDATE**

### **39-56 The specialist register ... Access to the registers; certificates as to registration**

Day now appointed in respect of provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250: London Gazette, 26 August 2005.

## **40 Exempt persons**

NOTE 1--As to the meaning of 'the Community Treaties' see EUROPEAN COMMUNITIES vol 51 PARA 1•22.

NOTE 3--Directive 93/16 replaced: European Parliament and EC Council Directive 2005/36 on the recognition of professional qualifications.



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#### **41. Eligible specialists.**

A person is an eligible specialist for the purposes of inclusion in the specialist register<sup>1</sup> if he holds a recognised specialist medical qualification<sup>2</sup> and is a national of an EEA state<sup>3</sup>, or if he is a person who for the purposes of access to and the practice of the medical profession is entitled to be treated in the same way as such a national in order to enable an enforceable Community right to be exercised<sup>4</sup>. A person is also an eligible specialist for these purposes if:

- 11 (1) he does not fall within the provisions described above<sup>5</sup>, but he has specialist medical qualifications awarded outside the United Kingdom<sup>6</sup> in a specified specialty<sup>7</sup> and he satisfies the specialist training authority<sup>8</sup> that those qualifications are equivalent to a certificate of completion of specialist training<sup>9</sup> in the specialty in question<sup>10</sup>;
- 12 (2) he has specialist qualifications awarded outside the United Kingdom in a medical specialty not so specified<sup>11</sup>, or he has knowledge of or experience in any medical specialty derived from academic or research work<sup>12</sup>, and he satisfies the specialist training authority that these give him a level of knowledge and skill consistent with practice as a consultant in that specialty in the national health service<sup>13</sup>.

In the case of an exempt person<sup>14</sup>, the specialist training authority must, when considering whether it is satisfied as mentioned in head (1) or head (2) above, take account of: (a) all his medical qualifications, knowledge or experience, wherever acquired, which are relevant to its determination<sup>15</sup>; and (b) where he has specialist qualifications awarded outside the EEA<sup>16</sup> which have been accepted by another EEA state as qualifying him to practise as a specialist in that state, of that acceptance<sup>17</sup>. In the case of an exempt person who applies to the specialist training authority for a determination that he is an eligible specialist within head (1) or head (2) above, the specialist training authority must give the applicant notice of the decision on the application<sup>18</sup>, and where it is not satisfied as mentioned in those heads, of the reasons for the decision and the applicant's right to appeal<sup>19</sup>.

<sup>1</sup> le for the purposes of the European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 8(2)(b) (prospectively revoked): see PARA 39 text to note 6 ante.

<sup>2</sup> le as specified in ibid art 10 (prospectively revoked): see PARA 42 post.

<sup>3</sup> Ibid art 9(1)(a) (prospectively revoked). As from a day to be appointed, the European Specialist Medical Qualifications Order 1995, SI 1995/3208 (as amended) is revoked by the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250 (as amended): see arts 1(2), (3), 31(5), Sch 10 Pt 2. At the date at which this volume states the law no such day had been appointed. As to the provisions intended to replace the European Specialist Medical Qualifications Order 1995, SI 1995/3208 (as amended) see PARAS 45-48, 53-56 post. For the meaning of 'EEA state' see PARA 40 note 1 ante.

<sup>4</sup> Ibid art 9(1)(b) (prospectively revoked). As to the meaning of 'enforceable Community right' see the European Communities Act 1972 s 2(1); and the Interpretation Act 1978 s 5, Sch 1.

<sup>5</sup> European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 9(2)(a) (prospectively revoked).

- 6 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.
- 7 European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 9(2)(b) (prospectively revoked). As to the specified specialties see Sch 2 (amended by SI 1997/2928; SI 1999/1373; SI 1999/3154; SI 2002/849; prospectively revoked).
- 8 For the meaning of 'specialist training authority' see PARA 66 note 2 post.
- 9 As to certificates of completion of specialist training see PARA 67 post.
- 10 European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 9(2) (prospectively revoked). See Case C-16/99 *Ministre de la Sante v Erpelding* [2002] 3 CMLR 480, ECJ (specialist qualification not within list of specialist training courses under EC Council Directive 93/16 (OJ L165, 7.7.1993, p 1) art 7; applicant not permitted to use corresponding professional title in host member state).
- 11 European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 9(3)(a) (prospectively revoked). As to references to a medical specialty see PARA 39 note 17 ante.
- 12 Ibid art 9(3)(b) (prospectively revoked).
- 13 Ibid art 9(3) (prospectively revoked). See *Lambiris v Specialist Training Authority* [2003] EWCA Civ 609, [2002] 2 CMLR 1159 (Greek qualification of dermato-venereology did not specifically match British qualification of dermatology; applicant not entered onto specialist register). As to references to a consultant in the national health service see PARA 39 note 16 ante.
- 14 For the meaning of 'exempt person' see PARA 40 note 1 ante.
- 15 European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 9(4)(a) (art 9(4), (5) substituted by SI 2003/3148; prospectively revoked).
- 16 For the meaning of 'EEA' see PARA 40 note 1 ante.
- 17 European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 9(4)(b) (as substituted (see note 15 supra); prospectively revoked).
- 18 Ibid art 9(5)(a) (as substituted (see note 15 supra); prospectively revoked).
- 19 Ie the right to appeal under ibid art 13 (prospectively revoked) (see PARA 43 post): art 9(5)(b) (as substituted (see note 15 supra); prospectively revoked).

## UPDATE

### **39-56 The specialist register ... Access to the registers; certificates as to registration**

Day now appointed in respect of provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250: London Gazette, 26 August 2005.

### **41 Eligible specialists**

NOTE 10--Directive 93/16 replaced: European Parliament and EC Council Directive 2005/36 on the recognition of professional qualifications.

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#### **42. Recognised specialist medical qualifications.**

The following are recognised specialist medical qualifications<sup>1</sup>:

- 13 (1) a specified qualification<sup>2</sup> granted in an EEA state<sup>3</sup> other than the United Kingdom<sup>4</sup> in a listed specialty<sup>5</sup> in which the United Kingdom is shown as awarding qualifications<sup>6</sup>;
  - 14 (2) a qualification in specialist medicine granted in an EEA state other than the United Kingdom which does not satisfy all the minimum training requirements laid down<sup>7</sup> and which was awarded following training begun before the relevant date<sup>8</sup>, accompanied by a certificate from the competent authority in the EEA state in which the qualification was awarded or in which its holder has subsequently become established, stating that the holder has been engaged in the practice of his specialty for at least the period required<sup>9</sup> for the recognition of his qualification in the United Kingdom<sup>10</sup>;
  - 15 (3) a qualification in specialist medicine, in a specified specialty<sup>11</sup> in which the United Kingdom is shown as awarding qualifications<sup>12</sup>:
- 1
    1. (a) which has been obtained at any time in an EEA state other than the United Kingdom<sup>13</sup>;
    2. (b) which does not conform with the specified designations<sup>14</sup>; and
    3. (c) evidence of which is accompanied by a certificate of the competent authorities of that state to the effect that the qualification was awarded following minimum standards of training<sup>15</sup> and is treated by that state as if it were a qualification in the appropriate specialty<sup>16</sup>; and
  - 2
    - 16 (4) subject to compliance with certain requirements<sup>17</sup>, any qualification which is evidence of training which does not accord with the standards laid down<sup>18</sup>, undertaken on the territory of the former German Democratic Republic and begun before 3 April 1992<sup>19</sup>;
    - 17 (5) subject to compliance with certain requirements<sup>20</sup>, any qualification which is evidence of training which did not accord with the standards laid down<sup>21</sup>, undertaken in Spain and completed before 1 January 1995<sup>22</sup>;
    - 18 (6) a specialist qualification in a listed specialty<sup>23</sup> which:
  - 3
    4. (a) was awarded by, or which relates to training started in, the former Czechoslovakia, the former Soviet Union or in Yugoslavia before the specified date<sup>24</sup>;
    5. (b) is accompanied by an attestation by the competent authorities of the specified EEA state<sup>25</sup> to the effect that that qualification has, on its territory, the same legal validity as regards access to and practice of specialised medicine as a listed qualification<sup>26</sup> in respect of that state in the relevant specialty<sup>27</sup>; and
    6. (c) is accompanied by a certificate issued by those authorities that the holder has effectively and lawfully been engaged in the activity in question in that state for at least three consecutive years during the five years prior to the date of issue of that certificate<sup>28</sup>.

4

1 le for the purposes of the European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 9(1) (prospectively revoked): see PARA 41 text to notes 1-4 ante.

2 le a qualification listed in Annex B of the Directive (which sets out the titles of specialist qualifications in EEA states). For the meaning of 'the Directive' see PARA 40 note 3 ante. As to such qualifications see the European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 10, Sch 4 (substituted by SI 2003/3148; amended by SI 2004/1947; prospectively revoked). As from a day to be appointed, the European Specialist Medical Qualifications Order 1995, SI 1995/3208 (as amended) is revoked by the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250 (as amended): see arts 1(2), (3), 31(5), Sch 10 Pt 2. At the date at which this volume states the law no such day had been appointed. As to the provisions intended to replace the European Specialist Medical Qualifications Order 1995, SI 1995/3208 (as amended) see PARAS 45-48, 53-56 post.

3 For the meaning of 'EEA state' see PARA 40 note 1 ante.

4 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

5 le listed in Annex C of the Directive.

6 European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 10(1)(a) (substituted by SI 2003/3148; prospectively revoked).

7 le by the Directive.

8 'The relevant date' means: (1) 1 January 1981, in the case of a qualification granted in Greece; (2) 1 January 1986, in the case of a qualification granted in Spain or Portugal; (3) 1 January 1994, in the case of a qualification granted in Austria, Finland, Iceland, Norway, or Sweden; (4) 1 May 1995, in the case of a qualification granted in Liechtenstein; (5) 1 June 2002, in the case of Switzerland; (6) 1 May 2004, in the case of a qualification granted in the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia or Slovakia; and (7) 20 December 1976, in the case of all other EEA states: European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 10(3) (amended by SI 2003/3148, and SI 2004/1947; prospectively revoked).

9 le by the Directive art 9(2) (qualifications not satisfying the minimum training requirements).

10 European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 10(1)(b) (prospectively revoked).

11 le referred to in Annex C of the Directive.

12 European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 10(1)(c) (amended by SI 2003/3148; prospectively revoked).

13 European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 10(1)(c)(i) (prospectively revoked).

14 le those set out in Annex B or Annex C of the Directive (which together set out the specialist medical qualifications awarded in EEA states): European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 10(1)(c)(ii) (amended by SI 2003/3148; prospectively revoked).

15 le in accordance with the provisions of the Directive arts 24-27, 29 (which set out minimum standards of training for specialist medical qualifications).

16 le a qualification set out under the heading relating to that state in Annex B of the Directive in the appropriate specialty referred to in Annex C of the Directive: European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 10(1)(c)(iii) (amended by SI 2003/3148; prospectively revoked).

17 In order to comply: (1) the holder of the qualification must satisfy the General Medical Council (by means of a certificate of the competent authorities in Germany or otherwise) that he is entitled by virtue of that qualification to practise his specialty throughout the territory of Germany on the same conditions as the holder of a qualification awarded in Germany and listed in Annex B of the Directive in a specialty listed in Annex C of the Directive (see the European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 10(2)(a) (amended by SI 2003/3148; prospectively revoked)); and (2) evidence of the qualification must be accompanied by a certificate of the competent authorities in Germany that the holder has practised his specialty in Germany for the period referred to in the Directive art 9(4) (training in former German Democratic Republic) (see the

European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 10(2)(b) (prospectively revoked). As to the General Medical Council see PARA 13 et seq ante.

18 le by the Directive arts 24-27.

19 European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 10(1)(d) (prospectively revoked).

20 In order to comply the holder of the qualification must provide the General Medical Council with evidence of the qualification, and a certificate of the competent authorities in Spain certifying that he has passed the test of specific professional competence organised under the special regularisation measures contained in Royal Decree 1497/99 which demonstrates that he has a level of knowledge and competence comparable to that attested to by a qualification set out under the heading for Spain in Annex B of the Directive in the appropriate specialty referred to in Annex C of the Directive: European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 10(2A) (added by SI 2003/3148; prospectively revoked).

21 le by the Directive arts 24-27.

22 European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 10(1)(e) (added by SI 2003/3148; prospectively revoked).

23 le listed in the European Specialist Medical Qualifications Order 1995, SI 1995/3208, Sch 2 Pt I (prospectively revoked).

24 Ibid art 10(1)(f)(i) (art 10(1)(f) added by SI 2004/1947; prospectively revoked). The specified date is: in the case of the former Czechoslovakia, 1 January 1993 in relation to the Czech Republic and Slovakia; in the case of the former Soviet Union, 20 August 1991 in relation to Estonia, 21 August 1991 in relation to Latvia, and 11 March 1990 in relation to Lithuania; and in the case of Yugoslavia, 25 June 1991 in relation to Slovenia: European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 10(1)(f) Table (as so added; prospectively revoked).

25 The specified EEA state is in the case of the former Czechoslovakia, the Czech Republic or Slovakia; in the case of the former Soviet Union, Estonia, Latvia or Lithuania; and in the case of Yugoslavia, Slovenia: ibid art 10(1)(f) Table (as added: see note 24 supra; prospectively revoked).

26 le listed in ibid Sch 4 (substituted by SI 2003/3148; amended by SI 2004/1947; prospectively revoked).

27 European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 10(1)(f)(ii) (as added: see note 24 supra; prospectively revoked).

28 Ibid art 10(1)(f)(iii) (as added: see note 24 supra; prospectively revoked).

## UPDATE

### **39-56 The specialist register ... Access to the registers; certificates as to registration**

Day now appointed in respect of provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250: London Gazette, 26 August 2005.

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### **43. Appeals.**

The specialist training authority<sup>1</sup> must secure that a person who fails to satisfy the specialist training authority that he is an eligible specialist<sup>2</sup>, and a person who fails to satisfy the authority of certain other matters<sup>3</sup>, has the right to appeal against its decision to a panel of independent persons (an 'appeal panel'), which must be convened by the specialist training authority as soon as practicable to reconsider the question and determine whether or not the appellant should so satisfy the specialist training authority<sup>4</sup>. The specialist training authority must determine and publish the procedure governing its selection of the members of appeal panels and the conduct of appeals<sup>5</sup>. The specialist training authority must secure that an appeal panel gives reasons for its determination<sup>6</sup>.

1 For the meaning of 'specialist training authority' see PARA 66 note 2 post.

2 In accordance with the European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 9(2), (3) (prospectively revoked) (see PARA 41 text to notes 5-13 ante): art 13(1)(b) (prospectively revoked). As from a day to be appointed, the European Specialist Medical Qualifications Order 1995, SI 1995/3208 (as amended) is revoked by the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250 (as amended): see arts 1(2), (3), 31(5), Sch 10 Pt 2. At the date at which this volume states the law no such day had been appointed. As to the provisions intended to replace the European Specialist Medical Qualifications Order 1995, SI 1995/3208 (as amended) see PARAS 45-48, 53-56 post.

3 In the matters referred to in *ibid* arts 8(4)(b), 12(2)(c) (prospectively revoked) (see PARA 39 text to note 12, note 10 ante): art 13(1)(c) (prospectively revoked).

4 *Ibid* art 13(1) (prospectively revoked).

5 *Ibid* art 13(2) (prospectively revoked).

6 *Ibid* art 13(3) (prospectively revoked).

### **UPDATE**

#### **39-56 The specialist register ... Access to the registers; certificates as to registration**

Day now appointed in respect of provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250: London Gazette, 26 August 2005.

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#### **44. Removal and suspension from specialist register.**

Where it comes to the notice of the registrar of the General Medical Council<sup>1</sup> that a person<sup>2</sup> whose name is included in the specialist register<sup>3</sup> no longer satisfies the specified requirements<sup>4</sup>, the registrar must remove that person's name from the specialist register and send him notice of having done so<sup>5</sup>. Where it comes to the notice of the registrar that a person so removed from the specialist register has become once again a person who satisfies those specified requirements, the registrar must once again include that person's name in the specialist register and must send him notice of having done so<sup>6</sup>. Where it comes to the notice of the registrar that a person's registration in the register of medical practitioners or the register of medical practitioners with limited registration<sup>7</sup> is suspended under any provision of the Medical Act 1983, the registrar must remove that person's name from the specialist register and send him notice of having done so<sup>8</sup>.

Where the registration committee of the General Medical Council<sup>9</sup> is satisfied that any entry in the specialist register has been fraudulently procured or incorrectly made, it may direct<sup>10</sup> that the entry be removed from the register<sup>11</sup>. Where the registration committee so directs that a person's name be removed from the specialist register, the registrar must without delay serve on that person notice of the direction and of his right to appeal against the direction<sup>12</sup>.

1 As to the registrar of the General Medical Council see PARA 23 ante.

2 I.e. other than one to whom the European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 14(4) (prospectively revoked) applies: see the text to notes 7, 8 infra.

3 As to the specialist register see PARA 39 ante.

4 I.e. those of the European Specialist Medical Qualifications Order 1995, SI 1995/3208, arts 8(3)(b), 12(1)(a) (prospectively revoked): see PARA 39 text to note 10 ante.

5 Ibid art 14(1) (prospectively revoked). As from a day to be appointed, the European Specialist Medical Qualifications Order 1995, SI 1995/3208 (as amended) is revoked by the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250 (as amended): see arts 1(2), (3), 31(5), Sch 10 Pt 2. At the date at which this volume states the law no such day had been appointed. As to the provisions intended to replace the European Specialist Medical Qualifications Order 1995, SI 1995/3208 (as amended) see PARAS 45-48, 53-56 post.

The Medical Act 1983 Sch 4 para 8 (see PARA 142 note 6 post) applies to notices required by the European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 14 (prospectively revoked), or by or by virtue of Sch 6 (prospectively revoked) (see the text to notes 9-12 infra), to be sent to any person by the registrar as it applies to the notifications referred to in the Medical Act 1983 Sch 4 para 8: European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 14(6) (prospectively revoked).

6 Ibid art 14(2) (prospectively revoked). As to such notices see note 5 supra.

7 As to such registers see PARA 34 ante.

8 European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 14(4)(a) (prospectively revoked). As to such notices see note 5 supra. In the case of an oral and maxillo-facial surgeon, the registrar must take such action where it comes to his notice that the person's registration in the register of dentists kept under the Dentists Act 1984 s 14 (see PARA 417 post) is suspended under any provision of that Act: see the European

Specialist Medical Qualifications Order 1995, SI 1995/3208, art 14(4)(b) (prospectively revoked). Where it comes to the notice of the registrar that the registration, as referred to in art 14(4)(a), (b) (prospectively revoked), of a person whose name has been removed from the specialist register under those provisions is no longer subject to suspension, the registrar must once again include that person's name in the specialist register unless his name has been erased from the relevant register referred to in art 14(4)(a), (b) (prospectively revoked), and must send him notice of having done so: art 14(5) (prospectively revoked). As to erasure from the medical registers and the dental register see PARAS 144, 441-443, 445, 461 post.

9 There is no longer a statutory registration committee of the General Medical Council. As to the power of the Council to appoint committees see PARA 25 ante.

10 The Medical Act 1983 s 40 (see PARA 188 post) has effect in relation to directions of the registration committee under the European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 14(3) (prospectively revoked) as it has effect in relation to decisions of the General Medical Council under the Medical Act 1983 s 39 (see PARA 189 post); and in particular: (1) the provisions of s 40(6), (11) have effect as if they included a reference to the registration committee as well as to the other committees mentioned there; and (2) s 40(8)(c) has effect as if the references to the general council were references to the registration committee, and the reference to s 39 were a reference to the European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 14(3) (prospectively revoked): art 14(3), Sch 6 para 3 (prospectively revoked).

11 Ibid art 14(3) (prospectively revoked). The provisions of the General Medical Council (Fraud or Error in relation to Registration) Rules 1980, SI 1980/860, rr 4-24, Schedule, (revoked) as they had effect on the date the European Specialist Medical Qualifications Order 1995, SI 1995/3208 (as amended) was made (ie 13 December 1995), apply in relation to entries in the specialist register as they apply in relation to entries in the register of medical practitioners and the register of medical practitioners with limited registration, but as if in the General Medical Council (Fraud or Error in relation to Registration) Rules 1980, SI 1980/860, r 11(3) (revoked) the reference to 'these rules' included a reference to the European Specialist Medical Qualifications Order 1995, SI 1995/3208 (as amended; prospectively revoked): Sch 6 para 1 (prospectively revoked).

12 Ie by virtue of ibid Sch 6 (prospectively revoked): Sch 6 para 2 (prospectively revoked). As to such notices see note 5 supra.



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*(b) The Register required under the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003*

## UPDATE

### **39-56 The specialist register ... Access to the registers; certificates as to registration**

Day now appointed in respect of provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250: London Gazette, 26 August 2005.

## **45. The specialist register.**

As from a day to be appointed the following provisions have effect<sup>1</sup>. The General Medical Council<sup>2</sup> must keep a register of specialists, known as the 'specialist register'<sup>3</sup>. The specialist register must contain the names of persons who hold a certificate of completion of training<sup>4</sup> in a listed specialty<sup>5</sup> awarded by the Postgraduate Medical Education and Training Board (the 'Board')<sup>6</sup>, and other eligible specialists<sup>7</sup>. A person is entitled to have his name included in the specialist register if he applies to the registrar of the General Medical Council for the purpose, paying any fee<sup>8</sup> specified by the Council in rules, and if he satisfies the registrar<sup>9</sup> of his entitlement<sup>10</sup>, and that he is a registered medical practitioner<sup>11</sup>. The specialist register must indicate the specialty in respect of which each person's name is included in the register<sup>12</sup>, and where the Board is satisfied that he has a particular expertise in a field within that specialty and he so requests in his application or subsequently, the name or a description of that field<sup>13</sup>.

A person may not take up appointment to any post as a consultant in the national health service<sup>14</sup> in a specialty, or any more specialised field within such a specialty, unless his name is included in the specialist register<sup>15</sup>.

1 The General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 13 is to come into force on a day to be specified by the Secretary of State and notified in the London, Edinburgh and Belfast Gazettes: see art 1(2), (3). At the date at which this volume states the law no such day had been specified. As to the Secretary of State see PARA 5 ante.

2 As to the General Medical Council see PARA 13 et seq ante.

3 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 13(1). 'Specialist register' means the register maintained by the Council pursuant to art 13(1): art 2, Sch 1.

4 For the meaning of 'certificate of completion of training' see PARA 87 note 2 post.

5 As to the listed specialties see the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 13(2)(a), Sch 3.

6 Ibid art 13(2)(a). As to the Board see PARA 71 post.

7 le as specified in *ibid* art 14 (see PARA 46 post): art 13(2)(b).

8 'Fee' is to be construed in accordance with *ibid* art 24: Sch 1. The Board and the Council may each charge reasonable fees to cover the cost of providing services in the course of the performance of any of its functions under or by virtue of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250 (as amended): art 24(1). Article 24 is to come into force on a day to be specified by the Secretary of State and notified in the London, Edinburgh and Belfast Gazettes: see art 1(2), (3). Article 24(5) came into force on 22 October 2003 so far as it relates to the Board, as did art 24(1)-(4) for the purpose of making rules under art 24(5). At the date at which this volume states the law no day had been specified for the commencement of art 24 for remaining purposes. The Board and the Council may each set those fees at levels such that the fees also cover the cost of such of its overheads as are reasonably attributable to the performance of its functions under or by virtue of the order, but the fees must not include any element of profit: art 24(2). The fee charged by the Board or the Council for any particular service must not include more than a reasonable proportion of the total cost of its overheads referred to in art 24(2): art 24(3). This article does not prevent the Council, where it has power to do so, from setting any other fee which it has power to charge at a level designated to include costs referred to in art 24, but any costs recovered that way cannot also be recovered by way of fees under art 24: art 24(4). If the Board or the Council charges any fee in accordance with art 24(1), it must specify the amount of the fee in rules: art 24(5). As to the making of rules by the Board see PARA 92 post. At the date at which this volume states the law no such rules had been made.

9 *Ibid* art 13(3).

10 le by virtue of *ibid* art 13(2) (see the text to notes 4-7 *supra*): art 13(3)(a).

11 *Ibid* art 13(3)(b). In the case of an oral and maxillo-facial surgeon, he must satisfy the registrar that he is also a registered dentist: art 13(3)(b). For the meaning of 'registered medical practitioner' see PARA 4 ante. For the meaning of 'registered dentist' see PARA 433 note 7 post; definition applied by Sch 1.

12 *Ibid* art 13(4)(a).

13 *Ibid* art 13(4)(b). In order to satisfy the Board that he has a particular expertise in a field such that he is entitled to have that expertise indicated in the register under art 13(4)(b), the person must satisfy the Board that he has satisfactorily completed: (1) sub-specialty training in the United Kingdom that is approved by the Board (art 13(5)(a)); or (2) any other sub-specialty training outside the United Kingdom that the Board is satisfied is equivalent to sub-specialty training approved by the Board (art 13(5)(b)). For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

14 'Consultant in the national health service' means a consultant other than a locum consultant (but including an honorary consultant) employed for the purposes of providing any service as part of the national health service; and 'national health service' means the health services established in pursuance of the National Health Service Act 1946: General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 1. As to the national health service see HEALTH SERVICES vol 54 (2008) PARA 1 et seq.

15 *Ibid* art 13(6). This provision does not apply to any person who held a post as a consultant in oral and maxillo-facial surgery in the national health service immediately before 1 January 1997: art 13(7).

## UPDATE

### **39-56 The specialist register ... Access to the registers; certificates as to registration**

Day now appointed in respect of provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250: London Gazette, 26 August 2005.

### **45 The specialist register**

TEXT AND NOTES 5, 7-11--SI 2003/1250 Sch 3 amended: SI 2005/2120, SI 2007/3101, SI 2009/1846. SI 2003/1250 art 13(2)(b) substituted, art 13(2)(c), (d), (3A) added, art 8(3) amended: SI 2007/3101.

NOTE 8--In exercise of the powers conferred on it by SI 2003/1250 art 24, the Board has made the Postgraduate Medical Education and Training Board (Fees) Rules 2009, approved by SI 2009/385.

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#### **46. Eligible specialists.**

As from a day to be appointed the following provisions have effect<sup>1</sup>. A person is an eligible specialist<sup>2</sup> if, immediately before these provisions come into effect, he is included in the specialist register maintained by the General Medical Council under the European Specialist Medical Qualifications Order 1995<sup>3</sup>. A person is also an eligible specialist if:

- 19 (1) the specialist training authority, or, where applicable, the specialist training authority's appeal panel, has determined that that person is an eligible specialist<sup>4</sup>;
- 20 (2) he holds a recognised specialist qualification<sup>5</sup> and he is:
  7. (a) a national of an EEA state<sup>6</sup>; or
  8. (b) a person who for the purposes of access to and the practice of the medical profession is entitled to be treated in the same way as such a national in order to enable an enforceable Community right to be exercised<sup>7</sup>;
- 6 21 (3) he does not fall within head (2) above<sup>8</sup>, but he has:
  - 7 9. (a) undertaken specialist training<sup>9</sup>; or
  10. (b) been awarded specialist qualifications<sup>10</sup>,
- 8 22 in a listed specialty<sup>11</sup>, and he satisfies the Postgraduate Medical Education and Training Board (the 'Board')<sup>12</sup> that that specialist training is, or those qualifications are, or both when considered together are, equivalent to a certificate of completion of training<sup>13</sup> in the specialty in question<sup>14</sup>;
- 23 (4) he has:
  - 9 11. (a) undertaken specialist training<sup>15</sup>, or been awarded specialist qualifications<sup>16</sup>, outside the United Kingdom in a medical specialty not listed<sup>17</sup>; or
  12. (b) he has knowledge of or experience in any medical specialty derived from academic or research work<sup>18</sup>,
- 10 24 and he satisfies the Board that these give him a level of knowledge and skill consistent with practice as a consultant in the national health service<sup>19</sup>.

If the Board is not satisfied<sup>20</sup> that: (i) under head (3) above, a person's specialist training or specialist qualifications, or both when considered together, are equivalent to a certificate of completion of training in the specialty in question<sup>21</sup>; or (ii) under head (4) above, a person's specialist training or specialist qualifications, or both when considered together, give him the required level of knowledge and skill<sup>22</sup>, or a person's knowledge of, or experience in, any medical specialty derived from academic or research work give him the required level of knowledge and skill<sup>23</sup>, the Board must give reasons as to why it is not satisfied, and, in particular, must inform the person of: (A) the period of additional training that the person must undertake and the fields to be covered by it<sup>24</sup>; (B) any examination, assessment, including a

specified period of assessment, or other test of competence that the person must complete to the Board's satisfaction<sup>25</sup>, in order to satisfy the Board under head (3) or head (4) above<sup>26</sup>.

If the Board is satisfied, pursuant to head (3) above, that a person's specialist training, specialist qualifications, or both when considered together, are equivalent to a certificate of completion of training in the specialty in question<sup>27</sup>, or, pursuant to head (4) above, that a person's specialist training, specialist qualifications, or both when considered together, give him the required level of knowledge and skill<sup>28</sup>, or that a person's knowledge of, or experience in, any medical specialty derived from academic or research work give him the required level of knowledge and skill<sup>29</sup>, it must, if the person so requests, issue to that person a written statement attesting to the fact that the person has satisfied the Board that he is eligible for inclusion in the specialist register<sup>30</sup>.

The Board must make rules as to the procedure to be followed in relation to, and by, persons applying to the Board under head (3) or head (4) above, including rules as to the evidence it requires in support of such an application<sup>31</sup>.

1 The General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 14 is to come into force on a day to be specified by the Secretary of State and notified in the London, Edinburgh and Belfast Gazettes: see art 1(2), (3). Article 14(12) (see the text to note 31 infra) came into force on 22 October 2003, as did art 14(4)-(7) for the purpose of making rules under art 14(12). At the date at which this volume states the law no day had been specified for the commencement of art 14 for remaining purposes. As to the Secretary of State see PARA 5 ante.

2 *Ie* for the purposes of *ibid* art 13(2)(b): see PARA 45 text to note 7 ante.

3 *Ie* if, immediately before *ibid* art 13 (see PARA 45 ante) comes into force, he is included in the specialist register maintained under the European Specialist Medical Qualifications Order 1995, SI 1995/3208 (as amended; prospectively repealed) by virtue of the transitional provisions set out in art 12 (prospectively revoked) (see PARA 39 note 10 ante): General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 14(1). As to the General Medical Council see PARA 13 et seq ante.

4 *Ie* pursuant to the European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 9(2), (3) (prospectively revoked) (see PARA 41 text to notes 5-13 ante): General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 14(2).

5 *Ie* as specified in *ibid* art 15: see PARA 47 post.

6 *Ibid* art 14(3)(a). 'EEA state' means a contracting party to the EEA Agreement or Switzerland; 'EEA Agreement' means the agreement on the European Economic Area signed at Oporto on 2 May 1992 as adjusted by the protocol signed at Brussels on 17 March 1993, as amended by Decisions of the EEA Joint Committee Nos 190/1999 of 17 December 1999, 89/2000 of 27 October 2000, 84/2002 of 25 June 2002 and by the agreement on the participation of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic signed at Luxembourg on 14 October 2003; 'EEA' means the European Economic Area, which is to be read as including Switzerland; and 'national', in relation to an EEA state, has the same meaning as it does for the purposes of the Community Treaties but does not include a person who by virtue of the Treaty of Accession Protocol No 3 (Channel Islands and Isle of Man) art 2 is not to benefit from Community provisions relating to the free movement of persons and services: General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 2, Sch 1 (amended by SI 2004/1947). For the meaning of 'the Community Treaties' see the Interpretation Act 1978 s 5, Sch 1; and the European Communities Act 1972 s 1(2).

7 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 14(3)(b). As to the meaning of 'enforceable Community right' see the European Communities Act 1972 s 2(1); and the Interpretation Act 1978 s 5, Sch 1.

8 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 14(4)(a).

9 *Ibid* art 14(4)(b)(i). In art 14(4), (5), 'specialist training' means specialist medical training that: (1) comprises of theoretical and practical instruction in a post specifically designated as a training post (art 14(7)(a)); (2) takes place in a university centre, a teaching hospital or other health establishment (art 14(7)(b)); (3) is supervised by an appropriate authority or other body (art 14(7)(c)); and (4) involves the personal participation

of the person training to be a specialist in the activity and in the responsibilities of the establishment concerned (art 14(7)(d)).

10 Ibid art 14(4)(b)(ii).

11 Ie a specialty listed in ibid Sch 3.

12 As to the Board see PARA 71 post.

13 For the meaning of 'certificate of completion of training' see PARA 87 note 2 post.

14 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 14(4). If a person falls within art 14(4), (5) (see the text to notes 15-19 infra) and: (1) he is also a person falling within art 14(3)(a), (b) (see the text to notes 6, 7 supra), and he has specialist qualifications awarded outside the EEA which have been accepted by another EEA state as qualifying him to practise as a specialist in that state (art 14(6)(a)); or (2) he has acquired specialist medical experience or knowledge, wherever obtained (art 14(6)(b)), the Board must, when considering whether it is satisfied as mentioned in art 14(4), (5), take account of that acceptance or of that experience or knowledge (art 14(6)).

15 Ibid art 14(5)(a)(i). See also note 9 supra.

16 Ibid art 14(5)(a)(ii).

17 Ie in ibid Sch 3: art 14(5)(a).

18 Ibid art 14(5)(b).

19 Ibid art 14(5). See also note 14 supra. For the meaning of 'consultant in the national health service' see PARA 45 note 14 ante.

20 Ie having taken into account, where applicable, the matters specified in ibid art 14(6): see note 14 supra.

21 Ibid art 14(8)(a).

22 Ibid art 14(8)(b)(i).

23 Ibid art 14(8)(b)(ii).

24 Ibid art 14(9)(a).

25 Ibid art 14(9)(b).

26 Ibid art 14(9). In respect of any application under head (2) or head (3) in the text, the Board must notify the applicant of its decision (and, where relevant, of the matters set out in art 14(9)), in accordance with its duty under art 16(4) (see PARA 53 text to notes 12-16 post): art 14(10).

27 Ibid art 14(11)(a).

28 Ibid art 14(11)(b)(i).

29 Ibid art 14(11)(b)(ii).

30 Ibid art 14(11). Such a statement is known as a 'statement of eligibility for registration': art 14(11).

31 Ibid art 14(12). As to the making of rules by the Board see PARA 92 post. Such rules are not made by statutory instruments and are not recorded in this work.

## UPDATE

### **39-56 The specialist register ... Access to the registers; certificates as to registration**

Day now appointed in respect of provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250: London Gazette, 26 August 2005.

#### **46 Eligible specialists**

TEXT AND NOTES--SI 2003/1250 art 14 amended, art 14A added: SI 2007/3101.

NOTE 6--European Communities Act 1972 s 1(2) definition of 'the Community Treaties' amended: European Communities (Finance) Act 2008 s 1.

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#### **47. Recognised specialist qualifications.**

As from a day to be appointed the following provisions have effect<sup>1</sup>. The following are recognised specialist qualifications<sup>2</sup>:

- 25 (1) a certificate of completion of specialist training<sup>3</sup>;
- 26 (2) a listed specialist qualification<sup>4</sup> granted in an EEA state<sup>5</sup> other than the United Kingdom<sup>6</sup> in a specialty in which the United Kingdom awards a qualification<sup>7</sup>;
- 27 (3) a specialist qualification which:
  - 11 13. (a) was awarded in an EEA state other than the United Kingdom<sup>8</sup>;
  14. (b) was awarded in a specialty in which the United Kingdom awards such a qualification<sup>9</sup>;
  15. (c) does not satisfy all the minimum training requirements laid down by the Directive<sup>10</sup>;
  16. (d) was awarded following training begun before the relevant date<sup>11</sup>; and
  17. (e) is accompanied by a certificate from the competent authority<sup>12</sup> in the EEA state in which the qualification was awarded or in which its holder has subsequently become established, stating that the holder has been engaged in the practice of his specialty for at least the period required<sup>13</sup>;
- 12 28 (4) a specialist qualification in a specialty in which the United Kingdom awards such a qualification<sup>14</sup>, which:
  - 13 18. (a) has been obtained at any time in an EEA state other than the United Kingdom<sup>15</sup>;
  19. (b) does not conform with the specified designations<sup>16</sup>; and
  20. (c) is accompanied by a certificate of the competent authorities of that state to the effect that the qualification was awarded following training<sup>17</sup> and is treated by that state as if it were a specified qualification<sup>18</sup>;
- 14 29 (5) a specialist qualification which:
  - 15 21. (a) was awarded in Spain to doctors who completed specialist training before 1 January 1995 that did not comply with the minimum requirements<sup>19</sup>;
  22. (b) was awarded in a specialty in which the United Kingdom awards such a qualification<sup>20</sup>; and
  23. (c) is accompanied by a certificate awarded by the competent Spanish authorities attesting to the fact that the person concerned has passed the test of specific professional competence organised<sup>21</sup> with the aim of verifying that the person concerned has a level of knowledge and competence comparable to that of doctors holding the specialist qualification listed in relation to Spain<sup>22</sup>; and
- 16 30 (6) a specialist qualification in a listed specialty<sup>23</sup>;
- 17



24. (a) which is evidence of training which does not accord with the standards laid down<sup>24</sup>, undertaken on the territory of the former German Democratic Republic and begun before 3 April 1992<sup>25</sup>;
25. (b) where the holder of the qualification satisfies the General Medical Council<sup>26</sup>, by means of a certificate of the competent authorities in Germany or otherwise, that he is entitled by virtue of that qualification to practise his specialty throughout the territory of Germany on the same conditions as the holder of a listed qualification awarded in Germany<sup>27</sup>; and
26. (c) where evidence of the qualification is accompanied by a certificate of the competent authorities in Germany that the holder has practised his specialty in Germany for the requisite period<sup>28</sup>.
- 18
- 31 (7) a specialist qualification in a listed specialty<sup>29</sup> which:
- 19
27. (a) was awarded by, or which relates to training started in, the former Czechoslovakia, the former Soviet Union or Yugoslavia before the specified dates<sup>30</sup>;
28. (b) is accompanied by an attestation by the competent authorities of the appropriate EEA state<sup>31</sup> to the effect that that qualification has, on its territory, the same legal validity as regards access to and practice of specialised medicine as a qualification awarded in that specialty in that state<sup>32</sup>; and
29. (c) is accompanied by a certificate from those authorities that the holder has effectively and lawfully been engaged in the activity in question in that state for at least three consecutive years during the five years prior to the date of issue of that certificate<sup>33</sup>.
- 20

1 The General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 15 is to come into force on a day to be specified by the Secretary of State and notified in the London, Edinburgh and Belfast Gazettes: see art 1(2), (3). At the date at which this volume states the law no such day had been specified. As to the Secretary of State see PARA 5 ante.

2 le for the purposes of ibid art 14(3) (see PARA 46 text to notes 5-7 ante): art 15(1).

3 Ibid art 15(1)(a). For the meaning of 'certificate of completion of specialist training' see PARA 69 note 11 post.

4 le listed in ibid Sch 7 (amended by SI 2004/1947).

5 For the meaning of 'EEA state' see PARA 46 note 6 ante.

6 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

7 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 15(1)(b). As to the qualifications see Sch 3 Pt 1 (amended by SI 2004/1947).

8 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 15(1)(c)(i).

9 le as set out in ibid Sch 3 Pt 1 (as amended): art 15(1)(c)(ii).

10 Ibid art 15(1)(c)(iii). 'The Directive' means EC Council Directive 93/16 (OJ L165, 7.7.1993, p 1) to facilitate the free movement of doctors and the mutual recognition of their diplomas, certificates and other evidence of formal qualifications: (1) as adapted by the EEA Agreement Annex VII para 4(b)-(d) (where the specialist medical qualifications awarded in certain EEA states and the names given to specialities in those states are set out); and (2) as amended by: (a) the Act annexed to the Treaty relating to the accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden signed at Corfu on 24 June 1994, as adjusted by the Decision of the Council of the European Union of 1 January 1995 adjusting the instruments concerning the accession of new member states to the European Union; (b) EC Council Directive 97/50 (OJ L291, 24.10.1997, p 35), EC Commission Directive 98/21 (OJ L119, 22.4.1998, p 15), EC Commission Directive 98/63 (OJ L253, 15.9.1998, p 24), EC Commission Directive 1999/46 (OJ L139, 2.6.1999, p 25) and EC Directive 2001/19 (OJ L206, 31.7.2001, p 1); (c) the agreement between the European Community and its

member states of the one part and the Swiss Confederation of the other, on the free movement of persons signed at Luxembourg on 21 June 1999; and (d) the Act annexed to the Treaty relating to the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the Adjustments to the Treaties on which the European Union is founded signed at Athens on 16 April 2003: General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 1 (definition amended by SI 2004/1947). For the meaning of 'EEA Agreement' see PARA 46 note 6 ante.

11 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 15(1)(c)(iv). 'The relevant date' means: (1) 1 January 1981, in the case of a qualification granted in Greece; (2) 1 January 1986, in the case of a qualification granted in Spain or Portugal; (3) 1 January 1994, in the case of a qualification granted in Austria, Finland, Iceland, Norway, or Sweden; (4) 1 May 1995, in the case of a qualification granted in Liechtenstein; (5) 1 June 2002, in the case of a qualification granted in Switzerland; or (6) 20 December 1976, in the case of a qualification granted in any other EEA state: art 15(2)(a)-(f).

12 'Competent authority', in relation to an EEA state, means the authority or body designated by that state as competent for the relevant purposes of the Directive: General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 1.

13 Ie required by the Directive art 9(2): General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 15(1)(c)(v).

14 Ie as set out in *ibid* Sch 3 Pt 1 (as amended).

15 *Ibid* art 15(1)(d)(i).

16 Ie set out in Sch 7 (as amended) or Annex C of the Directive (which together set out the relevant specialist qualifications awarded in EEA states): General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 15(1)(d)(ii).

17 Ie training in accordance with the provisions of the Directive arts 24-26, 29 (which set out the minimum standards of training for specialist qualifications).

18 Ie a qualification set out under the heading relating to the state in Sch 7 (as amended) or Annex C of the Directive: General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 15(1)(d)(iii).

19 Ie as laid down in the Directive arts 24-26: General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 15(1)(e)(i).

20 Ie as set out in *ibid* Sch 3 Pt 1 (as amended): art 15(1)(e)(ii).

21 Ie in accordance with the Directive art 9(2a).

22 Ie listed in the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 7 (as amended): art 15(1)(e)(iii).

23 Ie listed in *ibid* Sch 3 Pt 1 (as amended): art 15(1)(f).

24 Ie by the Directive arts 24-26.

25 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 15(1)(f)(i).

26 As to the General Medical Council see PARA 13 *et seq* ante.

27 Ie a qualification listed in Sch 7 (as amended) and Annex C of the Directive: General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 15(1)(f)(ii).

28 Ie the period referred to in the Directive art 9(4) (training in the former German Democratic Republic): General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 15(1)(f)(iii).

29 Ie listed in *ibid* Sch 3 Pt 1 (as amended): art 15(1)(g) (added by SI 2004/1947).

30 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 15(1)(g)(i) (as added: see note 29 ante). The specified dates are: for the former Czechoslovakia,

1 January 1993 in relation to the Czech Republic and Slovakia; for the former Soviet Union, 20 August 1991 in relation to Estonia, 21 August 1991 in relation to Latvia and 11 March 1990 in relation to Lithuania; and for Yugoslavia, 25 June 1991 in relation to Slovenia: art 15(1)(g) Table (as so added).

31 le in the case of the former Czechoslovakia, the Czech Republic or Slovakia; in the case of the former Soviet Union, Estonia, Latvia or Lithuania; and in the case of Yugoslavia, Slovenia: ibid art 15(1)(g) Table (as added: see note 29 supra).

32 le a qualification listed in ibid Sch 7 (as amended) in respect of that state: art 15(1)(g)(ii) (as added: see note 29 supra).

33 Ibid art 15(1)(g)(iii) (as added: see note 29 supra).

## **UPDATE**

### **39-56 The specialist register ... Access to the registers; certificates as to registration**

Day now appointed in respect of provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250: London Gazette, 26 August 2005.

### **47 Recognised specialist qualifications**

TEXT AND NOTES--SI 2003/1250 art 15 amended, art 15A added, Sch 7 revoked: SI 2007/3101.

NOTE 10--Directive 93/16 replaced: European Parliament and EC Council Directive 2005/36 on the recognition of professional qualifications.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/ (3) REGISTRATION, TRAINING AND QUALIFICATION/(i) The Registers/B. THE SPECIALIST REGISTER AND THE GENERAL PRACTITIONER REGISTER/(A) The Specialist Register/(b) The Register required under the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003/48. Transitional arrangements.

#### **48. Transitional arrangements.**

As from a day to be appointed the following provisions have effect<sup>1</sup>. The registrar of the General Medical Council<sup>2</sup> must ensure that all specialists whose names are included in the old specialist register<sup>3</sup> immediately before the relevant date<sup>4</sup> are, on the relevant date, transferred to the specialist register<sup>5</sup>. Any application made to the Council for inclusion in the old specialist register that is made before, but is not finally dealt with by, the relevant date must be determined: (1) in accordance with the relevant provisions<sup>6</sup>, but if the application is successful the applicant's name must be included in the specialist register instead of the old specialist register<sup>7</sup>; and (2) within the time limit specified<sup>8</sup>, the time period beginning with the date on which the Council received the application for inclusion in the old specialist register together with full supporting documentation<sup>9</sup>. Any appeal against the Council's decision to refuse such an application<sup>10</sup> must be dealt with in accordance with the relevant provisions<sup>11</sup>, and if that appeal is successful the applicant's name must be included in the specialist register<sup>12</sup>.

Where a person has applied to the specialist training authority<sup>13</sup> in respect of eligibility for entry to the specialist register<sup>14</sup> before the relevant date but the application has not been determined by that date, the Postgraduate Medical Education and Training Board (the 'Board')<sup>15</sup> must determine that application<sup>16</sup> and any appeal against a decision of the Board is to be made and determined in accordance with the relevant provisions<sup>17</sup>, but this does not prevent such a person from withdrawing any application he has made to the specialist training authority and making a new application to the Board<sup>18</sup>.

Where a person's name has, before the relevant date, been removed from the old specialist register<sup>19</sup> and, on or after the relevant date, it comes to the notice of the registrar of the General Medical Council that such a person is a registered medical practitioner<sup>20</sup>, the registrar must, if requested to do so by that person, include that person's name in the specialist register and send him notice of having done so<sup>21</sup>. Where a person's name has, before the relevant date, been removed from the old specialist register<sup>22</sup> and, on or after the relevant date, it comes to the notice of the registrar that such a person is no longer subject to suspension<sup>23</sup>, the registrar must, if he is satisfied that that person is a registered medical practitioner or, in the case of an oral and maxillo-facial surgeon, a registered medical practitioner and a registered dentist, include that person's name in the specialist register and send him notice of having done so<sup>24</sup>. Where a person's name has been removed from the old specialist register<sup>25</sup> before the relevant date, the relevant notice has been served on that person<sup>26</sup> and that person, on or after the relevant date, appeals against that removal within any relevant time limits<sup>27</sup>, if that appeal is successful that person's name must be included in the specialist register<sup>28</sup>.

Where an appeal is made<sup>29</sup> against a decision of the specialist training authority before the relevant date but it has not been determined by that date, the appeal must be determined in accordance with the relevant provisions<sup>30</sup>. In determining any application made to the Board by a person to whom the specialist training authority has, before the relevant date, given written<sup>31</sup> advice in relation to his training, the Board must take that advice into account in determining that person's application<sup>32</sup>.

1 The provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 31(4), Sch 8 Pt 1 (paras 1-20) are to come into force on a day to be specified by the Secretary of State and notified in the London, Edinburgh and Belfast Gazettes: see art 1(2), (3). At the date at which this volume states the law no such day had been specified. The Secretary of State may by order make such further transitional, transitory or saving provisions as he considers appropriate: art 31(6). At the date at which this volume states the law no such order had been made. As to the Secretary of State see PARA 5 ante. As to the power of the Secretary of State to make orders see PARA 92 post.

2 As to the registrar of the General Medical Council see PARA 23 ante. As to the General Medical Council see PARA 13 et seq ante.

3 'Old specialist register' means the register of specialists maintained by the General Medical Council under the European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 8 (prospectively revoked) (see PARA 39 ante): General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 8 para 1(a).

4 'Relevant date' means the date on which *ibid* Sch 8 Pt 1 (paras 1-20) comes into force: Sch 8 para 1(b).

5 *Ibid* Sch 8 para 9(1). For the meaning of 'specialist register' see PARA 45 note 3 ante.

6 *Ie* the relevant provisions of the European Specialist Medical Qualifications Order 1995, SI 1995/3208 (as amended; prospectively revoked): see PARA 39 ante.

7 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 8 para 9(2)(a). For the purposes of Sch 8 paras 9, 12, 14, if the relevant provisions of the European Specialist Medical Qualifications Order 1995, SI 1995/3208 (as amended; prospectively revoked) have been revoked, they are to be treated as if they remained in force with such modifications as necessary, and as if references to the specialist training authority were references to the Board: General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 8 para 20.

8 *Ie* in European Specialist Medical Qualifications Order 1995, SI 1995/3208, arts 8A(3) (as added; prospectively revoked) (see PARA 40 ante) where applicable. See also note 7 *supra*.

9 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 8 para 9(2)(b) (substituted by SI 2004/1947).

10 *Ie* pursuant to the European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 8A(6) (as added; prospectively revoked): see PARA 40 text to notes 12-13 ante.

11 *Ie* *ibid* art 8A(6) (as added; prospectively revoked): see PARA 40 text to notes 12-13 ante.

12 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 8 para 9(2) (amended by SI 2004/1947).

13 As to the specialist training authority see PARA 69 post.

14 *Ie* under the European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 9(2), (3) (prospectively revoked): see PARA 41 text to notes 5-13 ante. See also note 7 *supra*.

15 As to the Board see PARA 71 post.

16 *Ie* in accordance with the European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 9(2), (3) (prospectively revoked) and in accordance with the requirements of art 8A (as added; prospectively revoked) (see PARA 40 ante) where applicable: General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 8 para 12(a) (amended by SI 2004/1947). If, pursuant to the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 8 para 12, the Board or an appeal panel arranged in accordance with the European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 13 (prospectively revoked) (see PARA 43 ante) has determined that a person is an eligible specialist pursuant to art 9(2), (3) (prospectively revoked), that person must be treated as an eligible specialist pursuant to the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 14(2) (see PARA 46 text to note 4 ante) for the purposes of any subsequent application or request to be included in the specialist register: Sch 8 para 9(3). See also note 7 *supra*.

17 *Ie* in accordance with the European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 13(1) (prospectively revoked) (see PARA 43 text to notes 1-4 ante): General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 8 para 12(b); and see note 16 *supra*. See also note 7 *supra*.

18    Ie under ibid art 14(4), (5) (see PARA 46 text to notes 8-19 ante) as appropriate: Sch 8 para 12.

19    Ie pursuant to the European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 14(1) (prospectively revoked) (see PARA 44 text to notes 1-5 ante): General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 8 para 15(a).

20    Ibid Sch 8 para 15(b). In the case of an oral and maxillo-facial surgeon, the person must be a registered medical practitioner and a registered dentist: see Sch 8 para 15(b). For the meaning of 'registered medical practitioner' see PARA 4 ante. For the meaning of 'registered dentist' see PARA 433 note 7 post; definition applied by Sch 1.

21    Ibid Sch 8 para 15. In any case falling within Sch 8 paras 15-17, the Medical Act 1983 Sch 4 para 8 (see PARA 142 note 6 post) applies to notices required by those provisions to be sent to any person by the registrar of the General Medical Council as it applies to the notifications referred to in the Medical Act 1983 Sch 4 para 8: General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 8 para 18.

22    Ie pursuant to the European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 14(4) (prospectively revoked) (see PARA 44 text to notes 7, 8 ante): General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 8 para 17(a).

23    Ibid Sch 8 para 17(b).

24    Ibid Sch 8 para 17. See also note 21 supra.

25    Ie pursuant to the European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 14(3) (prospectively revoked): see PARA 44 text to notes 9-11 ante.

26    Ie pursuant to ibid Sch 6 para 2 (prospectively revoked) (see PARA 44 text to note 12 ante): General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 8 para 16(a).

27    Ibid Sch 8 para 16(b). Such an appeal must be determined in accordance with art 18(6), (7) (see PARA 54 note 6, text to note 17 post) as if the decision to remove that person's name had been taken under art 18(5) (see PARA 54 text to note 16 post): see Sch 8 para 16.

28    Ibid Sch 8 para 16. See also note 21 supra.

29    Ie pursuant to the European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 13(1) (prospectively revoked): see PARA 43 text to notes 1-4 ante.

30    Ie in accordance with ibid art 13(1) (prospectively revoked): General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 8 para 14. See also note 7 supra.

31    For the meaning of 'written' see PARA 20 note 22 ante.

32    General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 8 para 19.

## **UPDATE**

### **39-56 The specialist register ... Access to the registers; certificates as to registration**

Day now appointed in respect of provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250: London Gazette, 26 August 2005.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/ (3) REGISTRATION, TRAINING AND QUALIFICATION/(i) The Registers/B. THE SPECIALIST REGISTER AND THE GENERAL PRACTITIONER REGISTER/(B) The General Practitioner Register/49. The general practitioner register.

## (B) THE GENERAL PRACTITIONER REGISTER

### 49. The general practitioner register.

As from a day to be appointed the following provisions have effect<sup>1</sup>. The General Medical Council<sup>2</sup> must keep a register of general practitioners, known as 'the general practitioner register'<sup>3</sup>. The general practitioner register must contain the names of: (1) persons who hold a certificate of completion of training<sup>4</sup> in general practice awarded by the Postgraduate Medical Education and Training Board (the 'Board')<sup>5</sup>; (2) other eligible general practitioners<sup>6</sup>; and (3) persons who have an acquired right<sup>7</sup>. A person is entitled to have his name included in the general practitioner register if he applies to the registrar of the General Medical Council<sup>8</sup> for the purpose, paying any fee<sup>9</sup> specified by the Council in rules, and if he satisfies the registrar<sup>10</sup> of his entitlement<sup>11</sup>, and that he is a registered medical practitioner<sup>12</sup>. Unless a person's name is included in the general practitioner register, he must not be included in a medical performers list<sup>13</sup>.

1 The General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 10 is to come into force on a day to be specified by the Secretary of State and notified in the London, Edinburgh and Belfast Gazettes: see art 1(2), (3). At the date at which this volume states the law no such day had been specified. As to the Secretary of State see PARA 5 ante.

2 As to the General Medical Council see PARA 13 et seq ante.

3 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 10(1). 'General practitioner register' means the register maintained by the Council pursuant to art 10(1): art 2, Sch 1.

4 For the meaning of 'certificate of completion of training' see PARA 87 note 2 post.

5 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 10(2)(a). As to the Board see PARA 71 post.

6 Ie as specified in ibid art 11 (see PARA 50 post): art 10(2)(b).

7 Ie in accordance with ibid art 12, Sch 6 (see PARA 51 post): art 10(2)(c).

8 As to the registrar of the General Medical Council see PARA 23 ante.

9 As to the meaning of 'fee' see PARA 45 note 8 ante.

10 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 10(3).

11 Ie by virtue of ibid art 10(2) (see the text to notes 4-7 supra): art 10(3)(a).

12 Ibid art 10(3)(b). For the meaning of 'registered medical practitioner' see PARA 4 ante.

13 Ibid art 10(4)(a) (substituted in relation to England by SI 2004/865, and in relation to Wales by SI 2004/1016). 'Medical performers list' means a list of medical practitioners prepared and published pursuant to the National Health Service Act 1977 s 28X (as added) (see HEALTH SERVICES vol 54 (2008) PARA 263 et seq): General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 1 (definition added by SI 2004/865, and SI 2004/1016). The prohibition in the General and Specialist Medical

Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 10(4)(a) does not apply to a person undertaking a period of employment as a GP registrar, or a person who is provisionally registered under the Medical Act 1983 ss 15, 15A, 21 (s 15A as added) (see PARAS 102, 103, 108 post) acting in the course of his employment in a resident medical capacity in an approved medical practice within the meaning of s 11(4) (see PARA 95 notes 6, 9 post): General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 10(5). For the meaning of 'GP registrar' see PARA 84 note 5 post.

As to the transitional provisions applicable until art 10(4) is brought fully into force see art 31(4), Sch 8 Pt 2 (paras 21, 22): and PARA 52 post.

## **UPDATE**

### **39-56 The specialist register ... Access to the registers; certificates as to registration**

Day now appointed in respect of provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250: London Gazette, 26 August 2005.

### **49 The general practitioner register**

TEXT AND NOTES--For transitional provision, see the General and Specialist Medical Practice (Education, Training and Qualifications) Transitional Provisions Order 2005, SI 2005/2361.

TEXT AND NOTES 4-12--SI 2003/1250 art 10(2), (3) amended, art 10(3A) added: SI 2007/3101.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/ (3) REGISTRATION, TRAINING AND QUALIFICATION/(i) The Registers/B. THE SPECIALIST REGISTER AND THE GENERAL PRACTITIONER REGISTER/(B) The General Practitioner Register/50. Eligible general practitioners.

## 50. Eligible general practitioners.

As from a day to be appointed the following provisions have effect<sup>1</sup>. A person is an eligible general practitioner<sup>2</sup> if:

- 32 (1) he holds a vocational training certificate<sup>3</sup> or a certificate of acquired rights<sup>4</sup> issued<sup>5</sup> in an EEA state<sup>6</sup> other than the United Kingdom<sup>7</sup>, and he is<sup>8</sup>:
  - 21 30. (a) a national of an EEA state<sup>9</sup>; or
  31. (b) a person who for the purposes of access to and the practice of the medical profession is entitled to be treated in the same way as such a national in order to enable an enforceable Community right to be exercised<sup>10</sup>;
- 22 33 (2) he is a person falling within head (1)(a) or (b) above, he holds a vocational training certificate<sup>11</sup>, and that certificate is accompanied by a certificate of the competent authorities of the state which awarded it<sup>12</sup>;
- 34 (3) he holds a certificate of prescribed experience<sup>13</sup>;
- 35 (4) he holds a certificate of equivalent experience<sup>14</sup>;
- 36 (5) he was exempt from the need to have acquired the prescribed experience<sup>15</sup>;
- 37 (6) he does not fall within PARAGRAPH heads (1) to (5) above but he has:
  - 23 32. (a) undertaken training in general practice<sup>16</sup>; or
  33. (b) been awarded qualifications in general practice<sup>17</sup>,
- 24 38 and he satisfies the Postgraduate Medical Education and Training Board (the 'Board')<sup>18</sup> that that training is, or those qualifications are, or both when considered together are, equivalent to a certificate of completion of training<sup>19</sup> in general practice<sup>20</sup>.

If a person falls within head (6) above and: (i) he is also a person falling within head (1)(a) or head (1)(b) above and he has qualifications in general practice awarded outside the EEA<sup>21</sup> which have been accepted by another EEA state as qualifying him to practise as a general practitioner<sup>22</sup> in that state<sup>23</sup>; or (ii) he has acquired experience or knowledge in general practice, wherever obtained<sup>24</sup>, the Board must, when considering whether it is satisfied, take account of that acceptance or of that experience or knowledge<sup>25</sup>. If the Board is not satisfied, having taken into account such matters where applicable, that a person's training, qualifications, or both when considered together are equivalent to a certificate of completion of training in general practice, the Board must give reasons as to why it is not satisfied, and, in particular, must inform the person of: (A) the period of additional training that the person must undertake, and the fields to be covered by it<sup>26</sup>; (B) any examination, assessment, including a specified period of assessment, or other test of competence that the person must complete to the Board's satisfaction<sup>27</sup>, in order to so satisfy the Board<sup>28</sup>. If the Board is satisfied that a person's training, qualifications, or both when considered together are equivalent to a certificate of completion of training in general practice, it must, if the person so requests, issue to that person a written

statement attesting to the fact that the person has satisfied the Board that he is eligible for entry in the general practitioner register<sup>29</sup>.

The Board must make rules as to the procedure to be followed in relation to, and by, persons applying to the Board under head (6) above, including rules as to the evidence it requires in support of such an application<sup>30</sup>.

1 The General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 11 is to come into force on a day to be specified by the Secretary of State and notified in the London, Edinburgh and Belfast Gazettes: see art 1(2), (3). Article 11(8) (see the text to note 30 *infra*) came into force on 22 October 2003, as did art 11(3), (4) for the purpose of making rules under art 11(8). At the date at which this volume states the law no day had been specified for the commencement of art 11 for remaining purposes. As to the Secretary of State see PARA 5 *ante*.

2 *Ie* for the purposes of *ibid* art 10(2)(b): see PARA 49 text to note 6 *ante*.

3 *Ie* as listed in *ibid* Sch 6A (added by SI 2004/1947), together with the corresponding professional title: General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 11(1)(a) (amended by SI 2004/1947). For the meaning of 'vocational training certificates' see PARA 87 note 18 *post*.

4 'Certificate of acquired rights' means a certificate issued under the Directive art 36(4), to the effect that its holder has an acquired right to practise as a general practitioner under the national social security scheme of the issuing state without a vocational training certificate in general practice: General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 1. For the meaning of 'the Directive' see PARA 47 note 10 *ante*.

5 *Ie* in accordance with the Directive Title IV.

6 For the meanings of 'EEA state' and 'national' see PARA 46 note 6 *ante*.

7 For the meaning of 'United Kingdom' see PARA 1 note 3 *ante*.

8 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 11(1)(a).

9 *Ibid* art 11(1)(a)(i).

10 *Ibid* art 11(1)(a)(ii). As to the meaning of 'enforceable Community right' see the European Communities Act 1972 s 2(1); and the Interpretation Act 1978 s 5, Sch 1.

11 *Ie* a certificate awarded by a member state that is not listed in the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 6A (as added): art 11(1)(aa)(i) (art 11(1)(aa) added by SI 2004/1947). For the meaning of 'member state' see the Interpretation Act 1978 s 5, Sch 1; and the European Communities Act 1972 s 1(2), Sch 1 Pt II.

12 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 11(1)(aa)(ii) (as added: see note 11 *ante*). The certificate must be to the effect that the qualification was awarded following training in accordance with the relevant provisions of the Directive Title IV (which contains the minimum standards of training for the award of a vocational training certificate in general medical practice) and is treated by that state as if it were a qualification set out under the heading relating to the state in the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 6A (as added): art 11(1)(aa)(ii) (as so added). For the meaning of 'competent authority' see PARA 47 note 12 *ante*.

13 *Ibid* art 11(1)(b). 'Certificate of prescribed experience' means a certificate issued by the Joint Committee on Postgraduate Training for General Practice pursuant to the National Health Service Vocational Training Regulations, SI 1997/2817, reg 10 (see HEALTH SERVICES vol 54 (2008) PARA 263) and includes for the purposes of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 11(1)(b) a certificate of equivalent experience issued under the National Health Service (Vocational Training) Regulations 1979, SI 1979/1644 (revoked) or a certificate issued by the Board, in accordance with those provisions, pursuant to the transitional, transitory, and saving provisions in the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 8 (see PARA 70 *post*): Sch 1.

14 *Ibid* art 11(1)(c). 'Certificate of equivalent experience' means a certificate issued by the Joint Committee on Postgraduate Training for General Practice pursuant to the National Health Service Vocational Training

Regulations, SI 1997/2817, reg 12 (see HEALTH SERVICES vol 54 (2008) PARA 263) and includes for the purposes of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 11(1)(c) a certificate of equivalent experience issued under the National Health Service (Vocational Training) Regulations 1979, SI 1979/1644 or a certificate issued by the Board, in accordance with those provisions, pursuant to the transitional, transitory, and saving provisions in the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 8: Sch 1.

15 le by virtue of the National Health Service Vocational Training Regulations, SI 1997/2817, reg 5(1)(a)-(d), (f) (see HEALTH SERVICES vol 54 (2008) PARA 263): General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 11(2)(a). However, if a restricted services principal is eligible for inclusion in the general practitioner register only by virtue of an exemption under the National Health Service Vocational Training Regulations, SI 1997/2817, reg 5(1)(d), the registrar of the General Medical Council must ensure that that fact is indicated in that person's entry in the general practitioner register in such manner as the registrar thinks fit: art 11(2) (amended by SI 2004/865, and SI 2004/1016). For the meaning of 'restricted services principal' see PARA 49 note 23 ante. For the meaning of 'general practitioner register' see PARA 49 note 3 ante. As to the registrar of the General Medical Council see PARA 23 ante.

16 Ibid art 11(3)(a).

17 Ibid art 11(3)(b).

18 As to the Board see PARA 71 post.

19 For the meaning of 'certificate of completion of training' see PARA 87 note 2 post.

20 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 11(3). In respect of any application under art 11(3), the Board must notify the applicant of its decision and, where relevant, of the matters set out in art 11(5) (see the text to notes 26-28 infra) in accordance with its duty under art 16(4) (see PARA 53 text to notes 12-16 post): art 11(6).

21 For the meaning of 'EEA' see PARA 46 note 6 ante.

22 For the meaning of 'general practitioner' see PARA 49 note 23 ante.

23 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 11(4)(a).

24 Ibid art 11(4)(b).

25 Ibid art 11(4).

26 Ibid art 11(5)(a).

27 Ibid art 11(5)(b).

28 Ibid art 11(5).

29 Ibid art 11(7). Such a statement is known as a 'statement of eligibility for registration': art 11(7).

30 Ibid art 11(8). As to the making of rules by the Board see PARA 92 post. Such rules are not made by statutory instruments and are not recorded in this work.

## UPDATE

### **39-56 The specialist register ... Access to the registers; certificates as to registration**

Day now appointed in respect of provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250: London Gazette, 26 August 2005.

## **50 Eligible general practitioners**

TEXT AND NOTES--SI 2003/1250 art 11 amended, art 11A added, Sch 6A revoked: SI 2007/3101.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/ (3) REGISTRATION, TRAINING AND QUALIFICATION/(i) The Registers/B. THE SPECIALIST REGISTER AND THE GENERAL PRACTITIONER REGISTER/(B) The General Practitioner Register/51. Acquired rights of general practitioners.

## **51. Acquired rights of general practitioners.**

A person has an acquired right to practise as a general practitioner<sup>1</sup> if<sup>2</sup>:

- 39 (1) on 31 December 1994 his name was included in a medical list kept by a family health services authority<sup>3</sup>;
- 40 (2) on 31 December 1994 he was suitably experienced<sup>4</sup>;
- 41 (3) on 31 December 1994 he was established in the United Kingdom<sup>5</sup> by virtue of a qualification in medicine awarded in an EEA state<sup>6</sup> other than the United Kingdom which had in his case to be recognised in the United Kingdom<sup>7</sup> as entitling him to be registered, or to practise as if he were registered<sup>8</sup>, as a fully registered medical practitioner<sup>9</sup>; or
- 42 (4) on at least 10 days in the period of 4 years ending with 31 December 1994, or on at least 40 days in the period of 10 years ending with that date, he had been engaged as a deputy by, or provided as a deputy to, a doctor whose name was included in the medical list<sup>10</sup> of a family health services authority<sup>11</sup> or he had been employed as an assistant, other than as a trainee general practitioner, by such a doctor<sup>12</sup>.

The Postgraduate Medical Education and Training Board (the 'Board')<sup>13</sup> must, if a person so requests in writing<sup>14</sup>, issue a certificate of acquired rights to him if it is satisfied that he has an acquired right to practise<sup>15</sup>. The Board may make rules as to the procedure to be followed and the evidence it requires in support of such a request<sup>16</sup>.

1 For the meaning of 'general practitioner' see PARA 49 note 23 ante.

2 See the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 12(1). The provisions of art 12, Sch 6 are to come into force on a day to be specified by the Secretary of State and notified in the London, Edinburgh and Belfast Gazettes: see art 1(2), (3). Article 12(4) (see the text to note 16 infra) came into force on 22 October 2003, as did art 12(1)-(3) and Sch 6 for the purpose of making rules under art 12(4). At the date at which this volume states the law no day had been specified for the commencement of art 12 and Sch 6 for remaining purposes. As to the Secretary of State see PARA 5 ante.

Article 12(1) is expressed to be made for the purposes of the Directive art 36(2) (requirement for each EEA state to specify the acquired rights that it recognises for the purpose of exercising general medical practice under its national social security scheme without a vocational training certificate): see the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 12(1). For the meaning of 'the Directive' see PARA 47 note 10 ante. For the meaning of 'vocational training certificate' see PARA 87 note 18 post.

3 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 12(1), Sch 6 paras 1(a), 3(f). If a restricted services principal is included in the general practitioner register only by virtue of Sch 6 para 1(a), the registrar of the General Medical Council must ensure that that fact is indicated in that person's entry in the general practitioner register in such manner as the registrar thinks fit: art 12(2)(b) (art 12(2) amended by SI 2004/865, and SI 2004/1016). As to family health services authorities see HEALTH SERVICES vol 54 (2008) PARA 75 et seq. For the meaning of 'restricted services principal' see PARA 49 note 23 ante. For the meaning of 'general practitioner register' see PARA 49 note 3 ante. As to the registrar of the General Medical Council see PARA 23 ante.

4 Ibid Sch 6 para 1(b). 'Suitably experienced' means suitably experienced within the meaning of the National Health Service Act 1977 s 31 (repealed) other than by virtue of the National Health Service (Vocational Training) Regulations 1979, SI 1979/1644, reg 8(1)(e), (h) (revoked), even if on that date he had yet to obtain a certificate of prescribed or equivalent experience under those regulations: see the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 6 paras 1(b), 3(a).

5 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

6 For the meaning of 'EEA state' see PARA 46 note 6 ante.

7 Ie by virtue of the Directive (whether or not as read with the EEA Agreement), or by virtue of any enforceable Community right: General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 6 para 1(c). For the meaning of 'EEA Agreement' see PARA 46 note 6 ante. As to the meaning of 'enforceable Community right' see the European Communities Act 1972 s 2(1); and the Interpretation Act 1978 s 5, Sch 1.

8 Ie under the Medical Act 1983 s 3 (as substituted): see PARA 99 post.

9 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 6 para 1(c).

10 'Medical list' means the same as in the National Health Service (General Medical Services) Regulations 1992, SI 1992/635 (revoked) (see HEALTH SERVICES vol 54 (2008) PARA 263 et seq) General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 6 para 3(d), (e).

11 Ibid Sch 6 para 1(d)(i). For the purposes of Sch 6 para 1(d), engagement or provision as a deputy for a period of less than 24 hours beginning before but ending after midnight counts as engagement or provision on the second day only: Sch 6 para 2. If a person is included in the general practitioner register under art 10(2)(c) (see PARA 49 text to note 7 ante) only by virtue of an acquired right under Sch 6 para 1(d), the registrar of the General Medical Council must ensure that that fact is indicated in that person's entry in the general practitioner register in such manner as the registrar thinks fit: art 12(2)(a) (as amended: see note 3 supra).

12 Ibid Sch 6 para 1(d)(ii). See also note 11 supra.

13 As to the Board see PARA 71 post.

14 For the meaning of 'writing' see PARA 20 note 22 ante.

15 Ie by virtue of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 6: art 12(3).

16 Ibid art 12(4). As to the making of rules by the Board see PARA 92 post. Such rules are not made by statutory instruments and are not recorded in this work.

## UPDATE

### **39-56 The specialist register ... Access to the registers; certificates as to registration**

Day now appointed in respect of provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250: London Gazette, 26 August 2005.

### **51 Acquired rights of general practitioners**

TEXT AND NOTES 2, 3, 5-9--SI 2003/1250 art 12(1) amended, Sch 6 para 1(c) substituted: SI 2007/3101.

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## 52. Transitional arrangements.

As from a day to be appointed the following provisions have effect<sup>1</sup> for a transitional period<sup>2</sup>. A person is not eligible to be appointed to any post or work as a general practitioner<sup>3</sup> in the national health service<sup>4</sup> unless:

- 43 (1) he is a registered medical practitioner<sup>5</sup>; and
- 44 (2) he:
- 25
- 34. (a) holds a certificate of completion of training<sup>6</sup> in general practice awarded by the Postgraduate Medical Education and Training Board (the 'Board')<sup>7</sup>;
- 35. (b) has one of the specified certificates<sup>8</sup>;
- 36. (c) was exempt from the need to have acquired the prescribed experience<sup>9</sup>;
- 37. (d) has a statement of eligibility<sup>10</sup>; or
- 38. (e) has an acquired right<sup>11</sup>.
- 26

This prohibition includes: (i) nomination or approval to fill a vacancy for a medical practitioner<sup>12</sup>; (ii) inclusion in a list of persons undertaking to provide general medical services<sup>13</sup> or in a list of persons approved for the purpose of assisting in the provision of any such services<sup>14</sup>; (iii) performing personal medical services<sup>15</sup>; or (iv) inclusion in a list of persons who may perform personal medical services<sup>16</sup>. The prohibition does not include any person undertaking a period of employment as a GP registrar<sup>17</sup>, or a person who is provisionally registered<sup>18</sup> acting in the course of his employment in a resident medical capacity in an approved medical practice<sup>19</sup>.

A person who has an acquired right<sup>20</sup> must not be nominated or approved by a health authority or primary care trust<sup>21</sup>, or included in a list of persons undertaking to provide general medical services<sup>22</sup>, merely because of that acquired right<sup>23</sup>. A restricted services principal<sup>24</sup> whose name is included in the general practitioner register<sup>25</sup> by virtue of an acquired right<sup>26</sup>, or an exemption from the need to have the prescribed experience<sup>27</sup>, is not entitled to practise otherwise than in accordance with the restriction which applies in his case<sup>28</sup>.

1 The provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 31(4), Sch 8 Pt 2 (paras 21, 22) are to come into force on a day to be specified by the Secretary of State and notified in the London, Edinburgh and Belfast Gazettes: see art 1(2), (3). At the date at which this volume states the law no such day had been specified. The Secretary of State may by order make such further transitional, transitory or saving provisions as he considers appropriate: art 31(6). At the date at which this volume states the law no such order had been made. As to the Secretary of State see PARA 5 ante. As to the power of the Secretary of State to make orders see PARA 92 post.

2 Ibid Sch 8 Pt 2 applies until art 10(4) (see PARA 49 text to notes 13-18 ante) is brought fully into force: Sch 8 para 21.

3 For the meaning of 'general practitioner' see PARA 49 note 23 ante.

4 For the meaning of 'national health service' see PARA 45 note 14 ante.

5 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 8 para 22(1)(a). For the meaning of 'registered medical practitioner' see PARA 4 ante.

- 6 For the meaning of 'certificate of completion of training' see PARA 87 note 2 post.
- 7 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 8 para 22(1)(b)(i). As to the Board see PARA 71 post.
- 8 Ie one of the certificates referred to in ibid art 11(1) (see PARA 50 notes 1-12 ante): Sch 8 para 22(1)(b)(ii).
- 9 Ie by the regulations referred to in ibid art 11(2) (see PARA 50 text and note 13 ante): Sch 8 para 22(1)(b)(iii).
- 10 Ie issued to him under ibid art 11(7) (see PARA 50 text to note 27 ante): Sch 8 para 22(1)(b)(iv).
- 11 Ie in accordance with ibid art 12(1), Sch 6 (see PARA 51 ante): Sch para 8 22(1)(b)(v).
- 12 Ie pursuant to any regulations made under the National Health Service Act 1977 s 29B (repealed): General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 8 para 22(2)(a)(i).
- 13 Ie pursuant to any regulations made under the National Health Service Act 1977 s 29 (repealed).
- 14 Ie prepared pursuant to the National Health Service Act 1977 s 43D (as added) (see HEALTH SERVICES vol 54 (2008) PARA 263 et seq): General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 8 para 22(2)(a)(ii).
- 15 Ie as part of a pilot scheme within the meaning the National Health Service (Primary Care) Act 1997 s 1(1) (repealed), or in accordance with any arrangements made pursuant to the National Health Service Act 1977 s 28C (as added) (see HEALTH SERVICES vol 54 (2008) PARA 263): General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 8 para 22(2)(a)(iii).
- 16 Ie pursuant to any regulations made under the National Health Service (Primary Care) Act 1997 s 8ZA (repealed) or the National Health Service Act 1977 s 28DA (repealed): General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 8 para 22(2)(a)(iv).
- 17 For the meaning of 'GP registrar' see PARA 84 note 5 post.
- 18 Ie under the Medical Act 1983 ss 15, 15A, 21 (s 15A as added): see PARAS 102, 103, 108 post.
- 19 Ie within the meaning of ibid s 11(4) (see PARA 95 notes 6, 9 post): General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 8 para 22(3).
- 20 Ie under ibid Sch 6 para 1(d): see PARA 51 text to notes 10-12 ante.
- 21 Ie pursuant to any regulations made under the National Health Service Act 1977 s 29B (repealed). As to health authorities and primary care trusts see HEALTH SERVICES vol 54 (2008) PARA 75 et seq.
- 22 Ie pursuant to any regulations made under the National Health Service Act 1977 s 29 (repealed): General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 8 para 22(4)(a).
- 23 Ibid Sch 8 para 22(4).
- 24 For the meaning of 'restricted services principal' see PARA 49 note 23 ante.
- 25 For the meaning of 'general practitioner register' see PARA 49 note 3 ante.
- 26 Ie by virtue of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 6 para 1(a) (see PARA 51 text to notes 1-3 ante): Sch 8 para 22(5)(a).
- 27 Ie under the National Health Service (Vocational Training for General Medical Practice) Regulations 1997, SI 1997/2817, reg 5(1)(d) (see HEALTH SERVICES vol 54 (2008) PARA 263): General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 8 para 22(5)(b).
- 28 Ibid Sch 8 para 22(5).

## UPDATE



**39-56 The specialist register ... Access to the registers; certificates as to registration**

Day now appointed in respect of provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250: London Gazette, 26 August 2005.

**52 Transitional arrangements**

TEXT AND NOTE 21--In relation to Wales, references to a health authority are to be treated as references to a local health board: see the References to Health Authorities Order 2007, SI 2007/961.

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## (C) COMMON PROVISIONS

### 53. Decisions on inclusion in the registers.

As from a day to be appointed the following provisions have effect<sup>1</sup>. The registrar of the General Medical Council<sup>2</sup> must notify a person who has made an application for inclusion in either of the registers<sup>3</sup>: (1) that his name has been included in that register<sup>4</sup>; or (2) that his name has not been included in that register, the reason for that decision, and of the applicant's right to appeal<sup>5</sup>. Save in excepted cases<sup>6</sup>, the registrar must notify an applicant of such matters within the period of three months beginning with the date on which the registrar receives the application with full supporting documentation<sup>7</sup>, or any period of additional time which is permitted<sup>8</sup>.

The excepted cases are those where a person has applied to the Council for inclusion in either of the registers and he has previously had to satisfy the Postgraduate Medical Education and Training Board (the 'Board')<sup>9</sup> that he is an eligible general practitioner<sup>10</sup> or an eligible specialist<sup>11</sup>. In relation to such cases, the Board must<sup>12</sup>: (a) upon receiving an application with full supporting documentation<sup>13</sup> deal expeditiously with that application<sup>14</sup>; and (b) co-operate with the Council, and the Council must co-operate with the Board, to ensure that an applicant who has made such an application to the Board is able to apply to the Council for inclusion in either of the registers<sup>15</sup> and obtain a decision from the Council within the specified time<sup>16</sup>.

If a person applies to the registrar of the General Medical Council in order to have his name included in the general practitioner register or the specialist register and he satisfies the registrar that he is a registered medical practitioner<sup>17</sup>, but his application for inclusion in either of the registers is unsuccessful because he fails to satisfy the registrar that he is an eligible general practitioner or eligible specialist<sup>18</sup>, the decision of the registrar is to be treated as an appealable decision<sup>19</sup>.

1 The General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, arts 16, 23 are to come into force on a day to be specified by the Secretary of State and notified in the London, Edinburgh and Belfast Gazettes: see art 1(2), (3). At the date at which this volume states the law no such day had been specified. As to the Secretary of State see PARA 5 ante.

2 As to the registrar of the General Medical Council see PARA 23 ante. As to the General Medical Council see PARA 13 et seq ante.

3 I.e. pursuant to the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 10(3) (see PARA 49 text to notes 8-12 ante) or art 13(3) (see PARA 45 text to notes 8-11 ante). 'The registers' means the general practitioner register and the specialist register: Sch 1. For the meaning of 'general practitioner register' see PARA 49 note 3 ante. For the meaning of 'specialist register' see PARA 45 note 3 ante.

4 Ibid art 16(1)(a).

5 I.e. pursuant to ibid art 23 (see the text to notes 17-19 infra) where applicable: art 16(1)(b).

6 The excepted cases are those falling within ibid art 16(3): see the text to notes 9-11 infra.

7 Ibid art 16(2)(a).

8 le by the Directive art 15: General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 16(2)(b). For the meaning of 'the Directive' see PARA 47 note 10 ante.

9 As to the Board see PARA 71 post.

10 le pursuant to the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 11(3) (see PARA 50 text to notes 14-18 ante): art 16(3)(a). For the meaning of 'general practitioner' see PARA 49 note 23 ante.

11 le pursuant to ibid art 14(4), (5) (see PARA 46 text to notes 8-19 ante): art 16(3)(b).

12 Ibid art 16(4). For the purposes of complying with its duty pursuant to art 16(4), the Board may, if it sees fit, provide to the Council information relating to, or copies of, any applications that have been made to it pursuant to arts 11(3), 14(4), (5): art 16(7).

13 le pursuant to ibid arts 11(3), 14(4), (5), as the case may be.

14 Ibid art 16(4)(a).

15 le pursuant to ibid art 10(3) (see PARA 49 text to notes 8-12 ante) or art 13(3) (see PARA 45 text to notes 8-11 ante).

16 Ibid art 16(4)(b). The 'specified time' means the period of three months: (1) beginning on the date on which the Board receives all the documents enabling it to determine whether the applicant is an eligible general practitioner or an eligible specialist pursuant to arts 11(3), 14(4), (5) (art 16(5)(a)); and (2) ending with the date on which the registrar of the General Medical Council gives the applicant notice under art 16(1) (see the text to notes 4-5 supra) (art 16(5)(b)). In calculating such period of three months, the following are to be disregarded: (a) the period beginning with the date on which the Board gives the applicant notice under art 11(6) (see PARA 50 note 18 ante) or art 14(10) (see PARA 46 note 26 ante) (as the case may be), and ending with the date on which the Council receives all the documents enabling it to determine whether it is satisfied of the applicant's entitlement to be registered pursuant to art 10(3) or art 13(3) (as the case may be) (art 16(6)(a)); and (b) any period of additional time which is permitted by the Directive art 15 (General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 16(6)(b)).

17 le pursuant to ibid art 10(3)(b) (see PARA 49 text to note 12 ante) or art 13(3)(b) (see PARA 45 text to note 11 ante): art 23(1)(a).

18 le pursuant to ibid art 10(3)(a) (see PARA 49 text to note 11 ante) or art 13(3)(a) (see PARA 45 text to note 10 ante): art 23(1)(b).

19 le an appealable registration decision under the Medical Act 1983 Sch 3A (as added) (see PARA 126 et seq post) and the procedure in Sch 3A (as added) applies accordingly: General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 23(1). Failure by the Council to notify a person of the matters specified in art 16(1) (see the text to notes 2-5 supra) within the time specified in art 16(2) (see the text to notes 6-8 supra) or, where applicable, art 16(4) (see the text to note 16 infra) is treated as a decision against which a person may appeal under the Medical Act 1983 Sch 3A para 4 (as added) (see PARA 128 post): General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 23(2).

## UPDATE

### **39-56 The specialist register ... Access to the registers; certificates as to registration**

Day now appointed in respect of provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250: London Gazette, 26 August 2005.

### **53 Decisions on inclusion in the registers**

TEXT AND NOTES--SI 2003/1250 art 16 substituted, art 23 amended: SI 2007/3101.

TEXT AND NOTES 1-16--For transitional provision pending the coming into force of SI 2003/1250 art 16, see the General and Specialist Medical Practice (Education, Training and Qualifications) Transitional Provisions Order 2005, SI 2005/2361.

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#### **54. Removal and suspension from the registers.**

As from a day to be appointed the following provisions have effect<sup>1</sup>. Where it comes to the notice of the registrar of the General Medical Council<sup>2</sup> that a person is no longer a registered medical practitioner<sup>3</sup>, the registrar must remove that person's name from the general practitioner register<sup>4</sup> or the specialist register<sup>5</sup>, as the case may be, and send him notice of having done so<sup>6</sup>. Subject as provided<sup>7</sup>, where a person so removed from the general practitioner register or the specialist register becomes once again a registered medical practitioner, the registrar must, if requested to do so by that person, once again include that person's name in the general practitioner register or the specialist register, as the case may be, and send him notice of having done so<sup>8</sup>. Where it comes to the notice of the registrar that in the case of an oral and maxillo-facial surgeon his registration in the register of dentists<sup>9</sup> has been suspended under any provision of the Dentists Act 1984<sup>10</sup>, or he is no longer a registered dentist<sup>11</sup>, the registrar must remove that person's name from the specialist register and send him notice of having done so<sup>12</sup>. Where a person so removed from the specialist register is no longer suspended from the register of dentists and has not had his name erased from that register<sup>13</sup>, or once again becomes a registered dentist<sup>14</sup>, the registrar must, if requested to do so by that person and provided that person is also a registered medical practitioner, once again include that person's name in the specialist register and send him notice of having done so<sup>15</sup>.

Where the Council is satisfied that any entry in the general practitioner register or the specialist register has been fraudulently procured or incorrectly made it may direct that the entry be removed from that register<sup>16</sup>. Such a decision taken by the Council is to be treated as an appealable decision<sup>17</sup>.

1 The provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, arts 18, 31(4), Sch 8 Pt 3 (para 23) are to come into force on a day to be specified by the Secretary of State and notified in the London, Edinburgh and Belfast Gazettes: see art 1(2), (3). At the date at which this volume states the law no such day had been specified. As to the Secretary of State see PARA 5 ante.

2 As to the registrar of the General Medical Council see PARA 23 ante. As to the General Medical Council see PARA 13 et seq ante.

3 For the meaning of 'registered medical practitioner' see PARA 4 ante.

4 For the meaning of 'general practitioner register' see PARA 49 note 3 ante.

5 For the meaning of 'specialist register' see PARA 45 note 3 ante.

6 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 18(1). Schedule 8 Pt 3 (para 23) (see PARA 55 post) is to apply in place of art 18(1), (2) (see the text to notes 7, 8 infra) until the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, Sch 1 para 10 is brought into force: General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 31(4), Sch 8 para 23(1). At the date at which this volume states the law the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, Sch 1 para 10 had not been brought into force: see art 1(2), (3).

The Medical Act 1983 Sch 3A para 6 (as added) (see PARA 127 post) applies to notices required by the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 18 to be sent to any person by the registrar as it applies to the notifications referred to in the Medical Act 1983 Sch 3A para 6 (as added): General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 18(7).

- 7    le subject to *ibid* art 18(3), (4): see the text to notes 10-15 *infra*.
- 8    *Ibid* art 18(2). See also note 6 *supra*.
- 9    le the register kept under the Dentists Act 1984 s 14: see *PARA* 417 *post*.
- 10   General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 18(3)(a).
- 11   *Ibid* art 18(3)(b). For the meaning of 'registered dentist' see *PARA* 433 note 7 *post*.
- 12   *Ibid* art 18(3). See also note 6 *supra*.
- 13   *Ibid* art 18(4)(a). As to erasure from the register of dentists see *PARAS* 441-443, 445, 461 *post*.
- 14   *Ibid* art 18(4)(b).
- 15   *Ibid* art 18(4). See also note 6 *supra*.
- 16   *Ibid* art 18(5).
- 17   le as an appealable registration decision under the Medical Act 1983 Sch 3A (as added) (see *PARA* 126 *post*) and the procedure in Sch 3A (as added) applies accordingly: General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 18(6).

## **UPDATE**

### **39-56 The specialist register ... Access to the registers; certificates as to registration**

Day now appointed in respect of provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250: London Gazette, 26 August 2005.

### **54 Removal and suspension from the registers**

TEXT AND NOTES--SI 2003/1250 arts 18, 23 amended: SI 2007/3101.

NOTE 6--SI 2002/3135 Sch 1 para 10 brought into force on 16 November 2009: London Gazette, 21 August 2009.

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## **55. Removal and suspension from the registers: transitional arrangements.**

As from a day to be appointed the following provisions have effect<sup>1</sup>. Where it comes to the notice of the registrar of the General Medical Council<sup>2</sup> that a person whose name is included in the general practitioner register<sup>3</sup> or the specialist register<sup>4</sup> is no longer a registered medical practitioner<sup>5</sup>, or is suspended from the register of medical practitioners<sup>6</sup> under any provision of the Medical Act 1983<sup>7</sup>, the registrar must remove that person's name from the general practitioner register or the specialist register, as the case may be, and send him notice of having done so<sup>8</sup>. Where it comes to the notice of the registrar that a person so removed from the general practitioner register or the specialist register is once again a registered medical practitioner<sup>9</sup>, or is no longer suspended from the register of medical practitioners (unless his name has been erased from that register)<sup>10</sup>, the registrar must, if that person so requests, include that person's name in the specialist register or the general practitioner register, as the case may be, and send him notice of having done so<sup>11</sup>. Where a person's name has been removed from the general practitioner register or the specialist register pursuant to these provisions<sup>12</sup> and following the specified date<sup>13</sup> that person becomes a registered medical practitioner<sup>14</sup>, the registrar must treat that person as if he was removed from the appropriate register pursuant to the relevant provisions<sup>15</sup>.

1 The provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 31(4), Sch 8 Pt 3 (para 23) are to come into force on a day to be specified by the Secretary of State and notified in the London, Edinburgh and Belfast Gazettes: see art 1(2), (3). At the date at which this volume states the law no such day had been specified. As to the Secretary of State see PARA 5 ante.

Schedule 8 Pt 3 applies in place of art 18(1), (2) (see PARA 54 text to notes 2-8 ante) until the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, Sch 1 para 10 is brought into force: General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 8 para 23(1). At the date at which this volume states the law the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, Sch 1 para 10 had not been brought into force: see art 1(2), (3). The Secretary of State may by order make such further transitional, transitory or saving provisions as he considers appropriate: General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 31(6). At the date at which this volume states the law no such order had been made. As to the power of the Secretary of State to make orders see PARA 92 post.

2 As to the registrar of the General Medical Council see PARA 23 ante. As to the General Medical Council see PARA 13 et seq ante.

3 For the meaning of 'general practitioner register' see PARA 49 note 3 ante.

4 For the meaning of 'specialist register' see PARA 45 note 3 ante.

5 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 8 para 23(2)(a). For the meaning of 'registered medical practitioner' see PARA 4 ante.

6 Ie kept under the Medical Act 1983 s 2 (as amended): see PARA 34 ante.

7 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 8 para 23(2)(b).

8 Ibid Sch 8 para 23(2).

9 le in respect of a person whose name has been removed pursuant to ibid Sch 8 para 23(2)(a) (see the text to notes 2-5 supra): Sch 8 para 23(3)(a).

10 le in respect of a person whose name has been removed pursuant to ibid Sch 8 para 23(2)(b) (see the text to notes 6, 7 supra): Sch 8 para 23(3)(b). As to erasure from the register of medical practitioners see PARA 144 post.

11 Ibid Sch 8 para 23(3).

12 Ibid Sch 8 para 23(4)(a).

13 le the coming into force of the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, Sch 1 para 10.

14 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 8 para 23(4)(b).

15 le pursuant to ibid art 18(1) (see PARA 54 text to notes 2-6 ante): Sch 8 para 23(4). The procedure in art 18(2) (see PARA 54 text to notes 7-8 ante) applies accordingly to that person: Sch 8 para 23(4).

## **UPDATE**

### **39-56 The specialist register ... Access to the registers; certificates as to registration**

Day now appointed in respect of provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250: London Gazette, 26 August 2005.

### **55 Removal and suspension from the registers: transitional arrangements**

NOTE 1--SI 2002/3135 Sch 1 para 10 brought into force on 16 November 2009: London Gazette, 21 August 2009.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/ (3) REGISTRATION, TRAINING AND QUALIFICATION/(i) The Registers/B. THE SPECIALIST REGISTER AND THE GENERAL PRACTITIONER REGISTER/(C) Common Provisions/56. Access to the registers; certificates as to registration.

## **56. Access to the registers; certificates as to registration.**

As from a day to be appointed the following provisions have effect<sup>1</sup>. The General Medical Council<sup>2</sup> must cause to be published from time to time, electronically or otherwise, a copy of the registers<sup>3</sup> on a date specified by the registrar<sup>4</sup>. If the registrar receives a written inquiry from any person as to whether a named person is included in the general practitioner register<sup>5</sup> or the specialist register<sup>6</sup>, he must provide that person with a written<sup>7</sup> response which must, where applicable, include the details contained in the register relating to that named person's entry<sup>8</sup>.

A certificate purporting to be signed by the registrar, certifying that a person:

- 45 (1) is included in the general practitioner register or the specialist register<sup>9</sup>;
- 46 (2) is not so included<sup>10</sup>;
- 47 (3) was included in the general practitioner register or the specialist register at a specified date or during a specified period<sup>11</sup>;
- 48 (4) was not included in the general practitioner register or the specialist register at a specified date or during a specified period<sup>12</sup>; or
- 49 (5) has never been included<sup>13</sup>,

is evidence of the matters certified<sup>14</sup>.

1 The General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 17 is to come into force on a day to be specified by the Secretary of State and notified in the London, Edinburgh and Belfast Gazettes: see art 1(2), (3). At the date at which this volume states the law no such day had been specified. As to the Secretary of State see PARA 5 ante.

2 As to the General Medical Council see PARA 13 et seq ante.

3 For the meaning of 'the registers' see PARA 53 note 3 ante.

4 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 17(1). As to the registrar see PARA 23 ante.

5 For the meaning of 'general practitioner register' see PARA 49 note 3 ante.

6 For the meaning of 'specialist register' see PARA 45 note 3 ante.

7 For the meaning of 'written' see PARA 20 note 22 ante.

8 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 17(2).

9 Ibid art 17(3)(a).

10 Ibid art 17(3)(b).

11 Ibid art 17(3)(c).

12 Ibid art 17(3)(d).

13 Ibid art 17(3)(e).

14 Ibid art 17(3). As to the evidential effect of certificates admissible by statute see CIVIL PROCEDURE vol 11 (2009) PARA 897.

## **UPDATE**

### **39-56 The specialist register ... Access to the registers; certificates as to registration**

Day now appointed in respect of provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250: London Gazette, 26 August 2005.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/ (3) REGISTRATION, TRAINING AND QUALIFICATION/(ii) Medical Education and Standards of Proficiency/A. GENERAL EDUCATIONAL STANDARDS/57. The education committee; prescribed standards of proficiency.

## **(ii) Medical Education and Standards of Proficiency**

### **A. GENERAL EDUCATIONAL STANDARDS**

#### **57. The education committee; prescribed standards of proficiency.**

The education committee of the General Medical Council<sup>1</sup> has the general function of promoting high standards of medical education and co-ordinating all stages of medical education<sup>2</sup>. For the purpose of discharging this function the committee must: (1) determine the extent of the knowledge and skill which is to be required for the granting of primary United Kingdom qualifications<sup>3</sup> and secure that the instruction given in universities in the United Kingdom to persons studying for such qualifications is sufficient to equip them with knowledge and skill of that extent<sup>4</sup>; (2) determine the standard of proficiency which is to be required from candidates at qualifying examinations<sup>5</sup> and secure the maintenance of that standard<sup>6</sup>; and (3) determine patterns of experience which may be recognised as suitable for giving to those engaging in employment in a resident medical capacity in approved hospitals, institutions or medical practices<sup>7</sup> general clinical training for the purposes of the practice of their profession<sup>8</sup>.

In making such determinations, the education committee must secure that the following requirements<sup>9</sup> are satisfied<sup>10</sup>, namely, that any person who fulfils the required conditions<sup>11</sup>:

- 50 (a) will have acquired<sup>12</sup>:
- 27
- 39. (i) adequate knowledge of the sciences on which medicine is based and a good understanding of the scientific methods including the principles of measuring biological functions, the evaluation of scientifically established facts and the analysis of data<sup>13</sup>;
- 40. (ii) sufficient understanding of the structure, functions and behaviour of healthy and sick persons, as well as relations between the state of health and physical and social surroundings of the human being<sup>14</sup>;
- 41. (iii) adequate knowledge of clinical disciplines and practices, providing him with a coherent picture of mental and physical diseases, of medicine from the points of view of prophylaxis, diagnosis and therapy and of human reproduction<sup>15</sup>; and
- 42. (iv) suitable clinical experience in hospitals under appropriate supervision<sup>16</sup>; and
- 28
- 51 (b) will have undergone medical training comprising at least a six year course, or 5,500 hours of theoretical and practical instruction, which was given in a university or under the supervision of a university<sup>17</sup>, and was open only to persons holding qualifications adequate for admission to university for such training<sup>18</sup>.

The determinations of the education committee<sup>19</sup> are embodied in recommendations which may be directed to all or any of the universities or other bodies concerned with medical education<sup>20</sup>.

<sup>1</sup> Subject to the power of the committee to co-opt members, the composition of the education committee is such as the General Medical Council thinks fit: Medical Act 1983 s 1(3), Sch 1 para 19 (substituted by the

Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 5(1), (3)). As to the constitution of committees by the General Medical Council and the power of committees to co-opt members see PARA 25 ante. As to the General Medical Council see PARA 13 et seq ante.

2 Medical Act 1983 s 5(1).

3 For the meaning of 'primary United Kingdom qualification' see PARA 93 post. For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

4 Medical Act 1983 s 5(2)(a). 'The prescribed knowledge and skill' means knowledge and skill of the extent for the time being determined under s 5(2)(a), and embodied in recommendations under s 5(3) (see the text to notes 19, 20 infra): ss 5(4), 55(1).

5 For the meaning of 'qualifying examination' see PARA 94 post.

6 Medical Act 1983 s 5(2)(b). 'The prescribed standard of proficiency' means the standard for the time being determined under s 5(2)(b), and embodied in recommendations under s 5(3) (see the text to notes 19, 20 infra): ss 5(4), 55(1).

7 I.e. such employment as is mentioned in *ibid* s 10(2) (as amended): see PARA 95 text to notes 4-10 post.

8 *Ibid* s 5(2)(c). 'A prescribed pattern of experience' means any pattern for the time being determined under s 5(2)(c), and embodied in recommendations under s 5(3) (see the text to notes 19, 20 infra): ss 5(4), 55(1).

9 I.e. the requirements of Directive 93/16 art 23. 'Directive 93/16' means EC Council Directive 93/16 (OJ L165, 7.7.1993, p 1) to facilitate the free movement of doctors and the mutual recognition of their diplomas, certificates and other evidence of formal qualifications, as adapted by the EEA Agreement Annex VII para 4(a), in which the primary medical qualifications awarded in EEA states are set out, and as amended by: (1) the Act annexed to the Treaty relating to the accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the European Union signed at Corfu on 24 June 1994 (OJ C241, 29.8.1994, p 1), as adjusted by the Decision of the Council of the European Union of 1 January 1995 adjusting the instruments concerning the accession of new member states to the European Union; (2) EC Council Directive 97/50 (OJ L291, 24.10.1997, p 35), EC Commission Directive 98/21 (OJ L119, 22.4.1998, p 15), EC Commission Directive 98/63 (OJ L253, 15.9.1998, p 24), EC Commission Directive 99/46 (OJ L139, 2.6.1999, p 25) and EC Commission Directive 2001/19 (OJ L206, 31.7.2001, p 1); (3) the agreement between the European Community and its member states of the one part and the Swiss Confederation of the other, on the free movement of persons, signed at Luxembourg on 21 June 1999; (4) the Act annexed to the Treaty relating to the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the Adjustments to the Treaties on which the European Union is founded signed at Athens on 16 April 2003: Medical Act 1983 s 5(4) (definition added by the European Primary Medical Qualifications Regulations 1996, SI 1996/1591, reg 3(3); and amended by the European Qualifications (Health Care Professions) Regulations 2003, SI 2003/3148, reg 9(1), (3), and the European Qualifications (Health and Social Care Professions and Accession of New Member States) Regulations 2004, SI 2004/1947, reg 3(1), (4)); Medical Act 1983 s 55(1) (definition added by the European Primary Medical Qualifications Regulations 1996, SI 1996/1591, reg 7, Sch 2 para 13). In relation to anything done before the adoption by the Council of Directive 93/16, references in the Medical Act 1983 to that Directive, or to any provision of that Directive, are to be construed as references to, or to the corresponding provision of, the following Directives as for the time being amended, namely, EC Council Directive 75/362 (OJ L167, 30.6.1975, p 1) concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications in medicine, and EC Council Directive 75/363 (OJ L167, 30.6.1975, p 14) concerning the co-ordination of provisions in respect of activities of doctors: Medical Act 1983 s 55(2) (added by the European Primary Medical Qualifications Regulations 1996, SI 1996/1591, Sch 2 para 13(3)). For the meanings of 'EEA Agreement' and 'EEA state' see PARA 3 note 2 ante.

10 Medical Act 1983 s 5(2A) (ss 5A, 5B added by European Primary Medical Qualifications Regulations 1996, SI 1996/1591, reg 3(2)).

11 I.e. the conditions mentioned in the Medical Act 1983 s 3(1)(a) (as substituted) (see PARA 99 text to notes 1-4 post): s 5(2B) (as added: see note 10 supra). See also the Vocational Training for General Medical Practice (European Requirements) Regulations 1994, SI 1994/3130, (amended by SI 2004/1947; prospectively revoked by SI 2003/1250) in relation to the issue of vocational training certificates in the United Kingdom and the recognition of certificates issued in other EEA states.

12 Medical Act 1983 s 5(2B)(a) (as added: see note 10 supra).

13 *Ibid* s 5(2B)(a)(i) (as added: see note 10 supra).

14 Ibid s 5(2B)(a)(ii) (as added: see note 10 supra).

15 Ibid s 5(2B)(a)(iii) (as added: see note 10 supra).

16 Ibid s 5(2B)(a)(iv) (as added: see note 10 supra).

17 Ibid s 5(2B)(b)(i) (as added: see note 10 supra).

18 Ibid s 5(2B)(b)(ii) (as added: see note 10 supra). The requirement in Directive 93/16 to the effect that certain components of the specific training in general medical practice had to be undertaken full-time does not constitute indirect discrimination on grounds of sex: Case C-25/02 *Rinke v Arztekammer Hamburg* [2003] All ER (D) 79 (Sep), (2003) Times, 25 September, ECJ. As to indirect sex discrimination see DISCRIMINATION vol 13 (2007 Reissue) PARA 351.

19 le under the Medical Act 1983 s 5(2): see the text to notes 3-8 supra.

20 Ibid s 5(3).

## **UPDATE**

### **57-63 General Educational Standards**

The statutory functions of the education committee have been transferred to the General Medical Council with effect from 1 January 2009: see the Medical Professions (Miscellaneous Amendments) Order 2008, SI 2008/3131, art 2.

### **57 The education committee; prescribed standards of proficiency**

NOTE 1--1983 Act s 1(3)(c) amended: SI 2006/1914.

TEXT AND NOTE 4--Medical Act 1983 s 5(2)(a) amended: SI 2008/1774.

TEXT AND NOTES 9-18--1983 Act s 5(2A) amended, s 5(2B) repealed: SI 2007/3101.

Directive 93/16 replaced by European Parliament and EC Council Directive 2005/36 on the recognition of professional qualifications.

TEXT AND NOTES 19, 20--1983 Act s 5(3) now s 5(3), (3A) (substituted by SI 2006/1914). 1983 Act s 5(3A) amended: SI 2008/1774.

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## **58. Duties of medical schools.**

A university or other body in the United Kingdom<sup>1</sup> granting any primary United Kingdom qualification<sup>2</sup> or any additional qualification<sup>3</sup> must from time to time, when so required by the education committee<sup>4</sup>, furnish the committee with such information as it may require as to<sup>5</sup>: (1) the courses of study and examinations to be gone through in order to obtain the qualification<sup>6</sup>; (2) the ages at which such courses of study and examinations are required to be gone through<sup>7</sup>; (3) the age at which the qualification is granted<sup>8</sup>; and (4) generally the requisites for obtaining the qualification<sup>9</sup>.

1 As to the universities and bodies concerned see PARA 94 post. For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

2 For the meaning of 'primary United Kingdom qualification' see PARA 93 post.

3 I.e. for the time being registrable under the Medical Act 1983 s 16: see PARA 99 post.

4 As to the education committee and its general function see PARA 57 ante.

5 Medical Act 1983 s 6(1). As to the appointment by the education committee of visitors and inspectors see PARAS 59, 61 post.

6 Ibid s 6(1)(a).

7 Ibid s 6(1)(b).

8 Ibid s 6(1)(c).

9 Ibid s 6(1)(d).

## **UPDATE**

### **57-63 General Educational Standards**

The statutory functions of the education committee have been transferred to the General Medical Council with effect from 1 January 2009: see the Medical Professions (Miscellaneous Amendments) Order 2008, SI 2008/3131, art 2.

## **58 Duties of medical schools**

TEXT AND NOTES 1-5--Medical Act 1983 s 6(1) amended: SI 2008/1774.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/ (3) REGISTRATION, TRAINING AND QUALIFICATION/(ii) Medical Education and Standards of Proficiency/A. GENERAL EDUCATIONAL STANDARDS/59. Appointment of visitors of medical schools.

## **59. Appointment of visitors of medical schools.**

The education committee<sup>1</sup> may appoint persons to visit, subject to any directions which the Privy Council<sup>2</sup> may deem it expedient to give and to compliance with any conditions specified in any such directions, places where instruction is given to medical students under the direction of any university or other body<sup>3</sup>. It is the duty of such visitors to report to the education committee as to the sufficiency of the instruction given in the places which they visit and as to any other matters relating to the instruction which may be specified by the committee either generally or in any particular case; but no visitor may interfere with the giving of any instruction<sup>4</sup>. On the receipt of any report of a visitor the education committee must send a copy of the report to the university or other body under whose direction the instruction is given, and on the receipt of the copy that body may, within such period of not less than one month as the committee may have specified at the time it sent the copy of the report, make to the committee observations on the report or objections to it<sup>5</sup>. As soon as may be after the expiration of the period specified, the education committee must send a copy of the report and of any observations on it or objections to it duly made, together with the committee's comments on the report and on any such observations or objections, to the Privy Council<sup>6</sup>.

1 As to the education committee and its general function see PARA 57 ante.

2 As to the power of the Privy Council to give directions see PARA 31 ante. As to the exercise by the Privy Council of its powers under the Medical Act 1983 see PARA 32 ante. As to the Privy Council generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

3 As specified in the Medical Act 1983 s 4(3) (see PARA 93 text to notes 1-5 post): s 7(1). As to the approval of visitors' remuneration see PARA 25 note 4 ante.

4 Ibid s 7(2).

5 Ibid s 7(3).

6 Ibid s 7(4). As to the powers of the Privy Council in relation to educational standards see PARA 60 post.

## **UPDATE**

### **57-63 General Educational Standards**

The statutory functions of the education committee have been transferred to the General Medical Council with effect from 1 January 2009: see the Medical Professions (Miscellaneous Amendments) Order 2008, SI 2008/3131, art 2.

## **59 Appointment of visitors of medical schools**

TEXT AND NOTES--Medical Act 1983 s 7(1), (3) amended, s 7(4) repealed: SI 2008/1774.

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## **60. Privy Council powers as to courses and examinations.**

If at any time it appears to the education committee<sup>1</sup> that the course of study and examinations to be gone through in order to obtain a primary United Kingdom qualification<sup>2</sup> are not such as to equip persons going through the course and examinations with the prescribed knowledge and skill<sup>3</sup>, the committee may make representations to that effect to the Privy Council<sup>4</sup>. On any such representations the Privy Council may, if it sees fit, order that, after such time as may be specified in the order, a qualification<sup>5</sup> granted in pursuance of the course of study and examinations to which the order relates is not to be a qualification registrable under the registration provisions<sup>6</sup> of the Medical Act 1983<sup>7</sup>. Where an order is so made, no person is entitled to be so registered by virtue of any qualification specified in the order and granted after the specified time<sup>8</sup>.

An order so made may be revoked by Her Majesty with the advice of the Privy Council if, upon further representations from the committee or otherwise, it is made to appear to Her Majesty that the university or other body to which the order relates has made effectual provision, to the committee's satisfaction, for the improvement of the course of study or examinations to which the order relates or the mode of conducting those examinations<sup>9</sup>.

1 As to the education committee and its general function see PARA 57 ante.

2 For the meaning of 'primary United Kingdom qualification' see PARA 93 post.

3 For the meaning of 'the prescribed knowledge and skill' see PARA 57 note 4 ante.

4 Medical Act 1983 s 9(1). As to the duty of bodies granting qualifications to furnish the education committee with information as to courses of study and examinations see PARA 58 ante. As to the exercise by the Privy Council of its powers under the Medical Act 1983 see PARA 32 ante. As to the Privy Council generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

5 For the meaning of 'qualification' see PARA 34 note 2 ante.

6 I.e. under the Medical Act 1983 s 16: see PARA 99 post.

7 Ibid s 9(2). Unlike other orders made by the Privy Council under the Medical Act 1983, orders under s 9(2) do not need to be by way of statutory instrument: see s 51(1); and PARA 32 ante. As to proof of such orders see PARA 32 ante.

8 Ibid s 9(3).

9 Ibid s 9(7)(a). The revocation does not, however, entitle any person to be registered by virtue of a qualification granted before the revocation: s 9(7).

## **UPDATE**

### **57-63 General Educational Standards**

The statutory functions of the education committee have been transferred to the General Medical Council with effect from 1 January 2009: see the Medical Professions (Miscellaneous Amendments) Order 2008, SI 2008/3131, art 2.



## **60 Privy Council powers as to courses and examinations**

TEXT AND NOTES--Repealed: SI 2008/1774.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/ (3) REGISTRATION, TRAINING AND QUALIFICATION/(ii) Medical Education and Standards of Proficiency/A. GENERAL EDUCATIONAL STANDARDS/61. Appointment of inspectors.

## **61. Appointment of inspectors.**

For the purpose of securing the maintenance of the prescribed standard of proficiency<sup>1</sup> required from candidates at qualifying examinations<sup>2</sup>, the education committee<sup>3</sup> may appoint such number of inspectors as it may determine to attend, as it directs, all or any of the qualifying examinations held by any specified university or body<sup>4</sup>. In addition, any person deputed for that purpose by the committee may attend any examination held in the United Kingdom<sup>5</sup> which has to be gone through in order to obtain a primary United Kingdom qualification or additional qualification for the time being registrable<sup>6</sup>. The inspectors so appointed must not interfere with the conduct of any examination, but it is their duty to report to the committee their opinion as to the sufficiency of every examination which they attend, and any other matters relating to such examinations on which the committee requires them to report<sup>7</sup>. The committee must forward one copy of every such report to the body or each of the bodies who held the examination and another copy, together with any observations made on the report by the body or bodies in question, to the Privy Council<sup>8</sup>.

1 For the meaning of 'the prescribed standard of proficiency' see PARA 57 note 6 ante.

2 As to qualifying examinations see PARA 94 post.

3 As to the education committee and its general function see PARA 57 ante.

4 As specified in the Medical Act 1983 s 4(3) (see PARA 93 text to notes 1-5 post); s 6(2). As to the approval of the inspectors' remuneration see PARA 25 note 4 ante.

5 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

6 As under the Medical Act 1983 s 16 (see PARA 99 post); s 6(3). For the meaning of 'primary United Kingdom qualification' see PARA 93 post.

7 Ibid s 6(4).

8 Ibid s 6(5). For the powers of the education committee and the Privy Council where the standard of proficiency required does not conform to the prescribed standard see PARA 62 post. For powers where courses of study and examinations are inadequate see PARA 60 ante. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

## **UPDATE**

### **57-63 General Educational Standards**

The statutory functions of the education committee have been transferred to the General Medical Council with effect from 1 January 2009: see the Medical Professions (Miscellaneous Amendments) Order 2008, SI 2008/3131, art 2.

## **61 Appointment of inspectors**

TEXT AND NOTES 1-4--Medical Act 1983 s 6(2) amended: SI 2008/1774.

TEXT AND NOTE 8--1983 Act s 6(5) amended: SI 2008/1774.



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## **62. Privy Council powers on insufficiency of examinations.**

If at any time it appears to the education committee<sup>1</sup> that the standard of proficiency required from candidates at any qualifying examination<sup>2</sup> does not conform to the prescribed standard of proficiency<sup>3</sup>, the committee must make representations to that effect to the Privy Council<sup>4</sup>. The Privy Council, if it thinks fit, after considering the representations and any objections to them made by any university or other body or bodies to which the representations relate, may by order declare that the examinations held by that body or those bodies are to be deemed not to be qualifying examinations for the purposes of the Medical Act 1983<sup>5</sup>. A qualification<sup>6</sup> granted on the passing of an examination to which an order so made relates, and granted while the order is in force, does not entitle the holder to be registered<sup>7</sup> under the Medical Act 1983<sup>8</sup>.

An order made under these provisions may be revoked by Her Majesty with the advice of the Privy Council if upon further representation from the committee or from any university or other body to which the order relates it seems to Her Majesty expedient so to do<sup>9</sup>.

1 As to the education committee and its general function see PARA 57 ante.

2 As to qualifying examinations see PARA 94 post.

3 For the meaning of 'the prescribed standard of proficiency' see PARA 57 note 6 ante.

4 Medical Act 1983 s 9(4). As to the Privy Council generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

5 Ibid s 9(5). Unlike other orders made by the Privy Council under the Medical Act 1983, orders under s 9(5) do not need to be by way of statutory instrument: see s 51(1); and PARA 32 ante. As to proof of such orders, and as to the exercise by the Privy Council of its powers under the Medical Act 1983, see PARA 32 ante.

6 For the meaning of 'qualification' see PARA 34 note 2 ante.

7 Ie under the Medical Act 1983 Pt II (ss 3-18) (as amended).

8 Ibid s 9(6).

9 Ibid s 9(7)(b).

## **UPDATE**

### **57-63 General Educational Standards**

The statutory functions of the education committee have been transferred to the General Medical Council with effect from 1 January 2009: see the Medical Professions (Miscellaneous Amendments) Order 2008, SI 2008/3131, art 2.

## **62 Privy Council powers on insufficiency of examinations**

TEXT AND NOTES--Repealed: SI 2008/1774.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/ (3) REGISTRATION, TRAINING AND QUALIFICATION/(ii) Medical Education and Standards of Proficiency/A. GENERAL EDUCATIONAL STANDARDS/63. Visitors to approved hospitals and institutions.

### **63. Visitors to approved hospitals and institutions.**

The education committee<sup>1</sup> may, if it thinks fit, appoint persons to visit any approved<sup>2</sup> hospital, approved institution or approved medical practice<sup>3</sup>. It is the duty of such visitors to report to the education committee on the extent to which the general clinical training given by employment in a resident medical capacity<sup>4</sup> in the hospital, institution or medical practice is such as to provide the experience required by one or more prescribed patterns of experience<sup>5</sup>. If the education committee is of the opinion that: (1) an approved hospital, institution or medical practice does not provide experience required by any prescribed pattern of experience<sup>6</sup>; or (2) a pattern of experience recognised as applicable to persons by their examining body<sup>7</sup> is not a prescribed pattern of experience<sup>8</sup>; or (3) a combination of posts which is accepted by their examining body as providing persons who have held the posts comprised in the combination with the experience required by a prescribed pattern of experience does not in fact provide that experience<sup>9</sup>, then the committee must notify its opinion to the university or body concerned and that university or body must have regard to that opinion in discharging its functions relating to the requirements as to experience for full registration<sup>10</sup>.

1 As to the education committee and its general function see PARA 57 ante.

2 For the meaning of 'approved' see PARA 95 note 6 post.

3 Medical Act 1983 s 13(1) (amended by the National Health Service (Primary Care) Act 1997 s 41(10), Sch 2 para 61(3)(a)). For the meaning of 'medical practice' see PARA 95 note 9 post. As to the approval of visitors' remuneration see PARA 25 note 4 ante.

4 For the meaning of 'employment in a resident medical capacity' see PARA 95 note 5 post.

5 Medical Act 1983 s 13(2) (amended by the National Health Service (Primary Care) Act 1997 Sch 2 para 61(3)(b)).

6 Medical Act 1983 s 13(3)(a) (amended by the National Health Service (Primary Care) Act 1997 Sch 2 para 61(3)(c)).

7 References to a person's examining body are to be construed as follows: (1) where he claims registration by virtue of a qualification granted on passing an examination held by two or more bodies jointly, such references are to be construed as references to those bodies acting jointly (Medical Act 1983 s 11(2)(a)); (2) subject as aforesaid, such references are to be construed as references to the body granting the qualification by virtue of which he claims registration or, where he is entitled to claim registration by virtue of two or more qualifications, such references are to be construed as references to the body granting such of those qualifications as he may choose (s 11(2)(b)). For the meaning of 'qualification' see PARA 34 note 2 ante. As to qualifying examinations see PARA 94 post.

8 Ibid s 13(3)(b).

9 Ibid s 13(3)(c).

10 Ie under ibid ss 10, 11 (see PARAS 95, 96 post): s 13(3).

## **UPDATE**

### **57-63 General Educational Standards**

The statutory functions of the education committee have been transferred to the General Medical Council with effect from 1 January 2009: see the Medical Professions (Miscellaneous Amendments) Order 2008, SI 2008/3131, art 2.

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## ***B. THE MEDICAL ROYAL COLLEGES***

### **64. The medical Royal Colleges.**

At the beginning of the twentieth century there were two Royal Colleges in England and Wales, the Royal College of Physicians<sup>1</sup> and the Royal College of Surgeons<sup>2</sup>. During the course of the century a number of new colleges developed and there now exist: the Royal College of Obstetricians and Gynaecologists<sup>3</sup>; the Royal College of General Practitioners<sup>4</sup>; the Royal College of Pathologists<sup>5</sup>; the Royal College of Psychiatrists<sup>6</sup>; the Royal College of Radiologists<sup>7</sup>; the Royal College of Anaesthetists<sup>8</sup>; the Royal College of Ophthalmologists<sup>9</sup>; and the Royal College of Paediatrics and Child Health<sup>10</sup>.

As incorporated bodies the Royal Colleges may sue and be sued in their own names<sup>11</sup>. Their general purposes are to uphold professional standards, to oversee specialist medical education and grant specialist qualifications<sup>12</sup>, and to sponsor and encourage medical research. They all belong to the Academy of Medical Royal Colleges whose objectives are to co-ordinate the work of the medical Royal Colleges and Faculties<sup>13</sup>.

1 The Royal College of Physicians was founded as a college by charter dated 3 September 1518: 10 Hen 8.

2 The Royal College of Surgeons of England, offspring of much older bodies, dates in its present form from a charter of 1843.

3 The Royal College of Obstetricians and Gynaecologists was established in 1929 as an incorporated company limited by guarantee, and received its Royal Charter in 1947.

4 The Royal College of General Practitioners received its Royal Charter in 1952.

5 The Royal College of Pathologists received its Royal Charter in 1970.

6 The Royal College of Psychiatrists has existed in various forms since 1841, receiving its Royal Charter to become the 'Royal Medico Psychological Association' in 1926, and receiving a supplemental charter to become the 'Royal College of Psychiatrists' in 1971.

7 The Royal College of Radiologists received its Royal Charter in 1975.

8 The Royal College of Anaesthetists received its Royal Charter in 1992.

9 The Royal College of Ophthalmologists received its Royal Charter in 1988. The College was formed from the Ophthalmological Society of the United Kingdom (founded in 1880) and the Faculty of Ophthalmologists (founded in 1946).

10 The Royal College of Paediatrics and Child Health received its Royal Charter in 1996.

11 As to incorporation by Royal Charter see CORPORATIONS vol 9(2) (2006 Reissue) PARAS 1104, 1128 et seq.

12 By an agreement made in February 1883 between the Royal College of Physicians and the Royal College of Surgeons, a joint examination board has been established, and a candidate who passes the final examination conducted by this board is entitled to receive the licence of the Royal College of Physicians and the diploma of membership of the Royal College of Surgeons.

13 Membership of the Academy of Medical Royal Colleges includes the Scottish and Irish Royal Colleges.

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### ***C. SPECIALIST AND POSTGRADUATE MEDICAL EDUCATION AND TRAINING***

#### **65. The competent authorities.**

In relation to specialist medical qualifications, there are two competent authorities in the United Kingdom<sup>1</sup> for the purposes of meeting European Union obligations relating to the training of specialist doctors and mutual recognition of their qualifications<sup>2</sup>. The competent authority for the purposes of the recognition and registration of specialist medical qualifications is the General Medical Council<sup>3</sup>. The competent authority for the purposes of specialist medical training and the issue of certificates of completion of specialist training<sup>4</sup> and certain other certificates is the specialist training authority<sup>5</sup>. Accordingly, in relation to specialist medical qualifications:

- 52 (1) the General Medical Council, as respects the United Kingdom, performs the functions of the host member state<sup>6</sup> relating to the confirmation of authenticity of foreign diplomas and confirmation that a person has fulfilled the required training requirements<sup>7</sup>;
- 53 (2) the specialist training authority, as respects the United Kingdom, has the functions of a competent authority in relation to:
  - 29 43. (a) the issue of certificates relating to training in the United Kingdom in certain specialties<sup>8</sup>;
  44. (b) the requirement to assess content and duration of training, to take account of professional experience, and to communicate what additional training is required in the United Kingdom<sup>9</sup>;
  45. (c) the issue of certificates to specialists whose qualifications were awarded in the United Kingdom or who have practised their specialty in the United Kingdom<sup>10</sup>;
  46. (d) the issue of certificates of fulfilment of training requirements in respect of qualifications which do not conform with the specified designations<sup>11</sup>; and
  47. (e) the function of confirming authenticity of certificates of completion of specialist training and of confirming that a person has fulfilled the training requirements<sup>12</sup>; and
- 30 54 (3) the specialist training authority, as respects the United Kingdom, performs the functions of a member state in respect of:
  - 31 48. (a) the requirement to fulfil domestic requirements for specialist training in certain specialties<sup>13</sup>;
  49. (b) the requirement to take into account additional training already undertaken and professional experience already acquired<sup>14</sup>;
  50. (c) the requirement to give a decision within four months of receipt of an application together with full supporting documentation<sup>15</sup>.

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The Secretary of State<sup>16</sup> may give directions to the General Medical Council and to the specialist training authority in connection with their functions<sup>17</sup> and it is the duty of the body to whom the directions are given to comply with them<sup>18</sup>. Such directions may be as to matters of administration only<sup>19</sup>.

1 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

2 Ie for the purposes of the Directive Title II (mutual recognition of diplomas, certificates and other evidence of formal qualifications in medicine), Title III (co-ordination of provisions laid down by law, regulation or administrative action in respect of activities of doctors): European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 3(1) (prospectively revoked). As from a day to be appointed, the European Specialist Medical Qualifications Order 1995, SI 1995/3208 (as amended) is revoked by the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250 (as amended): see arts 1(2), (3), 31(5), Sch 10 Pt 2. At the date at which this volume states the law no such day had been appointed. As to the provisions intended to replace the European Specialist Medical Qualifications Order 1995, SI 1995/3208 (as amended) see PARA 69 et seq post. For the meaning of 'the Directive' see PARA 40 note 3 ante.

The General Medical Council and the specialist training authority are designated, as respects the United Kingdom, for the purposes set out in the European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 3 (prospectively revoked) in accordance with the Directive art 42 (which requires member states to designate the authorities competent to issue or receive the diplomas, documents and other information referred to in the Directive): European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 3(5) (prospectively revoked).

3 Ibid art 3(2) (prospectively revoked). As to the General Medical Council see PARA 13 et seq ante.

4 As to certificates of completion of specialist training see PARA 67 post.

5 European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 3(3) (prospectively revoked). The functions of the specialist training authority under or by virtue of the European Specialist Medical Qualifications Order 1995, SI 1995/3208 (as amended; prospectively revoked) are without prejudice to the functions of the General Medical Council or of any of its statutory committees under the Medical Act 1983: European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 3(6) (prospectively revoked). For the meaning of 'specialist training authority' see PARA 66 note 2 post. As to the statutory committees of the General Medical Council see PARA 26 ante.

6 Ie as provided for in the Directive art 22.

7 Ie the requirements of the Directive: European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 3(4)(a) (prospectively revoked).

8 Ie as provided for in the Directive art 8(2): European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 3(4)(b)(i) (prospectively revoked).

9 Ie as provided for in the Directive art 8(3): European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 3(4)(b)(ii) (amended by SI 2003/3148; prospectively revoked).

10 Ie as provided for in the Directive art 9(2): European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 3(4)(b)(iii) (prospectively revoked).

11 Ie as provided for in the Directive art 9(5): European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 3(4)(b)(iv) (prospectively revoked).

12 Ie as provided for in the Directive art 22: European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 3(4)(b)(v) (prospectively revoked).

13 Ie as referred to in the Directive art 8(1): European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 3(4)(c)(i) (prospectively revoked).

14 Ie as referred to in the Directive art 8(2): European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 3(4)(c)(ii) (amended by SI 2003/3148; prospectively revoked).

15 Ie as referred to in the Directive art 8(4): European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 3(4)(c)(iia) (added by SI 2003/3148; prospectively revoked).

16 As to the Secretary of State see PARA 5 ante.

17 le their functions under or by virtue of the European Specialist Medical Qualifications Order 1995, SI 1995/3208 (as amended; prospectively revoked).

18 Ibid art 4(1) (prospectively revoked).

19 Ibid art 4(2) (prospectively revoked). As to the charging of fees by the General Medical Council and the specialist training authority see PARA 39 note 7 ante.

## **UPDATE**

### **65-92 The competent authorities ... Rules and orders**

Day now appointed in respect of provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250: London Gazette, 26 August 2005.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/ (3) REGISTRATION, TRAINING AND QUALIFICATION/(ii) Medical Education and Standards of Proficiency/C. SPECIALIST AND POSTGRADUATE MEDICAL EDUCATION AND TRAINING/66. The specialist training authority.

## **66. The specialist training authority.**

The body designated as the specialist training authority<sup>1</sup> is the company limited by guarantee whose name is 'The specialist training authority of the medical Royal Colleges'<sup>2</sup>. The members of the specialist training authority are such individuals as are from time to time appointed by the Secretary of State<sup>3</sup> and by the specified bodies<sup>4</sup>. If any such body fails to make an appointment before the end of the period of three months beginning with the day on which the vacancy arose, the Secretary of State may determine that until such time as the body failing to make the appointment does so, the membership of the specialist training authority is not to include an individual appointed by that body<sup>5</sup>. Of the four individuals appointed by the Secretary of State, two must be postgraduate medical deans and the other two must not be registered medical practitioners<sup>6</sup>, and the Secretary of State must terminate the membership of any of those individuals who ceases to satisfy the criterion applicable in his case<sup>7</sup>.

1 Ibid by the European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 3(3) (prospectively revoked): see PARA 65 text to notes 4, 5 ante. As from a day to be appointed, the European Specialist Medical Qualifications Order 1995, SI 1995/3208 (as amended) is revoked by the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250 (as amended): see arts 1(2), (3), 31(5), Sch 10 Pt 2. At the date at which this volume states the law no such day had been appointed. As to the provisions intended to replace the European Specialist Medical Qualifications Order 1995, SI 1995/3208 (as amended) see PARA 69 et seq post.

2 Ibid art 3, Sch 1 para 5 (prospectively revoked). The company is registered in England under number 3136396: Sch 1 para 5 (prospectively revoked). 'Specialist training authority' means the specialist training authority of the medical Royal Colleges: art 2(2) (prospectively revoked). As to companies limited by guarantee see COMPANIES vol 14 (2009) PARA 79 et seq. As to the medical Royal Colleges see PARA 64 ante.

3 The Secretary of State appoints four individuals: ibid Sch 1 para 1 (prospectively revoked). As to the Secretary of State see PARA 5 ante.

4 Ibid Sch 1 para 1 (prospectively revoked). Each body appoints one individual, except the General Medical Council which appoints two: Sch 1 para 1 (prospectively revoked). The specified bodies are: the Faculty of Occupational Medicine; the Faculty of Public Health Medicine; the General Medical Council; the Royal College of Anaesthetists; the Royal College of General Practitioners; the Royal College of Obstetricians and Gynaecologists; the Royal College of Ophthalmologists; the Royal College of Paediatrics and Child Health; the Royal College of Pathologists; the Royal College of Physicians and Surgeons of Glasgow; the Royal College of Physicians of Edinburgh; the Royal College of Physicians of London; the Royal College of Psychiatrists; the Royal College of Radiologists; the Royal College of Surgeons of Edinburgh; and the Royal College of Surgeons of England: Sch 1 para 2 (amended by SI 1997/2928; prospectively revoked).

5 European Specialist Medical Qualifications Order 1995, SI 1995/3208, Sch 1 para 4 (prospectively revoked). Until such time as the body makes an appointment, the list in Sch 1 para 2 (as amended; prospectively revoked) (see note 4 supra) has effect as if the name of that body were omitted: Sch 1 para 4 (prospectively revoked).

6 For the meaning of 'registered medical practitioner' see PARA 4 ante.

7 European Specialist Medical Qualifications Order 1995, SI 1995/3208, Sch 1 para 3 (prospectively revoked).

## **UPDATE**

### **65-92 The competent authorities ... Rules and orders**

Day now appointed in respect of provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250: London Gazette, 26 August 2005.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/ (3) REGISTRATION, TRAINING AND QUALIFICATION/(ii) Medical Education and Standards of Proficiency/C. SPECIALIST AND POSTGRADUATE MEDICAL EDUCATION AND TRAINING/67. Certificates of completion of specialist training.

## **67. Certificates of completion of specialist training.**

The specialist training authority<sup>1</sup> must award a certificate of completion of specialist training to any person who applies to the authority for that purpose, and pays any fee determined by the authority<sup>2</sup>, if the authority is satisfied that he has satisfactorily completed approved specialist medical training<sup>3</sup> in the specialty stated in his application<sup>4</sup>. The specialist training authority may award a certificate of completion of specialist training in a specified specialty only<sup>5</sup>. A certificate of completion of specialist training may be awarded only to a registered medical practitioner<sup>6</sup> who has been appointed to a course of training intended to lead to the award of a certificate of completion of specialist training and who has successfully completed that course of training<sup>7</sup>. A period of training common to specialist medical training in more than one specialty counts towards completion of the training required for each of them<sup>8</sup>. A certificate of completion of specialist training must state: (1) the date on which it was awarded<sup>9</sup>; (2) the specialty in which it was awarded<sup>10</sup>; (3) the name of its holder<sup>11</sup>; and (4) his primary medical qualifications and where those qualifications were awarded<sup>12</sup>.

The specialist training authority must secure that a person to whom it refuses to award a certificate of completion of specialist training<sup>13</sup> has the right to appeal against its decision to a panel of independent persons (an 'appeal panel'), convened by the specialist training authority as soon as practicable to reconsider the question and determine whether or not the appellant should be awarded such a certificate<sup>14</sup>. The specialist training authority must determine and publish the procedure governing its selection of the members of appeal panels and the conduct of appeals<sup>15</sup>, and secure that an appeal panel gives reasons for its determination<sup>16</sup>.

1 For the meaning of 'specialist training authority' see PARA 66 note 2 ante.

2 As to fees see PARA 39 note 7 ante.

3 The training approved by the specialist training authority pursuant to the European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 7 (prospectively revoked): see PARA 68 post. As from a day to be appointed, the European Specialist Medical Qualifications Order 1995, SI 1995/3208 (as amended) is revoked by the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250 (as amended): see arts 1(2), (3), 31(5), Sch 10 Pt 2. At the date at which this volume states the law no such day had been appointed. As to the provisions intended to replace the European Specialist Medical Qualifications Order 1995, SI 1995/3208 (as amended) see PARA 69 et seq post.

4 Ibid art 6(1) (prospectively revoked).

5 Ibid art 6(4) (prospectively revoked). The specified specialties are those listed in Sch 2 (prospectively revoked).

6 Ibid art 6(2) (prospectively revoked). A certificate of completion of specialist training in oral and maxillo-facial surgery may be awarded only to a person who is also a registered dentist: art 6(2) (prospectively revoked). For the meaning of 'registered medical practitioner' see PARA 4 ante. For the meaning of 'registered dentist' see PARA 433 note 7 post.

7 Ibid art 6(2A) (added by SI 1997/2928; prospectively revoked).

8 European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 6(3) (prospectively revoked).

9 Ibid art 6(5)(a) (prospectively revoked).

- 10 Ibid art 6(5)(b) (prospectively revoked).
- 11 Ibid art 6(5)(c) (prospectively revoked).
- 12 Ibid art 6(5)(d) (prospectively revoked).
- 13 Ibid art 13(1)(a) (prospectively revoked).
- 14 Ibid art 13(1) (prospectively revoked).
- 15 Ibid art 13(2) (prospectively revoked).
- 16 Ibid art 13(3) (prospectively revoked).

## **UPDATE**

### **65-92 The competent authorities ... Rules and orders**

Day now appointed in respect of provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250: London Gazette, 26 August 2005.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/ (3) REGISTRATION, TRAINING AND QUALIFICATION/(ii) Medical Education and Standards of Proficiency/C. SPECIALIST AND POSTGRADUATE MEDICAL EDUCATION AND TRAINING/68. Minimum requirements of specialist medical training.

## **68. Minimum requirements of specialist medical training.**

The specialist training authority<sup>1</sup> must not approve specialist medical training intended to lead to the award of a certificate of completion of specialist training<sup>2</sup> unless it complies with the requirements set out below<sup>3</sup>. The authority may withdraw any such approval if it is satisfied that the training no longer complies with those requirements<sup>4</sup>.

The training must constitute an entire course of training in the specialty in question and must: (1) comprise theoretical and practical instruction<sup>5</sup>; (2) be full-time training<sup>6</sup>; (3) be supervised by the specialist training authority<sup>7</sup>; (4) comply with the specified requirements<sup>8</sup>; (5) be in a university centre, in a teaching hospital, or, where the specialist training authority is satisfied that it is appropriate, in a health establishment approved for this purpose by the specialist training authority<sup>9</sup>; (6) involve the personal participation of the person training to be a specialist in the activity and in the responsibilities of the establishments concerned<sup>10</sup>; and (7) be at least as long as the relevant period specified, if any<sup>11</sup>.

Part-time specialist medical training is permitted, under conditions approved by the specialist training authority, where training on a full-time basis would not be practicable for well-founded individual reasons; and accordingly the specialist training authority may approve part-time training which satisfies<sup>12</sup>:

- 55 (a) those conditions<sup>13</sup>;
  - 56 (b) the conditions set out in heads (1), (3), (5), and (6) above<sup>14</sup>; and
  - 57 (c) the following conditions:
- 33
- 51. (i) the standard of training must not be lower than that of full-time training<sup>15</sup>;
  - 52. (ii) the total length of training in the specialty in question must not be less than that of full-time training in the same specialty<sup>16</sup>; and
  - 53. (iii) the training must comply with the specified requirements relating to the characteristics of the part-time training of specialists<sup>17</sup>.
- 34

The curriculum and any other requirements relating to the training for each specialty, as they have effect from time to time, must be published following approval by the specialist training authority<sup>18</sup>.

1 For the meaning of 'specialist training authority' see PARA 66 note 2 ante.

2 As to certificates of completion of specialist training see PARA 67 ante.

3 European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 7(1) (prospectively revoked). As from a day to be appointed the European Specialist Medical Qualifications Order 1995, SI 1995/3208 (as amended) is revoked by the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250 (as amended): see arts 1(2), (3), 31(5), Sch 10 Pt 2. At the date at which this volume states the law no such day had been appointed. As to the provisions intended to replace the European Specialist Medical Qualifications Order 1995, SI 1995/3208 (as amended) see PARA 69 et seq post.

4 Ibid art 7(1) (prospectively revoked).

5 Ibid art 7(2)(a) (prospectively revoked).

6 Ibid art 7(2)(b) (prospectively revoked). See, however, the text to notes 12-17 infra.

7 Ibid art 7(2)(c) (prospectively revoked).

8 Ie those of Annex I point 1 of the Directive as set out in the European Specialist Medical Qualifications Order 1995, SI 1995/3208, Sch 3 (prospectively revoked): art 7(2)(d) (prospectively revoked). For the meaning of 'the Directive' see PARA 40 note 3 ante. Full-time training of specialists must be carried out in specific posts recognised by the competent authority; and must involve participation in all the medical activities of the department where the training is carried out, including on-call duties, so that the trainee specialist devotes to this practical and theoretical training all his professional activity throughout the duration of the standard working week and throughout the year according to provisions agreed by the competent authorities: Sch 3 para 1 (prospectively revoked). Accordingly these posts must be subject to appropriate remuneration: Sch 3 para 1 (prospectively revoked). Training may be interrupted for reasons such as military service, secondment, pregnancy or sickness: Sch 3 para 1 (prospectively revoked). The total duration of the training must not be reduced by reason of any interruption: Sch 3 para 1 (prospectively revoked). As to the competent authorities see PARA 65 ante.

9 Ibid art 7(2)(e) (prospectively revoked).

10 Ibid art 7(2)(f) (prospectively revoked).

11 Ie specified in ibid Sch 2 (prospectively revoked) (which sets out the medical specialties with minimum training periods): art 7(2)(g) (prospectively revoked).

12 Ibid art 7(3) (prospectively revoked).

13 Ibid art 7(3)(a) (prospectively revoked).

14 Ibid art 7(3)(b) (prospectively revoked).

15 Ibid art 7(3)(c)(i) (prospectively revoked).

16 Ibid art 7(3)(c)(ii) (prospectively revoked).

17 Ie the requirements of Annex I point 2 of the Directive as set out in the European Specialist Medical Qualifications Order 1995, SI 1995/3208, Sch 3 (prospectively revoked): art 7(3)(c)(iii) (prospectively revoked). Part-time training of specialists must meet the same requirements as full-time training, from which it may differ only in the possibility of limiting participation in medical activities to a period at least half of that provided for in Sch 3 para 1 (see note 8 supra): Sch 3 para 2 (prospectively revoked). The competent authorities must ensure that the total duration and quality of part-time training of specialists are not less than those of full-time trainees: Sch 3 para 2 (prospectively revoked). Appropriate remuneration must consequently be attached to such part-time training: Sch 3 para 2 (prospectively revoked).

18 Ibid art 7(4) (amended by SI 2002/849; prospectively revoked).

## UPDATE

### 65-92 The competent authorities ... Rules and orders

Day now appointed in respect of provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250: London Gazette, 26 August 2005.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/ (3) REGISTRATION, TRAINING AND QUALIFICATION/(ii) Medical Education and Standards of Proficiency/C. SPECIALIST AND POSTGRADUATE MEDICAL EDUCATION AND TRAINING/69. Specialist medical training: transitional arrangements.

## **69. Specialist medical training: transitional arrangements.**

As from a day to be appointed the following provisions have effect<sup>1</sup>. Where the specialist training authority<sup>2</sup> has approved specialist training<sup>3</sup>, the Postgraduate Medical Education and Training Board (the 'Board')<sup>4</sup> is deemed to have approved that training or any conditions<sup>5</sup>, and if such training is continuing immediately before the relevant date<sup>6</sup>, the Board is deemed to approve that training until such time as the Board<sup>7</sup> gives approval to postgraduate medical education and training<sup>8</sup>, gives such approval subject to conditions<sup>9</sup>, or withdraws such approval<sup>10</sup>. Where a person has applied to the specialist training authority for a certificate of completion of specialist training<sup>11</sup> before the relevant date, but the application has not been determined by that date, the Board must determine that application<sup>12</sup>, where applicable, within the specified time limit<sup>13</sup>; and any appeal against a refusal to award a certificate of completion of specialist training is to be made and determined in accordance with the specified provisions<sup>14</sup>. However, this does not prevent such a person from withdrawing such an application and making a new application to the Board for a certificate of completion of training<sup>15</sup>.

Where the specialist training authority has received a request in relation to its competent authority functions<sup>16</sup> that was received before but not finally dealt with by the relevant date, the Board must deal with the request<sup>17</sup>.

1 The provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 31(4), Sch 8 Pt 1 (paras 1-20) are to come into force on a day to be specified by the Secretary of State and notified in the London, Edinburgh and Belfast Gazettes: see art 1(2), (3). At the date at which this volume states the law no such day had been specified. The Secretary of State may by order make such further transitional, transitory or saving provisions as he considers appropriate: art 31(6). At the date at which this volume states the law no such order had been made. As to the Secretary of State see PARA 5 ante. As to the power of the Secretary of State to make orders see PARA 92 post.

2 Specialist training authority means the specialist training authority of the medical Royal Colleges: General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 2, Sch 1. As to the specialist training authority of the medical Royal Colleges see PARA 66 ante.

3 Ie under the European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 7 (see PARA 68 ante) including any conditions under art 7(3) (see PARA 68 text to notes 12-17 ante).

4 As to the Board see PARA 71 post.

5 Ie under the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 4: see PARA 83 post.

6 For the meaning of 'relevant date' see PARA 48 note 4 ante.

7 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 8 para 10. The Postgraduate Medical Education and Training Board must, in performing its functions under the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 8 Pt 1 (paras 1-20) apply the provisions of the Medical Practitioners (Vocational Training) Regulations (Northern Ireland) 1998, SI 1998/13, the National Health Service (Vocational Training for General Medical Practice) (Scotland) Regulations 1998, SI 1998/5, the National Health Service (Vocational Training for General Medical Practice) Regulations 1997, SI 1997/2817, (see HEALTH SERVICES vol 54 (2008) PARA 263) and the European Specialist Medical Qualifications Order 1995, SI 1995/3208, (see PARAS 39-44, 65-68 ante) as if they

had effect as modified by virtue of European Qualifications (Health and Social Care Professions and Accession of New Member States) Regulations 2004, SI 2004/1947, regs 6-9: reg 4.

8 le under the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 4(5) (see PARA 83 text to notes 10-16 post): Sch 8 para 10(a).

9 le under ibid art 4(7) (see PARA 83 text to note 18 post): Sch 8 para 10(b).

10 le under ibid art 4(8) (see PARA 83 text to notes 19-21 post) or art 9(4) (see PARA 86 text to note 20 post): Sch 8 para 10(c).

11 le a certificate of completion of specialist training awarded by the specialist training authority under the European Specialist Medical Qualifications Order 1995, SI 1995/3208 (prospectively revoked) (see PARA 67 ante), or a certificate of completion of specialist training issued by the Board, in accordance with the provisions of the European Specialist Medical Qualifications Order 1995, SI 1995/3208 (prospectively revoked), pursuant to the transitional, transitory, and saving provisions in the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 8: see Sch 1.

12 le in accordance with the European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 6 (prospectively revoked): see PARA 67 ante. If the relevant provisions of the European Specialist Medical Qualifications Order 1995, SI 1995/3208 (as amended; prospectively revoked) have been revoked, they are treated for the purposes of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 8 paras 11, 13 as if they remained in force with such modifications as necessary, and as if references to the specialist training authority were references to the Board: General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 8 para 20.

13 le that specified in the European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 3(4)(b) (iia) (prospectively revoked): General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 8 para 11(a). See also note 12 supra. Note that the European Specialist Medical Qualifications Order 1995, SI 1995/3208 (as amended; prospectively revoked) does not have an art 3(4)(b)(iia); it is submitted this is intended to be a reference to art 3(4)(c)(iia) (see PARA 65 text to note 16 ante).

14 le in accordance with the European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 13(1) (prospectively revoked) (see PARA 67 text to notes 15, 16 ante): General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 8 para 11(b). See also note 12 supra.

15 Ibid Sch 8 para 11. For the meaning of 'certificate of completion of training' see PARA 87 note 2 post.

16 le under the European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 3(4)(b)(i)-(v), (c)(i), (ii) (prospectively revoked): see PARA 65 text to notes 9-15 ante.

17 le in accordance with the relevant provisions of the European Specialist Medical Qualifications Order 1995, SI 1995/3208 (as amended; prospectively revoked): General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 8 para 13. See also note 12 supra.

## **UPDATE**

### **65-92 The competent authorities ... Rules and orders**

Day now appointed in respect of provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250: London Gazette, 26 August 2005.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/ (3) REGISTRATION, TRAINING AND QUALIFICATION/(ii) Medical Education and Standards of Proficiency/C. SPECIALIST AND POSTGRADUATE MEDICAL EDUCATION AND TRAINING/70. General practice postgraduate training: transitional provisions.

## **70. General practice postgraduate training: transitional provisions.**

As from a day to be appointed the following provisions have effect<sup>1</sup>. Where the Joint Committee on Postgraduate Training for General Practice has approved training<sup>2</sup>, the Postgraduate Medical Education and Training Board (the 'Board')<sup>3</sup> is deemed to have approved that training<sup>4</sup>; and if that training is continuing immediately before the relevant date<sup>5</sup>, the Board is deemed to have approved such training until the specified time<sup>6</sup>. Where the Joint Committee on Postgraduate Training for General Practice has approved a GP trainer<sup>7</sup> and that approval continues immediately before the relevant date, the Board is deemed to have approved that general practitioner<sup>8</sup> until the specified time<sup>9</sup>. Where an appeal is made against a decision of the Joint Committee on Postgraduate Training for General Practice to refuse to approve a GP trainer<sup>10</sup>, either before the relevant date but where the appeal has not been determined by that date<sup>11</sup> or on or after the relevant date within the time limit specified<sup>12</sup>, the appeal must be dealt with in accordance with the relevant provisions<sup>13</sup>.

Where a person has applied to the Joint Committee on Postgraduate Training for General Practice for a certificate of equivalent experience<sup>14</sup> or a certificate of prescribed experience<sup>15</sup> before the relevant date but the application has not been determined before that date, the Board must determine that application in accordance with the relevant provisions<sup>16</sup> and any appeal against a refusal of a certificate<sup>17</sup> must, similarly, be made and determined in accordance with the relevant provisions<sup>18</sup>. However, such a person is not prevented from withdrawing any such application and making a new application to the Board for a certificate of completion of training<sup>19</sup> or for a statement of eligibility for registration<sup>20</sup>, as the case may be<sup>21</sup>. Where an appeal is made against a decision of the Joint Committee on Postgraduate Training for General Practice<sup>22</sup>, either before the relevant date but where the appeal has not been determined by that date<sup>23</sup> or on or after the relevant date within the time limit specified<sup>24</sup>, the appeal must be dealt with in accordance with the relevant provisions<sup>25</sup>.

In determining any application to the Board made by a person to whom the Joint Committee on Postgraduate Training for General Practice has, before the relevant date, given written<sup>26</sup> advice in relation to his training, the Board must take that advice into account in determining that person's application<sup>26</sup>.

1 The provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 31(4), Sch 8 paras 2-8 are to come into force on a day to be specified by the Secretary of State and notified in the London, Edinburgh and Belfast Gazettes: see art 1(2), (3). At the date at which this volume states the law no such day had been specified. The Secretary of State may by order make such further transitional, transitory or saving provisions as he considers appropriate: art 31(6). At the date at which this volume states the law no such order had been made. As to the Secretary of State see PARA 5 ante. As to the power of the Secretary of State to make orders see PARA 92 post.

2 Ie under the National Health Service (Vocational Training for General Medical Practice) Regulations 1997, SI 1997/2817, regs 6, 8.

3 As to the Board see PARA 71 post.

4 Ie under the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 4: see PARA 83 post.

5 For the meaning of 'relevant date' see PARA 48 note 4 ante.

6 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 8 para 2. The specified time is such time as the Board: (1) gives approval under art 4(5) (see PARA 83 text to notes 10-16 post) (Sch 8 para 2(a)); (2) gives approval under art 4(5) subject to conditions under art 4(7) (see PARA 83 text to note 18 post) (Sch 8 para 2(b)); or (3) withdraws approval under art 4(8) (see PARA 83 text to notes 19-21 post), 9(4) (see PARA 86 text to note 20 post) (Sch 8 para 2(c)).

7 Ie under the National Health Service (Vocational Training for General Medical Practice) Regulations 1997, SI 1997/2817, reg 7. For the meaning of 'GP trainer' see PARA 84 note 7 post.

8 Ie under the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 4: see PARA 83 post. For the meaning of 'general practitioner' see PARA 49 note 23 ante.

9 Ibid Sch 8 para 3. The specified time is such time as the Board: (1) gives approval under art 4(5) (see PARA 83 text to notes 10-16 post) (Sch 8 para 3(a)); (2) gives approval under art 4(5) subject to conditions under art 4(7) (see PARA 83 text to note 18 post) (Sch 8 para 3(b)); or (3) withdraws approval under art 4(8) (see PARA 83 text to notes 19-21 post), or art 9(4) (see PARA 86 text to note 20 post) (Sch 8 para 3(c)).

10 Ie a decision made under the National Health Service (Vocational Training for General Medical Practice) Regulations 1997, SI 1997/2817, reg 7.

11 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 8 para 4(a).

12 Ie specified in the National Health Service (Vocational Training for General Medical Practice) Regulations 1997, SI 1997/2817, reg 7(5), (6): General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 8 para 4(b).

13 Ie the relevant provisions of the National Health Service (Vocational Training for General Medical Practice) Regulations 1997, SI 1997/2817: General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 8 para 4. If the relevant provisions have been repealed they are treated for the purposes of Sch 8 paras 4-6 as if they remained in force with such modifications as necessary, and as if references to the 'Joint Committee' were references to the Board: Sch 8 para 8.

14 For the meaning of 'certificate of equivalent experience' see PARA 50 note 12 ante.

15 For the meaning of 'certificate of prescribed experience' see PARA 50 note 11 ante.

16 Ie the relevant provisions of the National Health Service (Vocational Training for General Medical Practice) Regulations 1997, SI 1997/2817: General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 8 para 5(a). See also note 13 supra. The time limit specified in the National Health Service (Vocational Training for General Medical Practice) Regulations 1997, SI 1997/2817, reg 12(8A) (as added) applies in accordance with that provision, and the period of three months specified in that provision begins with the date on which the Joint Committee on Postgraduate Training for General Practice or, as the case may be, the Board received the application together with full supporting documentation: General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 8 para 5(b) (substituted by SI 2004/1947).

17 Ie including an appeal against a failure to notify the applicant of a decision within the time limit specified in the National Health Service (Vocational Training for General Medical Practice) Regulations 1997, SI 1997/2817, reg 12(8A) (as added): see note 16 supra.

18 Ie the relevant provisions of the National Health Service (Vocational Training for General Medical Practice) Regulations 1997, SI 1997/2817: General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 8 para 5(c) (amended by SI 2004/1947). See also note 13 supra. The Postgraduate Medical Education and Training Board must, in performing its functions under the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 8 Pt 1 (paras 1-20) apply the provisions of the Medical Practitioners (Vocational Training) Regulations (Northern Ireland) 1998, SI 1998/13, the National Health Service (Vocational Training for General Medical Practice) (Scotland) Regulations 1998, SI 1998/5, the National Health Service (Vocational Training for General Medical Practice) Regulations 1997, SI 1997/2817, and the European Specialist Medical Qualifications Order 1995, SI 1995/3208, (see PARAS 39-44, 65-68 ante) as if they had effect as modified by virtue of European Qualifications (Health and Social Care Professions and Accession of New Member States) Regulations 2004, SI 2004/1947, regs 6-9: reg 4.

19 For the meaning of 'certificate of completion of training' see PARA 87 note 2 post.

20 Ie pursuant to the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 11(3): see PARA 50 text to notes 14-18 ante.

21 Ibid Sch 8 para 5.

22 Ie pursuant to the National Health Service (Vocational Training for General Medical Practice) Regulations 1997, SI 1997/2817, reg 13 (which relates to decisions relating to certificates of equivalent experience in respect of persons exercising a Community right, and appeals against refusal of certificates).

23 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 8 para 6(a) (amended by SI 2004/1947).

24 Ie specified in the National Health Service (Vocational Training for General Medical Practice) Regulations 1997, SI 1997/2817, reg 13(1): General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 8 para 6(b).

25 Ie the relevant provisions of the National Health Service (Vocational Training for General Medical Practice) Regulations 1997, SI 1997/2817: General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 8 para 6. See also note 13 supra.

26 For the meaning of 'written' see PARA 20 note 22 ante.

26 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 8 para 7.

## **UPDATE**

### **65-92 The competent authorities ... Rules and orders**

Day now appointed in respect of provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250: London Gazette, 26 August 2005.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/ (3) REGISTRATION, TRAINING AND QUALIFICATION/(ii) Medical Education and Standards of Proficiency/C. SPECIALIST AND POSTGRADUATE MEDICAL EDUCATION AND TRAINING/71. The Postgraduate Medical Education and Training Board.

## **71. The Postgraduate Medical Education and Training Board.**

The Postgraduate Medical Education and Training Board (the 'Board')<sup>1</sup> is a body corporate<sup>2</sup>, the principal functions of which are<sup>3</sup>: (1) to establish standards of, and requirements relating to, postgraduate medical education and training<sup>4</sup>; (2) to secure the maintenance of such standards and requirements<sup>5</sup>; and (3) to develop and promote postgraduate medical education and training in the United Kingdom<sup>6</sup>. The main objectives of the Board in exercising its functions are: (a) to safeguard the health and well-being of persons using or needing the services of general practitioners<sup>7</sup> or specialists<sup>8</sup>; (b) to ensure that the needs of persons undertaking postgraduate medical education and training in each of the countries of the United Kingdom<sup>9</sup> are met by the standards it establishes and to have proper regard to the differing considerations applying to the different groups of persons concerned<sup>10</sup>; and (c) to ensure that the needs of employers and those engaging the services of general practitioners and specialists within the national health service<sup>11</sup> are met by the standards it establishes<sup>12</sup>. In exercising its functions, the Board must co-operate wherever reasonably practicable with the General Medical Council<sup>13</sup>, any body that appears to it to be representative of the medical Royal Colleges in the United Kingdom<sup>14</sup>, and such other bodies as the Secretary of State<sup>15</sup> may specify by order<sup>16</sup>.

There are two committees of the Board, namely, the training committee<sup>17</sup> and the assessment committee<sup>18</sup>. On a proposal from the Board or otherwise, the Secretary of State may by order create a new statutory committee and confer functions on it<sup>19</sup>, or vary the functions of the statutory committees<sup>20</sup>.

1 The Postgraduate Medical Education and Training Board is referred to in the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250 (as amended) as 'the Board': see arts 2, 3(1), Sch 1.

2 Ibid art 3(1). As to bodies corporate see COMPANIES; CORPORATIONS.

3 The Board has such other functions as are conferred on it by or under the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250 (as amended): art 3(3). Article 3 is to come into force on a day to be specified by the Secretary of State and notified in the London, Edinburgh and Belfast Gazettes: see art 1(2), (3). Article 3 came into force on 22 October 2003 so far as it relates to functions conferred on the Board by provisions specified in the notification in the London Gazette (14 October 2003). At the date at which this volume states the law no day had been specified for the commencement of art 3 for remaining purposes. As to the Secretary of State see PARA 5 ante.

The functions of the Board under or by virtue of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250 (as amended) are without prejudice to the functions of the General Medical Council or any of its statutory committees under the Medical Act 1983: General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 3(12). As to the General Medical Council see PARA 13 et seq ante. As to its statutory committees see PARA 25 ante.

4 Ibid art 3(2)(a).

5 Ibid art 3(2)(b).

6 Ibid art 3(2)(c). For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

7 For the meaning of 'general practitioner' see PARA 49 note 23 ante.

8 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 3(4)(a).

9 'United Kingdom country' means England, Scotland, Wales or Northern Ireland: *ibid* Sch 1.

10 I.e. the groups of persons to whom the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250 (as amended) applies: art 3(4)(b).

11 For the meaning of 'national health service' see PARA 45 note 14 ante.

12 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 3(4)(c).

13 *Ibid* art 3(5)(a).

14 *Ibid* art 3(5)(b). As to the medical Royal Colleges see PARA 64 ante.

15 As to the Secretary of State see PARA 5 ante.

16 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 3(5)(c). As to the making of orders by the Secretary of State see PARA 92 post.

17 *Ibid* art 3(7)(a). As to the training committee see PARA 80 post.

18 *Ibid* art 3(7)(b). As to the assessment committee see PARA 81 post.

19 *Ibid* art 3(11)(a).

20 *Ibid* art 3(11)(b). 'The statutory committees' means the training committee, the assessment committee and any committee created under art 3(11)(a) (see the text to note 19 *supra*): see art 3(8), Sch 1. Each statutory committee has such functions as are conferred on it by the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250 (as amended): art 3(9).

## **UPDATE**

### **65-92 The competent authorities ... Rules and orders**

Day now appointed in respect of provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250: London Gazette, 26 August 2005.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/ (3) REGISTRATION, TRAINING AND QUALIFICATION/(ii) Medical Education and Standards of Proficiency/C. SPECIALIST AND POSTGRADUATE MEDICAL EDUCATION AND TRAINING/72. Annual reports and review of the Board's functions.

## **72. Annual reports and review of the Board's functions.**

As from a day to be appointed the following provisions have effect<sup>1</sup>. The Postgraduate Medical Education and Training Board (the 'Board')<sup>2</sup> must, within such time as directed by the Secretary of State, submit a report to him on the Board's exercise of its functions<sup>3</sup> during the period specified by the Secretary of State<sup>4</sup>, and thereafter submit such a report once in each calendar year in respect of the period since its last such report<sup>5</sup>. The Secretary of State must lay before each House of Parliament a copy of every such report submitted to him by the Board<sup>6</sup>.

The Secretary of State must ensure that a full review of the Board's exercise of its functions is carried out once in every five year period<sup>7</sup>. Such a review must be undertaken by a body appointed by the Secretary of State for that purpose<sup>8</sup>, and that body must produce a written<sup>9</sup> report on its review of the Board's exercise of its functions<sup>10</sup>. The Secretary of State must lay before each House of Parliament a copy of every such report<sup>11</sup>.

1 The General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, arts 27, 28 are to come into force on a day to be specified by the Secretary of State and notified in the London, Edinburgh and Belfast Gazettes: see art 1(2), (3). At the date at which this volume states the law no such day had been specified. As to the Secretary of State see PARA 5 ante.

2 As to the Board see PARA 71 ante.

3 As to the functions of the Board see PARA 71 ante.

4 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 27(1)(a). Within the times specified in art 27(1), the Board must also send a copy of the report to the Scottish Ministers, the Department of Health, Social Services and Public Safety in Northern Ireland and the National Assembly for Wales: art 27(2). As to the Scottish Ministers and the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

5 Ibid art 27(1)(b). See also note 4 supra.

6 Ibid art 27(3). A copy of the report must also be laid before the Scottish Parliament by the Scottish Ministers, and before the Northern Ireland Assembly by the Department of Health, Social Services and Public Safety in Northern Ireland, and the National Assembly for Wales must publish the report: art 27(4). As to the laying of documents before Parliament see PARLIAMENT vol 34 (Reissue) PARA 941. As to the Scottish Parliament and the Northern Ireland Assembly see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

7 Ibid art 28(1). The first review must take place within five years of the date of art 28 coming into force and thereafter a review must take place once in every five year period following on from when the last review was carried out: art 28(4).

8 Ibid art 28(2).

9 For the meaning of 'writing' see PARA 20 note 22 ante.

10 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 28(3).

11 Ibid art 28(5). A copy of the report must also be laid before the Scottish Parliament by the Scottish Ministers, and before the Northern Ireland Assembly by the Department of Health, Social Services and Public Safety in Northern Ireland, and the National Assembly for Wales must publish the report: art 28(6).



## **UPDATE**

### **65-92 The competent authorities ... Rules and orders**

Day now appointed in respect of provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250: London Gazette, 26 August 2005.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/ (3) REGISTRATION, TRAINING AND QUALIFICATION/(ii) Medical Education and Standards of Proficiency/C. SPECIALIST AND POSTGRADUATE MEDICAL EDUCATION AND TRAINING/73. Default powers of the Secretary of State.

### 73. Default powers of the Secretary of State.

As from a day to be appointed the following provisions have effect<sup>1</sup>. If it appears to the Secretary of State that the Postgraduate Medical Education and Training Board (the 'Board')<sup>2</sup> has failed to perform any function<sup>3</sup> which, in the opinion of the Secretary of State, should have been performed by it, the Secretary of State may notify the Board of his opinion and require the Board to make representations to him<sup>4</sup>. The Secretary of State may, having considered the representations of the Board, give such directions, if any, to the Board as he considers appropriate<sup>5</sup>. If the Board fails to comply with any such directions the Secretary of State may give effect to the direction<sup>6</sup>, and for the purpose of so doing the Secretary of State may: (1) exercise any power of the Board<sup>7</sup> or do any act or other thing authorised to be done by the Board<sup>8</sup>; and (2) do, of his own motion, any act or other thing which he is otherwise authorised to do<sup>9</sup> at the instigation of the Board<sup>10</sup>.

1 The General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 26 is to come into force on a day to be specified by the Secretary of State and notified in the London, Edinburgh and Belfast Gazettes: see art 1(2), (3). At the date at which this volume states the law no such day had been specified. As to the Secretary of State see PARA 5 ante.

2 As to the Board see PARA 71 ante.

3 As to the functions of the Board see PARA 71 ante. As to the Board making annual reports on the exercise of its functions to the Secretary of State see PARA 72 ante.

4 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 26(1). The Secretary of State must not take any action pursuant to art 26(1)-(4) unless he has consulted the Scottish Ministers, the Department of Health, Social Services and Public Safety in Northern Ireland and the National Assembly for Wales: art 26(5). As to the Scottish Ministers and the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

5 Ibid art 26(2). See also note 4 supra.

6 Ibid art 26(3). See also note 4 supra.

7 As to the powers of the Board see PARA 77 post.

8 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 26(4)(a). See also note 4 supra.

9 Ie under the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250 (as amended).

10 Ibid art 26(4)(b). See also note 4 supra.

## UPDATE

### 65-92 The competent authorities ... Rules and orders

Day now appointed in respect of provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250: London Gazette, 26 August 2005.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/ (3) REGISTRATION, TRAINING AND QUALIFICATION/(ii) Medical Education and Standards of Proficiency/C. SPECIALIST AND POSTGRADUATE MEDICAL EDUCATION AND TRAINING/74. Membership of the Board.

#### **74. Membership of the Board.**

The Postgraduate Medical Education and Training Board (the 'Board')<sup>1</sup> consists of 25 members, who are<sup>2</sup> either: (1) members whose names are included in the register of medical practitioners<sup>3</sup>, known as 'medical members'<sup>4</sup>; or (2) members who are not and never have been registered medical practitioners<sup>5</sup> and do not hold any qualification that is registrable under the Medical Act 1983, known as 'lay members'<sup>6</sup>. The number of medical members must exceed by at least one the number of lay members<sup>7</sup>. The specified bodies<sup>8</sup> each appoint one medical member and one lay member to the Board<sup>9</sup>, and the Secretary of State appoints the remaining members<sup>10</sup>. The Secretary of State must ensure that of the members he appoints at least one member is appointed from amongst persons who have been nominated by the General Medical Council<sup>11</sup>, and at least six medical members are appointed from amongst registered medical practitioners who have been nominated by a body that appears to him to represent the medical Royal Colleges in the United Kingdom<sup>12</sup>. The Secretary of State must, prior to appointing any such member, make a request in writing to the General Medical Council or the representative body for a list of names of persons that the General Medical Council or the representative body wishes to nominate, specifying in that request the number of nominations required<sup>13</sup> and the date by which those nominations are required<sup>14</sup>. An appointing authority must consult such persons as it considers appropriate before appointing any member<sup>15</sup>, and appoint members from among persons who have such qualifications, interests and experience as, in the opinion of that authority, will be of value to the Board in the performance of its functions<sup>16</sup>.

Each member's term of office is for a period of three years<sup>17</sup>. A person may be removed from office as a Board member in such circumstances as may be provided for by the Board in rules<sup>18</sup>, and every member must retire from the Board on reaching the age of 70<sup>19</sup>. A member may resign at any time by giving notice in writing<sup>20</sup> to the Board and to the appointing authority that appointed him<sup>21</sup>. No person is prevented from being appointed merely because he has previously been a member of the Board<sup>22</sup>. Where a member ceases to be a member, the appointing authority that appointed him must appoint a member to replace him<sup>23</sup>, but if the unexpired term<sup>24</sup> is less than 12 months the vacancy need not be filled if the Board consents<sup>25</sup>.

1 As to the Board see PARA 71 ante.

2 See the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 3(6), Sch 2 para 1(1).

3 I.e. the register maintained by the General Medical Council under the Medical Act 1983 s 2: see PARA 34 ante.

4 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 2 para 1(1)(a).

5 For the meaning of 'registered medical practitioner' see PARA 4 ante.

6 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 2 para 1(1)(b). On a proposal from the Board or otherwise, the Secretary of State may by order vary the size or composition of the Board provided that the number of medical members always exceeds by at least one the number of lay members, and the Scottish Ministers, the Department of Health Social Services and Public Safety in Northern Ireland and the National Assembly for Wales always each appoint at least one medical member and one lay member to the Board: Sch 2 para 1(14). As to the making of orders by the Secretary of

State see PARA 92 post. As to the Secretary of State see PARA 5 ante. As to the Scottish Ministers and the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

7 Ibid Sch 2 para 1(2).

8 le the Scottish Ministers, the Department of Health Social Services and Public Safety in Northern Ireland and the National Assembly for Wales.

9 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 2 para 1(3).

10 Ibid Sch 2 para 1(3). The appointors are together referred to as 'the appointing authorities': Sch 2 para 1(3). The Secretary of State may direct a special health authority to exercise his functions of appointing members of the Board under Sch 2 para 1(3), including members appointed pursuant to Sch 2 para 1(4) (see the text to notes 11, 12 infra) or to assist him in the exercise of such parts of those functions to the extent specified in his direction: Sch 2 para 4(1)(a). If the Secretary of State does so direct a special health authority, the National Health Service Act 1977 has effect as if the directions were directions of the Secretary of State under s 16D (as added) (see HEALTH SERVICES vol 54 (2008) PARA 142), and accordingly the function were exercisable by the special health authority under s 16D (as added): General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 2 para 4(2). As to special health authorities see HEALTH SERVICES vol 54 (2008) PARA 136 et seq.

11 Ibid Sch 2 para 1(4)(a). See also note 14 infra. As to the General Medical Council see PARA 13 et seq ante.

12 Ibid Sch 2 para 1(4)(b). Such a body is known as 'the representative body': Sch 2 para 1(4)(b). The requirements in Sch 2 para 1(4)(b), (5) (see the text to notes 13, 14 infra) (in so far as it applies to the representative body) do not apply if, in the reasonable opinion of the Secretary of State, there is no one body that represents the medical Royal Colleges in the United Kingdom: Sch 2 para 1(7). See also note 14 infra. As to the medical Royal Colleges see PARA 64 ante.

13 Ibid Sch 2 para 1(5)(a). See also note 14 infra.

14 Ibid Sch 2 para 1(5)(b). The requirements in Sch 2 para 1(4)(a), (b) (see the text to notes 11,12 supra), as the case may be, do not apply if the General Medical Council or the representative body fails to provide the number of nominations specified pursuant to Sch 2 para 1(5)(a) (see the text to note 13 supra) by the date specified pursuant to Sch 2 para 1(5)(b): Sch 2 para 1(6).

15 Ibid Sch 2 para 1(8)(a).

16 Ibid Sch 2 para 1(8)(b).

17 Ibid Sch 2 para 2(1). However, for the initial membership of the Board, the appointing authority may determine the duration of the first term of office of each member, save that the term of office must not be less than three years and must not exceed five years: Sch 2 para 2(2).

18 Ibid Sch 2 para 2(3). As to the making of rules by the Board see PARA 92 post. As to the rules that have been made see the Postgraduate Medical Education and Training Board (Members--Removal from Office) Rules 2004, approved by the Postgraduate Medical Education and Training Board (Members--Removal from Office) Rules Order 2004, SI 2004/3410: see PARA 76 post.

19 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 2 para 2(5).

20 For the meaning of 'writing' see PARA 20 note 22 ante.

21 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 2 para 2(4).

22 Ibid Sch 2 para 1(9).

23 Ibid Sch 2 para 1(10).

24 'The unexpired term' means the period beginning with the date on which the member ceases to be a member and ending with the date on which his full term of office would have expired: ibid Sch 2 para 1(13).

25 Ibid Sch 2 para 1(11). However, the vacancy must be filled if the vacancy would result in the requirement in Sch 2 para 1(2) (see the text to note 7 supra) not being satisfied: Sch 2 para 1(12).

## **UPDATE**

### **65-92 The competent authorities ... Rules and orders**

Day now appointed in respect of provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250: London Gazette, 26 August 2005.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/ (3) REGISTRATION, TRAINING AND QUALIFICATION/(ii) Medical Education and Standards of Proficiency/C. SPECIALIST AND POSTGRADUATE MEDICAL EDUCATION AND TRAINING/75. The chair.

## 75. The chair.

With the exception of the first chair<sup>1</sup>, the members of the Postgraduate Medical Education and Training Board (the 'Board')<sup>2</sup> must elect a chair from among themselves<sup>3</sup>, and the term of office of the chair is three years<sup>4</sup>. The chair holds office until whichever of the following first occurs: (1) he resigns as chair by giving notice in writing to the Secretary of State<sup>5</sup> and the Board<sup>6</sup>; (2) he ceases to be a member of the Board<sup>7</sup>; or (3) he is removed as chair by a majority vote of the other members of the Board<sup>8</sup>. A person is not to be prevented from being elected chair merely because he has previously been chair<sup>9</sup>, but if a period of eight years has elapsed, beginning with his assuming office as chair, and no other person has been appointed or elected and served as chair during that time, that person may not be elected as chair until some other person has served as chair<sup>10</sup>.

1 The first chair is to be appointed by the Secretary of State and his term of office is five years: General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 3(6), Sch 2 para 3(3). The Secretary of State may direct a special health authority to exercise his functions of appointing the first chair under Sch 2 para 3(3), (6) (see note 8 *infra*) or to assist him in the exercise of such parts of those functions to the extent specified in his direction: Sch 2 para 4(1)(b). If the Secretary of State does so direct a special health authority, the National Health Service Act 1977 has effect as if the directions were directions of the Secretary of State under s 16D (as added) (see HEALTH SERVICES vol 54 (2008) PARA 142), and accordingly the function were exercisable by the special health authority under s 16D (as added): General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 2 para 4(2). As to the Secretary of State see PARA 5 *ante*. As to special health authorities see HEALTH SERVICES vol 54 (2008) PARA 136 *et seq*.

2 As to the Board see PARA 71 *ante*. As to the members of the Board see PARA 74 *ante*.

3 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 2 para 3(1).

4 *Ibid* Sch 2 para 3(2).

5 *Ibid* Sch 2 para 3(4).

6 *Ibid* Sch 2 para 3(4)(a).

7 *Ibid* Sch 2 para 3(4)(b).

8 *Ibid* Sch 2 para 3(4)(c). The first chair cannot be removed by a majority vote of other members of the Board under Sch 2 para 3(4)(c) but he may be removed from office by the Secretary of State if: (1) he ceases to live or work wholly or mainly in the United Kingdom (Sch 2 para 3(5)(a)); (2) there is a change in his qualifications, interests or experience such that it appears to the Secretary of State that he will no longer contribute to the Board's exercise of its functions in such manner as justifies his continued chairmanship (Sch 2 para 3(5)(b)); or (3) there is, in the opinion of the Secretary of State, a serious and persistent deficiency in his attendance at meetings, or in his conduct or performance at meetings of the Board or otherwise (Sch 2 para 3(5)(c)). If the first chair ceases to hold office under Sch 2 para 3(4)(a), (b) (see the text to notes 5-7 *supra*), or Sch 2 para 3(5), the Secretary of State must appoint a successor for the unexpired term: Sch 2 para 3(6). See also note 1 *supra*. 'Unexpired term' means the period beginning with the date on which the chair ceases to be the chair and ending with the date on which his full term of office as chair under Sch 2 para 3(3) (see note 1 *supra*) would have expired: Sch 2 para 3(7). As to the functions of the Board see PARA 71 *ante*. For the meaning of 'United Kingdom' see PARA 1 note 3 *ante*.

9 *Ibid* Sch 2 para 3(8).

10 *Ibid* Sch 2 para 3(9).

## **UPDATE**

### **65-92 The competent authorities ... Rules and orders**

Day now appointed in respect of provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250: London Gazette, 26 August 2005.

### **75 The chair**

NOTE 1--SI 2003/1250, Sch 2 para 4 revoked: Health Act 2006 Sch 9.



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## **76. Removal of Board members.**

The Board<sup>1</sup> must, as soon as is reasonably practicable, make a determination that a member<sup>2</sup> is unsuitable to continue his membership of the Board once it is satisfied that that member, during his tenure of office as a member is subject to specified events<sup>3</sup>.

The Board may make a determination that a member is unsuitable to continue his membership of the Board if it is satisfied that that member has failed to attend three consecutive meetings of the Board<sup>4</sup>, or has committed a serious breach of the code of conduct<sup>5</sup> or, in its reasonable opinion, that his continued membership presents a real risk that confidence in the work of the Board may be undermined<sup>6</sup>. However, the Board must not make such a determination unless the chair has given the member a reasonable opportunity to make written<sup>7</sup> representations to the chair<sup>8</sup>.

Following a determination by the Board that a member is unsuitable to continue his membership, the chair of the Board must give notice in writing of that determination, together with the reason for it, to the appropriate appointing authority<sup>9</sup> and the member in respect of whom the determination is made<sup>10</sup>. The notice must inform them that, as a consequence, that member is by that notice removed from office as a member, and the notice to the appropriate appointing authority must inform it that it is requested to appoint a person to replace that member for the unexpired term<sup>11</sup>. Where written notice has been given to the member concerned<sup>12</sup>, that member's membership of the Board ceases with immediate effect when the notice has been served on him<sup>13</sup>.

1 As to the Board see PARA 71 ante.

2 'Member' means a member of the Board and includes the chair except for the first chair; 'chair' means the chair of the Board and, except for the purposes of rr 4(4), 5(4)(a) (see notes 8, 11 infra), includes the first chair; and 'first chair' means the first chair of the Board appointed under the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 2 para 3(3), (6) (see PARA 75 notes 1, 8 ante); Postgraduate Medical Education and Training Board (Members--Removal from Office) Rules Order 2004, SI 2004/3410, r 2.

3 Ibid r 3. The specified events are that the member:

- 5 (1) is disqualified or suspended (other than by an interim suspension order or direction pending investigation) from practising by any relevant licensing body anywhere in the world (r 3(a));
- 6 (2) is the subject of a national disqualification (r 3(b));
- 7 (3) has been removed from, or refused admission to, a primary care list by reason of inefficiency, fraud or unsuitability (within the meaning of the National Health Service Act 1977 s 49F(2), (3), (4) (all as added) respectively and, at the date the Board is making its determination, has not subsequently been included in such a list (Postgraduate Medical Education and Training Board (Members--Removal from Office) Rules Order 2004, SI 2004/3410, r 3(c));
- 8 (4) is suspended from a primary care list (other than by an interim suspension order or direction pending investigation) for a period of three or more months (r 3(d));
- 9 (5) has been finally convicted: (a) of a criminal offence in the United Kingdom, the Channel Islands or the Isle of Man, and has been sentenced to a term of imprisonment of over three months (including a suspended sentence without the possibility of a fine) (r 3(e)(i)); or (b)

- elsewhere, of an offence which would if committed in England and Wales constitute a criminal offence, and has been sentenced to a term of imprisonment of over three months (r 3(e)(ii));
- 10 (6) is adjudged bankrupt or has had sequestration of his estate awarded unless, in either case, he has been discharged or the bankruptcy order has been annulled by the date on which the Board is making its determination (r 3(f));
  - 11 (7) is made the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order under the Insolvency Act 1986 Sch 4A (as added) (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY), unless that order has ceased to have effect or has been annulled by the date on which the Board is making its determination (Postgraduate Medical Education and Training Board (Members--Removal from Office) Rules Order 2004, SI 2004/3410, r 3(g));
  - 12 (8) has made a composition or arrangement with, or granted a trust deed for, his creditors unless he has been discharged in respect of it by the date on which the Board is making its determination (r 3(h));
  - 13 (9) is dismissed or early-retired by any NHS body for reasons relating to a failure to perform his duties to a standard which in the opinion of the NHS body ensures the continued operational effectiveness of that NHS body (r 3(i));
  - 14 (10) is subject to a disqualification order under the Company Directors Disqualification Act 1986 (see COMPANIES vol 15 (2009) PARA 1575 et seq), the Companies (Northern Ireland) Order 1986, SI 1986/1032 (NI 6), or to an order made under the Insolvency Act 1986 s 429(2)(b) (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 910) (Postgraduate Medical Education and Training Board (Members--Removal from Office) Rules Order 2004, SI 2004/3410, r 3(j));
  - 15 (11) is removed from the position of charity trustee or trustee for a charity by an order made by the Charity Commission or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which he was responsible or to which he was privy, or which he by his conduct contributed to or facilitated, or under the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 s 7 from being concerned in the management or control of any body (Postgraduate Medical Education and Training Board (Members--Removal from Office) Rules Order 2004, SI 2004/3410, r 3(k));
  - 16 (12) does not reside or work wholly or mainly within the United Kingdom (r 3(l));
  - 17 (13) where that member is a medical member, ceases to be included in the register of medical practitioners maintained by the General Medical Council under the Medical Act 1983 s 2 (see PARA 34 ante) (Postgraduate Medical Education and Training Board (Members--Removal from Office) Rules Order 2004, SI 2004/3410, r 3(m));
  - 18 (14) where that member is a lay member, has obtained a registrable medical qualification (r 3(n)).

'Relevant licensing body' means any body whose functions include the accreditation, registration, licensing or regulation of persons engaged in medical practice or dentistry, or in activities which, in the reasonable opinion of the Board, are otherwise relevant to the duties of a member: r 2. As to the regulation of the dental profession see PARA 385 et seq post. 'National disqualification' means a decision made by the Family Health Services Appeal Authority under the National Health Service Act 1977 s 49N (as added) (see HEALTH SERVICES vol 54 (2008) PARAS 261, 468), or a decision made under provisions in force in Scotland or Northern Ireland corresponding to that provision: Postgraduate Medical Education and Training Board (Members--Removal from Office) Rules Order 2004, SI 2004/3410, r 2. 'Primary care list' means any list referred to in the National Health Service Act 1977 s 49N(1)(c) (as added) (see HEALTH SERVICES vol 54 (2008) PARAS 248 et seq, 402) or a list corresponding to any of those lists in Scotland or Northern Ireland: Postgraduate Medical Education and Training Board (Members--Removal from Office) Rules Order 2004, SI 2004/3410, r 2. For the meaning of 'United Kingdom' see PARA 1 note 3 ante. As to bankruptcy see BANKRUPTCY AND INDIVIDUAL INSOLVENCY. As to arrangements and compositions with creditors see BANKRUPTCY AND INDIVIDUAL INSOLVENCY. 'NHS body' means any foundation trust within the meaning of the Health and Social Care (Community Health and Standards) Act 2003 s 1, and any health service body referred to in the National Health Service and Community Care Act 1990 s 4(2) (see HEALTH SERVICES vol 54 (2008) PARA 75 et seq): Postgraduate Medical Education and Training Board (Members--Removal from Office) Rules Order 2004, SI 2004/3410, r 2. As to the removal from office of a charity trustee or trustee for a charity see CHARITIES vol 8 (2010) PARAS 294, 566. As to medical members see PARA 74 ante. 'Registrable medical qualification' means any qualification that is registrable under the Medical Act 1983: Postgraduate Medical Education and Training Board (Members--Removal from Office) Rules Order 2004, SI 2004/3410, r 2. As to the registration of qualifications see PARAS 99, 102, 107, 109, 111 post. As to lay members see PARA 74 ante.

4 Ibid r 4(1)(a).

5 Ibid r 4(1)(b). 'Code of conduct' means such code of conduct as the Board may from time to time adopt, providing direction or guidance as to conduct in office of a member: r 2.

6 Ibid r 4(1)(c).

7 For the meaning of 'written' see PARA 20 note 22 ante.

8 Postgraduate Medical Education and Training Board (Members--Removal from Office) Rules Order 2004, SI 2004/3410, r 4(2). The chair must, having provided the member with such an opportunity, bring the matter to the attention of the Board at the next Board meeting, at which time the Board must, taking any written representations received into account, determine whether the member is unsuitable to continue his membership of the Board: r 4(3). Where the member concerned is the chair, r 4(2), (3) must be read as if references to 'the chair' were to 'the deputy chair': r 4(4). 'Deputy chair' means a member who has been authorised by the Board to carry out such duties as are normally undertaken by the chair when the chair is unavailable to carry out those duties: r 2.

9 Ibid r 5(1)(a). 'Appropriate appointing authority' means, in relation to a determination to remove a member, the appointing authority that appointed that member; and 'appointing authority' means the Secretary of State for Health, the Scottish Ministers, the Department of Health, Social Services and Public Safety in Northern Ireland or the National Assembly for Wales: r 2. As to the Secretary of State see PARA 5 ante. As to the National Assembly for Wales and the Scottish Ministers see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

10 Ibid r 5(1)(b). The written notice referred to in r 5(1)(b) must be served on the member by delivering it to him (r 5(2)(a)); leaving it at his proper address (r 5(2)(b)); or sending it by post to his proper address (r 5(2)(c)). For these purposes, the proper address of a member is the address he has given to the Board for the purpose of serving any notice, or otherwise his last known address: r 5(2).

11 Ibid r 5(1). Where a determination is made that the chair is unsuitable to continue his membership, the deputy chair must write to the appropriate appointing authority and to the chair in the required terms: r 5(4)(a). The chair or deputy chair is not obliged to request that the appropriate appointing authority seeks a replacement for the remainder of the member's unexpired term if the unexpired term is a period of less than 12 months and the removal of the member would not result in the number of lay members of the Board being equal to or exceeding the number of medical members of the Board: r 5(4)(b). 'Unexpired term' means the period beginning with the date on which the member ceases to be a member and ending with the date on which his full term of office as a member would ordinarily have expired: r 2. As to a member's term of office see PARA 74 ante.

12 In pursuant to ibid r 5(1)(b), (2): see the text and note 10 supra.

13 Ibid r 5(3).

## UPDATE

### 65-92 The competent authorities ... Rules and orders

Day now appointed in respect of provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250: London Gazette, 26 August 2005.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/ (3) REGISTRATION, TRAINING AND QUALIFICATION/(ii) Medical Education and Standards of Proficiency/C. SPECIALIST AND POSTGRADUATE MEDICAL EDUCATION AND TRAINING/77. Powers of the Board.

## **77. Powers of the Board.**

Subject as provided<sup>1</sup>, the Postgraduate Medical Education and Training Board (the 'Board')<sup>2</sup> may do anything which appears to it to be necessary or expedient for the purpose of, or in connection with, the performance of its functions<sup>3</sup>. In particular the Board has power:

- 58 (1) to borrow<sup>4</sup>;
- 59 (2) to appoint such staff as it may determine<sup>5</sup>;
- 60 (3) to pay its staff such salaries, allowances and expenses as it may determine<sup>6</sup>;
- 61 (4) to arrange for the discharge of any of its functions, other than a power to make rules, by its staff or members of the Board<sup>7</sup>;
- 62 (5) to make such provision for the payment of such pensions, allowances or gratuities, or of such contributions or payments towards provision for such pensions, allowances or gratuities, to or in respect of its staff as it may determine<sup>8</sup>;
- 63 (6) to make such provision in respect of its members and members of its committees<sup>9</sup> and sub-committees as it may determine:
- 35 54. (a) for the payment of allowances or remuneration, including the payment of allowances to employers of such members for the purposes of enabling the members to perform their functions<sup>10</sup>;
- 55. (b) for the reimbursement of such expenses as the members may reasonably have incurred in the course of carrying out those functions<sup>11</sup>;
- 36 64 (7) to establish such committees, and sub-committees of its committees, as it considers appropriate in connection with the discharge of its functions and to delegate any of its functions to them other than any power to make rules<sup>12</sup>;
- 65 (8) to appoint persons who are not members of the Board to any committee or sub-committee it establishes<sup>13</sup>;
- 66 (9) to regulate the procedure of any of its committees or their sub-committees<sup>14</sup>; and
- 67 (10) to abolish any of its committees, except a statutory committee<sup>15</sup>, or any sub-committee of its committees<sup>16</sup>.

The powers of the Board may be exercised even though there is a vacancy among its members<sup>17</sup>, and no proceedings of the Board are invalidated by any defect in the appointment of a member<sup>18</sup>. If it appears to the Board that any committee or sub-committee is failing to perform its functions adequately, the Board may give a direction as to the proper performance of those functions<sup>19</sup>.

The Secretary of State<sup>20</sup> or an appropriate authority<sup>21</sup> may make grants or loans to the Board towards expenses incurred, or to be incurred by it<sup>22</sup>, or for such other purposes in connection with the functions of the Board as may be approved by the Secretary of State or the appropriate authority and agreed with the Board<sup>23</sup>.

1. In relation to any provision made by or under the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250 (as amended).

2 As to the Board see PARA 71 ante.

3 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 3(6), Sch 2 para 10(1). As to the functions of the Board see PARA 71 ante.

4 Ibid Sch 2 para 10(2)(a). See also the text to notes 20-23 infra.

5 Ibid Sch 2 para 10(2)(b). As to the power of the Secretary of State to make directions transferring staff to the Board from the Royal College of General Practitioners or the specialist training authority see art 31(4), Sch 8 paras 24-27. For the meaning of 'specialist training authority' see PARA 69 note 2 ante.

6 Ibid Sch 2 para 10(2)(c).

7 Ibid Sch 2 para 10(2)(d). As to the making of rules by the Board see PARA 92 post.

8 Ibid Sch 2 para 10(2)(e).

9 As to the membership of the Board see PARA 74 ante. As to the committees see PARA 71 ante.

10 I.e. their functions under the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250 (as amended): Sch 2 para 10(2)(f)(i).

11 Ibid Sch 2 para 10(2)(f)(ii).

12 Ibid Sch 2 para 10(2)(g).

13 Ibid Sch 2 para 10(2)(h). The Board must ensure that persons appointed to any committee or sub-committee who are not Board members have such qualifications, interests or experience as, in the opinion of the Board, are relevant to the field with which the committee or sub-committee is mainly concerned: Sch 2 para 10(3).

14 Ibid Sch 2 para 10(2)(i). This provision is expressed to be subject to any provision made by or under the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250 (as amended). As to the procedure of the statutory committees see PARA 82 post.

15 For the meaning of 'statutory committee' see PARA 71 note 20 ante.

16 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 2 para 10(2)(j).

17 Ibid Sch 2 para 10(5). As to the filling of membership vacancies see PARA 74 ante.

18 Ibid Sch 2 para 10(6). As to the appointment of members see PARA 74 ante.

19 Ibid Sch 2 para 10(4).

20 As to the Secretary of State see PARA 5 ante.

21 'Appropriate authority' means the Scottish Ministers, the Department of Health, Social Services and Public Safety in Northern Ireland or the National Assembly for Wales: General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 2 para 6(2). As to the Scottish Ministers and the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

22 I.e. in connection with the process of the implementation of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250 (as amended): Sch 2 para 6(1)(a).

23 Ibid Sch 2 para 6(1)(b).

## UPDATE

### 65-92 The competent authorities ... Rules and orders

Day now appointed in respect of provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250: London Gazette, 26 August 2005.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/ (3) REGISTRATION, TRAINING AND QUALIFICATION/(ii) Medical Education and Standards of Proficiency/C. SPECIALIST AND POSTGRADUATE MEDICAL EDUCATION AND TRAINING/78. Procedure of the Board and its committees.

## **78. Procedure of the Board and its committees.**

The Postgraduate Medical Education and Training Board (the 'Board')<sup>1</sup> may regulate its own procedures<sup>2</sup>. The Board must establish and maintain a system for the declaration and registration of private interests of its members and other members of its committees and sub-committees<sup>3</sup>, and publish entries recorded in the resulting register<sup>4</sup>. The Board must establish and maintain a system for resolving complaints made to the Board about the performance of any of its functions<sup>5</sup> and make rules as to how such a system will operate<sup>6</sup>. No person who is a member of the Board or any of its committees or sub-committees who is also a registered medical practitioner<sup>7</sup> may take part in any proceedings of the Board in any period during which he is the subject of any investigation, proceedings or determination concerning his fitness to practise his profession<sup>8</sup>.

The appointing authorities<sup>9</sup> may each nominate a representative to attend meetings of the Board<sup>10</sup>. Such a representative may not address the Board unless he is invited or requested to do so by the chair of the Board or otherwise has the permission of the Board to address it<sup>11</sup>.

1 As to the Board see PARA 71 ante.

2 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 3(6), Sch 2 para 7. This provision is expressed to be subject to any provision made by or under the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250 (as amended). As to the procedure of the statutory committees see PARA 82 post.

3 Ibid Sch 2 para 8(a). As to the membership of the Board see PARA 74 ante. As to the power of the Board to establish committees and sub-committees see PARA 77 ante.

4 Ibid Sch 2 para 8(b).

5 As to the functions of the Board see PARA 71 ante.

6 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 2 para 9. As to the making of rules by the Board see PARA 92 post. At the date at which this volume states the law no such rules had been made.

7 For the meaning of 'registered medical practitioner' see PARA 4 ante.

8 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 2 para 10(7). As to proceedings relating to the fitness to practise of medical practitioners see PARA 138 et seq post.

9 I.e. the Secretary of State, the Scottish Ministers, the Department for Health, Social Services and Public Safety in Northern Ireland and the National Assembly for Wales. As to the Secretary of State see PARA 5 ante. As to the Scottish Ministers and the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

10 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 2 para 5(1).

11 Ibid Sch 2 para 5(2).

## **UPDATE**

**65-92 The competent authorities ... Rules and orders**

Day now appointed in respect of provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250: London Gazette, 26 August 2005.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/ (3) REGISTRATION, TRAINING AND QUALIFICATION/(ii) Medical Education and Standards of Proficiency/C. SPECIALIST AND POSTGRADUATE MEDICAL EDUCATION AND TRAINING/79. Accounts.

## **79. Accounts.**

As from a day to be appointed the following provisions have effect<sup>1</sup>. The Postgraduate Medical Education and Training Board (the 'Board')<sup>2</sup> must keep accounts in such form as the Secretary of State<sup>3</sup> may determine<sup>4</sup>, and prepare annual accounts in respect of each financial year<sup>5</sup> in such form as the Secretary of State may determine<sup>6</sup>. The annual accounts must be audited by persons whom the Board appoints<sup>7</sup>. As soon as is reasonably practicable after the end of the financial year to which the annual accounts relate, the Board must cause them to be published together with any report on them made by the auditors<sup>8</sup>, and send a copy of the annual accounts and of any such report to the Secretary of State<sup>9</sup>, the Comptroller and Auditor General<sup>10</sup>, and the National Assembly for Wales<sup>11</sup>. The Comptroller and Auditor General must examine, certify and report on the annual accounts<sup>12</sup>. The Secretary of State must lay before each House of Parliament: (1) a copy of the annual accounts certified by the Comptroller and Auditor General; (2) any report of the auditors; and (3) the report of the Comptroller and Auditor General<sup>13</sup>.

1 The General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 29 is to come into force on a day to be specified by the Secretary of State and notified in the London, Edinburgh and Belfast Gazettes: see art 1(2), (3). At the date at which this volume states the law no such day had been specified. As to the Secretary of State see PARA 5 ante.

2 As to the Board see PARA 71 ante.

3 As to the Secretary of State see PARA 5 ante.

4 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 29(1)(a).

5 'Financial year' means the period beginning with the date on which the Board is established and ending with the next 31 March following that date, and each successive period of 12 months ending with 31 March: *ibid* art 29(9). The provision establishing the Board, namely art 3(1) (see PARA 71 text to note 2 ante), came into force on 22 October 2003: see the London Gazette (14 October 2003).

6 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 29(1)(b).

7 *Ibid* art 29(2). No person may be appointed as an auditor unless he is eligible for appointment as a company auditor under the Companies Act 1989 s 25 (eligibility for appointment: see COMPANIES vol 15 (2009) PARA 969): General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 29(3).

8 *Ibid* art 29(4)(a).

9 *Ibid* art 29(4)(b)(i).

10 *Ibid* art 29(4)(b)(ii). As to the Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 724-726.

11 *Ibid* art 29(4)(b)(v). Copies must also be sent to the Scottish Ministers and the Department for Health, Social Services and Public Safety in Northern Ireland: art 29(4)(b)(iii), (iv). As to the National Assembly for Wales and the Scottish Ministers see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

12 *Ibid* art 29(5). For the purposes of his examination, the Comptroller and Auditor General may inspect the accounts of the Board and any records relating to them: art 29(6).

13 Ibid art 29(7). A copy of the annual accounts (and the reports mentioned in art 29(7)) must be laid before the Scottish Parliament by the Scottish Ministers, and before the Northern Ireland Assembly by the Department of Health, Social Services and Public Safety in Northern Ireland, and the National Assembly for Wales must publish the accounts (and the aforementioned reports): art 29(8). As to the laying of documents before Parliament see PARLIAMENT vol 34 (Reissue) PARA 941. As to the Northern Ireland Assembly see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

## **UPDATE**

### **65-92 The competent authorities ... Rules and orders**

Day now appointed in respect of provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250: London Gazette, 26 August 2005.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/ (3) REGISTRATION, TRAINING AND QUALIFICATION/(ii) Medical Education and Standards of Proficiency/C. SPECIALIST AND POSTGRADUATE MEDICAL EDUCATION AND TRAINING/80. The training committee.

## **80. The training committee.**

The training committee<sup>1</sup> advises and makes recommendations to the Postgraduate Medical Education and Training Board (the 'Board')<sup>2</sup> on: (1) the standards required for entry to training in general practice or specialist practice<sup>3</sup>; (2) the training curricula to be followed in general practice and for each of the specified specialties<sup>4</sup>; and (3) such other matters relating to postgraduate medical education and training for general medical practice and specialist practice as the Board may request<sup>5</sup>. The Board may delegate such of its functions<sup>6</sup> to the training committee, or sub-committees of that committee<sup>7</sup>, as it considers appropriate, other than any power to make rules<sup>8</sup>.

1 The training committee is one of the statutory committees: see PARA 71 note 20 ante.

2 As to the Board see PARA 71 ante.

3 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 3(10), Sch 2 para 11(1)(a).

4 Ibid Sch 2 para 11(1)(b). As to the specified specialties see Sch 3.

5 Ibid Sch 2 para 11(1)(c).

6 As to the functions of the Board see PARA 71 ante.

7 As to the power of the Board to establish sub-committees see PARA 77 ante.

8 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 2 para 11(2). As to the making of rules by the Board see PARA 92 post.

## **UPDATE**

### **65-92 The competent authorities ... Rules and orders**

Day now appointed in respect of provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250: London Gazette, 26 August 2005.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/ (3) REGISTRATION, TRAINING AND QUALIFICATION/(ii) Medical Education and Standards of Proficiency/C. SPECIALIST AND POSTGRADUATE MEDICAL EDUCATION AND TRAINING/81. The assessment committee.

### **81. The assessment committee.**

The assessment committee<sup>1</sup> advises and makes recommendations to the Postgraduate Medical Education and Training Board (the 'Board')<sup>2</sup> on: (1) the assessment of those undertaking education and training in general practice and specialist medical practice<sup>3</sup>; (2) the assessment of persons applying to the Board in respect of certain general or specialist training<sup>4</sup>; (3) the outcomes to be achieved by education and training in general practice or specialist medical practice, including the levels of skill, knowledge and expertise to be achieved<sup>5</sup>; (4) the examinations, assessments and other tests of competence to be completed, whether during or upon completion of a course of education and training in general practice or specialist medical practice<sup>6</sup>; and (5) such other matters relating to the assessment of education and training in general practice or specialist medical practice as the Board may request<sup>7</sup>. The Board may delegate such of its functions<sup>8</sup> to the assessment committee, or sub-committees of that committee<sup>9</sup>, as it considers appropriate, other than any power to make rules<sup>10</sup>.

1 The assessment committee is one of the statutory committees: see PARA 71 note 20 ante.

2 As to the Board see PARA 71 ante.

3 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 3(10), Sch 2 para 12(1)(a).

4 *Ibid* under *ibid* art 11(3) (see PARA 50 text to notes 14-18 ante, or art 14(4) or (5) (see PARA 50 text to notes 19-26 ante): see Sch 2 para 12(1)(b).

5 *Ibid* Sch 2 para 12(1)(c).

6 *Ibid* Sch 2 para 12(1)(d).

7 *Ibid* Sch 2 para 12(1)(e).

8 As to the functions of the Board see PARA 71 ante.

9 As to the power of the Board to establish sub-committees see PARA 77 ante.

10 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 2 para 12(2). As to the making of rules by the Board see PARA 92 post.

## **UPDATE**

### **65-92 The competent authorities ... Rules and orders**

Day now appointed in respect of provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250: London Gazette, 26 August 2005.

### **81 The assessment committee**

NOTE 4--SI 2003/1250 Sch 2 para 12(1)(b) amended: SI 2007/3101.



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## **82. Procedure of the statutory committees.**

The Postgraduate Medical Education and Training Board (the 'Board')<sup>1</sup> must make rules<sup>2</sup> in respect of the statutory committees<sup>3</sup>, and sub-committees of the statutory committees<sup>4</sup>, which must provide in particular for: (1) their composition<sup>5</sup>; (2) the appointment of members to the committees, including persons who are not members of the Board<sup>6</sup>; (3) subject to certain requirements<sup>7</sup>, their functions<sup>8</sup>; (4) the quorum at meetings<sup>9</sup>; (5) the procedure to be followed<sup>10</sup>; and (6) standards for the attendance and performance of members<sup>11</sup>. The rules must, in particular, provide for the chair of a statutory committee to be a medical member of the Board<sup>12</sup>. In making such rules in relation to the appointment of members to the statutory committees and sub-committees of the statutory committees, the Board must, in so far as it is reasonably practicable, provide for representation on that committee or sub-committee of such of the medical Royal Colleges<sup>13</sup> in the United Kingdom<sup>14</sup> as the Board considers appropriate, having regard to the functions of that committee or sub-committee<sup>15</sup>.

1 As to the Board see PARA 71 ante.

2 As to the making of rules by the Board see PARA 92 post.

3 For the meaning of 'statutory committees' see PARA 71 note 20 ante.

4 As to the power of the Board to establish sub-committees see PARA 77 ante.

5 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 3(10), Sch 2 para 13(1)(a).

6 Ibid Sch 2 para 13(1)(b). As to the membership of the Board see PARA 74 ante.

7 The subject to the requirements of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250 (as amended), and any order made under art 3(11)(b): see PARA 71 text to note 20 ante.

8 Ibid Sch 2 para 13(1)(c).

9 Ibid Sch 2 para 13(1)(d).

10 Ibid Sch 2 para 13(1)(e).

11 Ibid Sch 2 para 13(1)(f). At the date at which this volume states the law no such rules had been made.

12 Ibid Sch 2 para 13(2). As to medical members of the Board see PARA 74 ante.

13 As to the medical Royal Colleges see PARA 64 ante.

14 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

15 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 2 para 13(3).

## **UPDATE**

### **65-92 The competent authorities ... Rules and orders**

Day now appointed in respect of provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250: London Gazette, 26 August 2005.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/ (3) REGISTRATION, TRAINING AND QUALIFICATION/(ii) Medical Education and Standards of Proficiency/C. SPECIALIST AND POSTGRADUATE MEDICAL EDUCATION AND TRAINING/83. Standards and requirements of education and training.

### **83. Standards and requirements of education and training.**

The Postgraduate Medical Education and Training Board (the 'Board')<sup>1</sup> must from time to time establish the standards and requirements relating to postgraduate medical education and training necessary for the award of a certificate of completion of training<sup>2</sup> in general practice and in each of the listed specialties<sup>3</sup>, and set those standards and requirements out in rules<sup>4</sup>. The standards and requirements established by the Board must comply with the minimum requirements for general practice and specialist training<sup>5</sup>, and must include: (1) the standards required for entry to training<sup>6</sup>; (2) the education and training curriculum to be followed for general practice and for each specialty<sup>7</sup>; (3) the outcomes to be achieved by that education and training, including the level of skill, knowledge and expertise required<sup>8</sup>; and (4) the methods of assessment of progress during and upon completion of that education and training<sup>9</sup>.

In performing its function in relation to the maintenance of standards and requirements<sup>10</sup>, the Board may approve: (a) a course of postgraduate medical education and training, or part of such a course, which the Board is satisfied meets or would meet the established standards and requirements<sup>11</sup>; (b) a programme of postgraduate medical education and training, or part of such a programme, which the Board is satisfied meets or would meet those standards and requirements<sup>12</sup>; (c) a training post which the Board is satisfied meets or would meet those standards and requirements<sup>13</sup>; (d) a general practitioner<sup>14</sup>, whom the Board considers to be properly organised and equipped for providing training<sup>15</sup>; (e) examinations, assessments or other tests of competence<sup>16</sup>. The Board may approve postgraduate medical education and training taking place outside the United Kingdom<sup>17</sup>, and may attach conditions to any approval it gives or has given including, if the Board considers it appropriate, a period of time for which that approval is valid<sup>18</sup>. The Board may at any time withdraw approval where it is satisfied that any such conditions<sup>19</sup> or any established standards or requirements<sup>20</sup> are not being met<sup>21</sup>. The Board must make rules about the procedure to be followed for giving, withdrawing, and attaching conditions to, approvals<sup>22</sup>.

The Board must cause to be published from time to time, electronically or otherwise, a list of the education and training it has approved specifying: (i) any course or programme, or part of such a course or programme, training post, general practitioner, examination, assessment or other test of competence that it has approved<sup>23</sup>; (ii) the date on which that approval was given<sup>24</sup>; (iii) any conditions to which that approval is subject<sup>25</sup>; (iv) where relevant, the date on which that approval was withdrawn<sup>26</sup>; and (v) such other matters as the Board may specify in rules<sup>27</sup>.

1 As to the Board see PARA 71 ante.

2 For the meaning of 'certificate of completion of training' see PARA 87 note 2 post.

3 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 4(1). Article 4 is to come into force on a day to be specified by the Secretary of State and notified in the London, Edinburgh and Belfast Gazettes: see art 1(2), (3). Article 4(1)-(4), (10), (11) came into force on 22 October 2003, as did art 4(5)-(8) for the purpose of making rules under art 4(10). At the date at which this volume states the law no day had been specified for the commencement of art 4 for remaining purposes. As to the Secretary of State see PARA 5 ante. As to the listed specialties see Sch 3.



4 Ibid art 4(3). At the date at which this volume states the law no such rules had been made. As to the making of rules by the Board see PARA 92 post.

5 Ie as set out in ibid arts 5, 6 (see PARAS 84, 85 post) respectively: art 4(2). However, nothing in the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250 (as amended) prevents the Board from establishing additional requirements or higher standards under art 4 as it considers appropriate: art 4(2).

6 Ibid art 4(4)(a).

7 Ibid art 4(4)(b).

8 Ibid art 4(4)(c).

9 Ibid art 4(4)(d).

10 Ie its function mentioned in ibid art 3(2)(b): see PARA 71 text to note 5 ante.

11 Ie the standards established under ibid art 4(1) (see the text to notes 1-3 supra): art 4(5)(a). As to the withdrawal of approval of education or training see PARA 86 text to note 20 post.

12 Ibid art 4(5)(b). See also note 11 supra.

13 Ibid art 4(5)(c). See also note 11 supra.

14 For the meaning of 'general practitioner' see PARA 49 note 23 ante.

15 Ie the training specified in the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 5(1)(c)(i) (see PARA 84 text to notes 5-7 post): art 4(5)(d). See also note 11 supra.

16 Ibid art 4(5)(e). See also note 11 supra.

17 Ibid art 4(6).

18 Ibid art 4(7).

19 Ibid art 4(8)(a).

20 Ibid art 4(8)(b).

21 Ibid art 4(8).

22 Ibid art 4(10). Subject to the minimum requirements specified in arts 5, 6, (see PARAS 84, 85 post), such rules may provide that of the categories specified in art 4(5) (see the text to notes 10-16 supra), only certain categories will be approved by the Board in respect of general practice or a specialty: art 4(11). At the date at which this volume states the law no such rules had been made.

23 Ibid art 4(9)(a).

24 Ibid art 4(9)(b).

25 Ibid art 4(9)(c).

26 Ibid art 4(9)(d).

27 Ie rules made under ibid art 4(10) (see the text to note 22 supra): art 4(9)(e).

## **UPDATE**

### **65-92 The competent authorities ... Rules and orders**

Day now appointed in respect of provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250: London Gazette, 26 August 2005.



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#### **84. Minimum requirements for general practice training.**

The minimum requirements for general practice training<sup>1</sup> are that:

- 68 (1) the training must comply with the specified requirements for specific training in general practice<sup>2</sup>;
- 69 (2) the training must include at least three years in full-time employment, and must be supervised by the Postgraduate Medical Education and Training Board (the 'Board')<sup>3</sup>; and
- 70 (3) the three year period specified in head (2) above must include<sup>4</sup>:
- 37 56. (a) a period or periods amounting to at least 12 months employment as a GP registrar<sup>5</sup> which takes place with a general practitioner<sup>6</sup> who has been approved by the Board for the purpose of providing training<sup>7</sup>; and
- 57. (b) a period or periods amounting to at least 12 months employment in a post or posts, in a specialty or specialties which the Board has prescribed<sup>8</sup> for this purpose, that post or posts being in accordance with such other requirements as the Board may prescribe<sup>9</sup>.
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In relation to periods of part-time employment under head (3) above, the requirements may be satisfied by periods of part-time employment of equivalent duration but it will not be regarded as equivalent unless it includes at least two periods of full-time employment each lasting not less than one week, one such period falling within head (3)(a) above, and one such period falling within head (3)(b) above<sup>10</sup>.

1    Ie as referred to in the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 4(2): see PARA 83 text to note 5 ante.

2    Ie the requirements of the Directive art 31(1) or, in the case of part-time training, art 31(1) together with art 34: General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 5(1)(a). For the meaning of 'the Directive' see PARA 47 note 10 ante.

Each member state which dispenses the complete training referred to in the Directive art 23 (see PARA 57 text to notes 9-18 ante) within its territory must institute specific training in general medical practice meeting requirements at least as stringent as those laid down in arts 31, 32 in such a manner that the first diplomas, certificates or other evidence of formal qualifications awarded on completion of the course are issued not later than 1 January 2006: General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 5(6), Sch 4 (setting out the Directive art 30). The specific training in general medical practice referred to in the Directive art 30 must meet the following minimum requirements: (1) entry must be conditional upon the successful completion of at least six years' study within the framework of the training course referred to in art 23; (2) it must be a full-time course lasting at least three years, and must be supervised by the competent authorities or bodies; (3) it must be practically rather than theoretically based; the practical instruction must be given, on the one hand, for at least six months in an approved hospital or clinic with suitable equipment and services and, on the other hand, for at least six months in an approved general medical practice or in an approved centre where doctors provide primary care; it must be carried out in contact with other health establishments or structures concerned with general medical practice; however, without prejudice to the aforesaid minimum periods, the practical instruction may be given for a maximum period of six months in other approved health establishments or structures concerned with general medical practice; (4) it must entail the personal participation of the trainee in the professional activities of the persons with whom he

works: General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 4 (setting out the Directive art 31(1)). Without prejudice to the principle of full-time training laid down in the Directive art 31(1)(b), member states may authorise specific part-time training in general medical practice in addition to full-time training, where the following particular conditions are met: (a) the total duration of training may not be shortened because it is being followed on a part-time basis; (b) the weekly duration of part-time training may not be less than 50% of weekly full-time training; (c) part-time training must include a certain number of full-time training periods, both for the training conducted at a hospital or clinic and for the training given in an approved medical practice or in an approved centre where doctors provide primary care, and these full-time training periods must be of sufficient number and duration as to provide adequate preparation for the effective exercise of general medical practice: General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 4 (setting out the Directive art 34(1)). Part-time training must be of a level and quality equivalent to that of full-time training; and it must lead to a diploma, certificate or other evidence of formal qualification, as referred to in the Directive art 30: General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 4 (setting out the Directive art 34(2)).

3 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 5(1)(b). Any period remaining under art 5(1)(b), the minimum periods set out in art 5(1)(c) (see the text to note 4 *infra*) having been met, must consist of a period of employment in a post or posts falling within art 5(1)(c)(i), (ii) (see the text to notes 5-9 *infra*): art 5(2). As to the Board see PARA 71 *ante*.

4 *Ibid* art 5(1)(c).

5 'GP registrar' means a medical practitioner who is being trained in general practice by a GP trainer (see note 7 *infra*) whether as part of training leading to the award of a certificate of completion of training or otherwise: *ibid* art 5(5), Sch 1. For the meaning of 'certificate of completion of training' see PARA 87 note 2 *post*.

6 For the meaning of 'general practitioner' see PARA 49 note 23 *ante*.

7 *Ie* in accordance with the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 4(5)(d) (see PARA 83 text to note 15 *ante*): art 5(1)(c)(i). A general practitioner who is approved by the Board under art 4(5)(d) for the purposes of providing training to a GP registrar under art 5(1)(c)(i) is known as a 'GP trainer': art 5(4), Sch 1.

8 'Prescribed' means prescribed in rules made by the Board: *ibid* Sch 1. As to the making of rules by the Board see PARA 92 *post*. At the date at which this volume states the law no such rules had been made.

9 *Ibid* art 5(1)(c)(ii).

10 *Ibid* art 5(3). The requirement in the Directive to the effect that certain components of the specific training in general medical practice have to be undertaken full-time does not constitute indirect discrimination on grounds of sex: see Case C-25/02 *Rinke v Arztekammer Hamburg* [2003] All ER (D) 79 (Sep), (2003) Times, 25 September, ECJ. As to indirect sex discrimination see DISCRIMINATION vol 13 (2007 Reissue) PARA 351.

## UPDATE

### 65-92 The competent authorities ... Rules and orders

Day now appointed in respect of provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250: London Gazette, 26 August 2005.

### 84 Minimum requirements for general practice training

NOTES 2-4, 10--SI 2003/1250 art 5(1) amended, art 5(2) substituted, art 5(3), (6), Sch 4 revoked: SI 2007/3101.

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## **85. Minimum requirements for specialist training.**

The minimum requirements for specialist training<sup>1</sup> are that the training must constitute an entire course of training in the specialty in question and must: (1) comprise theoretical and practical instruction<sup>2</sup>; (2) be full-time training<sup>3</sup>; (3) be supervised by the Postgraduate Medical Education and Training Board (the 'Board')<sup>4</sup>; (4) be in a university centre, in a teaching hospital or, where the Board is satisfied that it is appropriate, in a health establishment approved for this purpose by the Board<sup>5</sup>; (5) involve the personal participation of the medical practitioner training to be a specialist in the activity and in the responsibilities of the establishments concerned<sup>6</sup>; (6) comply with the specified requirements relating to the characteristics of the full-time training of specialists<sup>7</sup>; and (7) be at least as long as the relevant period, if any<sup>8</sup>.

However, part-time specialist training is permitted where training on a full-time basis would not be practicable for well-founded individual reasons, and accordingly, the Board may approve part-time training which satisfies<sup>9</sup>: (a) any conditions imposed by the Board<sup>10</sup>; (b) the conditions set out heads (1) and (3) to (5) above<sup>11</sup>; (c) the conditions that: (i) the standard of training must not be lower than that of full-time training<sup>12</sup>; (ii) the total length of training in the specialty in question must not be less than that of full-time training in the same specialty<sup>13</sup>; and (iii) the training must comply with the specified requirements relating to the characteristics of the part-time training of specialists<sup>14</sup>.

1    Ie as referred to in the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 4(2): see PARA 83 text to note 5 ante.

2    Ibid art 6(1)(a)(i).

3    Ibid art 6(1)(a)(ii). See, however, the text to notes 9-14 infra. The requirement in the Directive to the effect that certain components of the specific training in general medical practice have to be undertaken full-time does not constitute indirect discrimination on grounds of sex: see Case C-25/02 *Rinke v Arztekammer Hamburg* [2003] All ER (D) 79 (Sep), (2003) Times, 25 September, ECJ. For the meaning of 'the Directive' see PARA 47 note 10 ante. As to indirect sex discrimination see DISCRIMINATION vol 13 (2007 Reissue) PARA 351.

4    General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 6(1)(a)(iii). As to the Board see PARA 71 ante.

5    Ibid art 6(1)(a)(iv).

6    Ibid art 6(1)(a)(v).

7    Ie the requirements of Annex I point 1 of the Directive: General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 6(1)(a)(vi).

Full-time training of specialists must be carried out in specific posts recognised by the competent authority; it must involve participation in all the medical activities of the department where the training is carried out, including on-call duties, so that the trainee specialist devotes to this practical and theoretical training all his professional activity throughout the duration of the standard working week and throughout the year according to provisions agreed by the competent authorities: art 6(3), Sch 5 para 1 (setting out Annex 1 point 1 of the Directive). Accordingly these posts must be subject to appropriate remuneration: General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 5 para 1. Training may be interrupted for reasons such as military service, secondment, pregnancy or sickness: Sch 5 para 1. The total duration of the training must not be reduced by reason of any interruption: Sch 5 para 1.

8 le the period as specified in ibid Sch 3: art 6(1)(a)(vii).

9 Ibid art 6(2).

10 Ibid art 6(2)(a).

11 Ibid art 6(2)(b).

12 Ibid art 6(2)(c)(i).

13 Ibid art 6(2)(c)(ii).

14 le the requirements of Annex I point 2 of the Directive: General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 6(2)(c)(iii). Part-time training of specialists must meet the same requirements as full-time training, from which it may differ only in the possibility of limiting participation in medical activities to a period at least half of that provided for in Annex 1 point 1 of the Directive (see note 7 supra): see the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 5 para 2. The competent authorities must ensure that the total duration and quality of part-time training of specialists are not less than those of full-time trainees: Sch 5 para 2. Appropriate remuneration must consequently be attached to such part-time training: Sch 5 para 2 ( setting out Annex 1 point 2 of the Directive).

## **UPDATE**

### **65-92 The competent authorities ... Rules and orders**

Day now appointed in respect of provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250: London Gazette, 26 August 2005.

### **85 Minimum requirements for specialist training**

TEXT AND NOTES--SI 2003/1250 art 6 substituted, Sch 5 revoked: SI 2007/3101.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/ (3) REGISTRATION, TRAINING AND QUALIFICATION/(ii) Medical Education and Standards of Proficiency/C. SPECIALIST AND POSTGRADUATE MEDICAL EDUCATION AND TRAINING/86. Visiting panels.

## **86. Visiting panels.**

As from a day to be appointed the Postgraduate Medical Education and Training Board (the 'Board')<sup>1</sup> may, if it thinks fit, appoint a panel of persons, called a 'visiting panel', to visit any hospital, institution, general practitioner<sup>2</sup> or other person by whom, where or under whose direction or management any postgraduate medical education or training leading to the award of a certificate of completion of training<sup>3</sup> is, or is proposed to be given<sup>4</sup>, or any sub-specialty training is, or is proposed to be given<sup>5</sup>. A visiting panel must include at least one person who is not and never has been a registered medical practitioner<sup>6</sup> and who does not hold any qualification that is registrable under the Medical Act 1983<sup>7</sup>. Where a visiting panel visits any hospital, institution, general practitioner or other person in the exercise of its functions, it is the duty of the panel to prepare a report to the Board on the visit<sup>8</sup>. The Board must, following a request by any person, make available such reports<sup>9</sup>.

Subject to the requirements of these provisions, the Board must make rules<sup>10</sup> in relation to visiting panels and such rules must include provision as to: (1) the composition of visiting panels<sup>11</sup>; (2) the areas or matters to be covered by a report to the Board<sup>12</sup>; (3) the frequency with which visiting panels must visit the persons or bodies specified<sup>13</sup>; (4) the manner in which such visits are to be conducted<sup>14</sup>; (5) the payment of allowances to persons appointed to visiting panels, including the payment of allowances to employers of persons appointed to visiting panels for the purposes of enabling visitors to perform their functions as visitors<sup>15</sup>; and (6) the reimbursement of such expenses as persons appointed to visiting panels may reasonably have incurred in the course of the panel carrying out its functions<sup>16</sup>.

Any hospital, institution, general practitioner or other person that may be visited by a visiting panel must, whenever required to do so by the Board, give to the Board such information as the Board may reasonably require in connection with the exercise of its functions<sup>17</sup>. The matters with respect to which the Board may require information include the standards and requirements which must be met by persons pursuing postgraduate medical education and training leading to the award of a certificate of completion of training<sup>18</sup>, and the procedures for managing that education or training<sup>19</sup>. Where such a person or body fails to comply with any reasonable request for information made by the Board, the Board may on that ground alone, after having warned that person or body that this sanction may be imposed, direct that the postgraduate medical education or training to which that information relates is no longer approved, or from a specified date will be no longer approved<sup>20</sup>.

1 As to the Board see PARA 71 ante.

2 For the meaning of 'general practitioner' see PARA 49 note 23 ante.

3 For the meaning of 'certificate of completion of training' see PARA 87 note 2 post.

4 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 7(1)(a). Article 7 is to come into force on a day to be specified by the Secretary of State and notified in the London, Edinburgh and Belfast Gazettes: see art 1(2), (3). Article 7(5) (see the text to notes 10-16 infra) came into force on 22 October 2003, as did art 7(1)-(3) for the purpose of making rules under art 7(5). At the date at which this volume states the law no day had been specified for the commencement of art 7 for remaining purposes. As to the Secretary of State see PARA 5 ante. As to the standards and requirements of education and training and the minimum requirements see PARAS 83-85 ante.

- 5 Ibid art 7(1)(b).
- 6 For the meaning of 'registered medical practitioner' see PARA 4 ante.
- 7 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 7(2). As to qualifications registrable under the Medical Act 1983 see PARAS 99, 102, 107, 109, 111 post.
- 8 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 7(3).
- 9 Ibid art 7(4).
- 10 As to the making of rules by the Board see PARA 92 post.
- 11 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 7(5)(a).
- 12 Ibid art 7(5)(b).
- 13 Ie in ibid art 7(1) (see the text to notes 1-5 supra): art 7(5)(c).
- 14 Ibid art 7(5)(d).
- 15 Ibid art 7(5)(e).
- 16 Ibid art 7(5)(f). At the date at which this volume states the law no such rules had been made.
- 17 Ibid art 9(1), (2). Article 9 is to come into force on a day to be specified by the Secretary of State and notified in the London, Edinburgh and Belfast Gazettes: see art 1(2), (3). At the date at which this volume states the law no such day had been specified. As to the functions of the Board see PARA 71 ante.
- 18 Ibid art 9(3)(a).
- 19 Ibid art 9(3)(b).
- 20 Ie within the meaning of ibid art 4(5) (see PARA 83 text to notes 10-16 ante): art 9(4).

## **UPDATE**

### **65-92 The competent authorities ... Rules and orders**

Day now appointed in respect of provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250: London Gazette, 26 August 2005.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/ (3) REGISTRATION, TRAINING AND QUALIFICATION/(ii) Medical Education and Standards of Proficiency/C. SPECIALIST AND POSTGRADUATE MEDICAL EDUCATION AND TRAINING/87. Certificates of completion of training.

### **87. Certificates of completion of training.**

The Postgraduate Medical Education and Training Board (the 'Board')<sup>1</sup> must award a certificate of completion of training<sup>2</sup> to any person who applies to the Board for that purpose, and who pays any fee specified in rules made by the Board<sup>3</sup>, if the Board is satisfied that he has satisfactorily completed education and training, approved by the Board<sup>4</sup>. A certificate of completion of training may be awarded only to a registered medical practitioner<sup>5</sup>, and only to a person who has been appointed to a course of training intended to lead to the award of a certificate of completion of training and has successfully completed that course of training<sup>6</sup>. The Board may only award a certificate of completion of training in general practice, or in a listed specialty<sup>7</sup>. A certificate of completion of training must state:

- 71 (1) the date on which it was awarded<sup>8</sup>;
- 72 (2) that it was awarded in general practice, or, where applicable, in which specialty it was awarded<sup>9</sup>;
- 73 (3) the name of its holder<sup>10</sup>;
- 74 (4) his primary medical qualifications and where those qualifications were awarded<sup>11</sup>; and
- 75 (5) his registration number in the register of medical practitioners<sup>12</sup>.

A certificate of completion of training must be signed by the chair of the Board<sup>13</sup> or by such other persons as the chair has nominated for this purpose<sup>14</sup>.

For the purposes of compliance with European Union obligations<sup>15</sup>, the vocational training certificate<sup>16</sup> issued in the United Kingdom<sup>17</sup> is the certificate of completion of training in general practice<sup>18</sup>. Similarly, for such purposes<sup>19</sup>, the diploma, certificate or other evidence of formal qualifications in specialised medicine in the United Kingdom is the certificate of completion of training awarded in a listed specialty<sup>20</sup>.

Where the Board is satisfied that a certificate of completion of training has been fraudulently procured or incorrectly awarded, it must direct that the certificate of completion of training be withdrawn<sup>21</sup> and notify the General Medical Council that it has withdrawn that person's certificate of completion of training<sup>22</sup>.

1 As to the Board see PARA 71 ante.

2 'Certificate of completion of training' means a certificate of completion of training awarded under the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 8, including any such certificate awarded in pursuance of the Board's competent authority functions specified in art 20(3)(a) (see PARA 88 text to notes 18-24 post): art 2, Sch 1.

3 As to the meaning of 'fee' see PARA 45 note 8 ante. As to the making of rules by the Board see PARA 92 post.

4 Ie approved in accordance with the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 4 (see PARA 83 ante): art 8(1). Article 8 is to come into force on a day to be specified by the Secretary of State and notified in the London, Edinburgh and Belfast Gazettes: see art 1(2), (3). Article 8(8) came into force on 22 October 2003, as did art 8(1)-(6) for the purpose of making rules under art 8(8). At the date at which this volume states the law no day had been specified for the commencement of art 8 for remaining purposes. As to the Secretary of State see PARA 5 ante.

The Board must make rules as to the procedure to be followed in relation to and by persons wishing to apply to the Board for a certificate of completion of training, including rules as to the evidence it requires in support of such an application: art 8(8). At the date at which this volume states the law no such rules had been made.

5 Ibid art 8(2). A certificate of completion of training in the specialty of oral and maxillo-facial surgery may be awarded only to a person who is also a registered dentist: art 8(2). For the meaning of 'registered dentist' see PARA 433 note 7 post.

6 Ibid art 8(3). However, nothing in art 8 prevents the Board from awarding a certificate of completion of training to a person when exercising its competent authority functions under the Directive art 8 as set out in the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 20(3)(a) (see PARA 88 text to notes 18-24 post): art 8(4). For the meaning of 'the Directive' see PARA 47 note 10 ante.

7 I.e. a specialty listed in ibid Sch 3: art 8(5).

8 Ibid art 8(6)(a).

9 Ibid art 8(6)(b).

10 Ibid art 8(6)(c).

11 Ibid art 8(6)(d).

12 I.e. the register kept by the registrar of the General Medical Council under the Medical Act 1983 s 2 (see PARA 34 ante): General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 8(6)(e). As to the General Medical Council see PARA 13 et seq ante.

13 As to the chair of the Board see PARA 75 ante.

14 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 8(7).

15 I.e. for the purposes of the Directive art 30 which requires EEA states to institute specific training in general practice. For the meaning of 'EEA state' see PARA 46 note 6 ante.

16 'Vocational training certificate' means a diploma, certificate or other evidence of formal qualifications awarded on completion of a course of specific training in general medical practice and referred to in the Directive art 30: General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, Sch 1.

17 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

18 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 8(9). The following are also vocational training certificates: (1) a certificate of prescribed experience (art 8(10)(a)); and (2) a certificate of equivalent experience that has been annotated in accordance with the National Health Service Vocational Training Regulations, SI 1997/2817, reg 12(7) (see HEALTH SERVICES vol 54 (2008) PARA 263) (General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 8(10)(b)). For the meaning of 'certificate of prescribed experience' see PARA 50 note 11 ante; and for the meaning of 'certificate of equivalent experience' see PARA 50 note 12 ante. As to the minimum requirements for general practice training see PARA 84 ante.

19 I.e. for the purposes of the Directive art 4.

20 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 8(11). As to the minimum requirements for specialist training see PARA 85 ante.

21 Ibid art 8(12)(a).

22 Ibid art 8(12)(b).

## UPDATE

### 65-92 The competent authorities ... Rules and orders

Day now appointed in respect of provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250: London Gazette, 26 August 2005.

### **87 Certificates of completion of training**

NOTE 4--SI 2003/1250 art 8(3) amended, art 8(4), (9)-(11) revoked: SI 2007/3101.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/ (3) REGISTRATION, TRAINING AND QUALIFICATION/(ii) Medical Education and Standards of Proficiency/C. SPECIALIST AND POSTGRADUATE MEDICAL EDUCATION AND TRAINING/88. The competent authorities.

## **88. The competent authorities.**

As from a day to be appointed the following provisions have effect<sup>1</sup>. The Postgraduate Medical Education and Training Board (the 'Board')<sup>2</sup> is designated<sup>3</sup> as the competent authority<sup>4</sup> in the United Kingdom<sup>5</sup> in relation to specific training in general medical practice<sup>6</sup>, except that the General Medical Council<sup>7</sup> is designated as being responsible for the recognition of vocational training certificates<sup>8</sup> and certificates of acquired rights<sup>9</sup> issued in EEA states<sup>10</sup> other than the United Kingdom<sup>11</sup>.

In relation to specialist qualifications there are two competent authorities in the United Kingdom<sup>12</sup>. The General Medical Council is designated as the competent authority for the purposes of the recognition and registration of specialist qualifications<sup>13</sup>, and the Board is designated as the competent authority for the purposes of specialist training and the issue of certificates of completion of training<sup>14</sup> and certain other certificates<sup>15</sup>.

In addition to the other functions conferred upon it<sup>16</sup>, the General Medical Council performs the function, in the event of justified doubts, of requiring the competent authority of another member state that has awarded a diploma, certificate or other evidence of formal qualification to confirm its authenticity and to confirm that the holder of the diploma, certificate or other evidence of formal qualification has fulfilled the minimum training requirements<sup>17</sup>. In addition to the other functions conferred upon it<sup>18</sup>, the Board performs the following functions of a member state or its competent authorities or bodies:

76 (1) the function<sup>19</sup>:

39

58. (a) of assessing the content and duration of specialist training of an EEA<sup>20</sup> national who holds a specialist qualification awarded by a member state in a specialty in which the United Kingdom does not award a certificate of completion of training<sup>21</sup>;
59. (b) of taking into account the content and duration of the specialist training of the person concerned, together with that person's professional experience, additional training and continuing medical education, in determining what, if any, additional training that person must complete in order to obtain a certificate of completion of training in a specified United Kingdom specialty<sup>22</sup>;
60. (c) of communicating its decision to the person concerned within four months of the date on which that person submits his application for a certificate of completion of training, together with full supporting documentation<sup>23</sup>; and
61. (d) the function of awarding certificates of completion of training to EEA nationals<sup>24</sup>;

40

- 77 (2) where required to do so by another EEA state, the function<sup>25</sup> of issuing certificates to specialists holding a specialist qualification that does not satisfy all the minimum training requirements<sup>26</sup> and that was awarded following training begun before the relevant date<sup>27</sup> where either:

41

62. (a) that qualification was awarded by the United Kingdom<sup>28</sup>; or
63. (b) the person holding that qualification has subsequently become established in the United Kingdom<sup>29</sup>,

- 42
- 78 stating that, where applicable, the holder has been engaged in the practice of his specialty for at least the required period<sup>30</sup>;
- 79 (3) the function of issuing certificates of fulfilment of training requirements<sup>31</sup> in respect of specialist qualifications which do not conform with the specified designations<sup>32</sup>; and
- 80 (4) where a request is received from another member state, the function of confirming authenticity of a certificate of completion of training and of confirming that a person holding a certificate of completion of training has fulfilled the minimum training requirements<sup>33</sup>.

1 The General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, arts 19, 20 are to come into force on a day to be specified by the Secretary of State and notified in the London, Edinburgh and Belfast Gazettes: see art 1(2), (3). At the date at which this volume states the law no such day had been specified.

2 As to the Board see PARA 71 ante.

3 Ie pursuant to the Directive art 42. For the meaning of 'the Directive' see PARA 47 note 10 ante.

4 For the meaning of 'competent authority' see PARA 47 note 12 ante.

5 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

6 Ie for the purposes of Title IV of the Directive: General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 19(a).

7 As to the General Medical Council see PARA 13 et seq ante.

8 For the meaning of 'vocational training certificate' see PARA 87 note 18 ante.

9 For the meaning of 'certificate of acquired rights' see PARA 50 note 4 ante.

10 For the meaning of 'EEA state' see PARA 46 note 6 ante.

11 Ie for the purposes of the Directive art 37: General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 19(b).

12 Ibid art 20(1). The authorities are designated pursuant to the Directive art 42 for the purposes of Title II and Title III: see the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 20(1).

13 Ibid art 20(1)(a).

14 For the meaning of 'certificate of completion of training' see PARA 87 note 2 ante.

15 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 20(1)(b). This provision is expressed to be subject to art 3(12): see PARA 71 note 3 ante.

16 Ie elsewhere in the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250 (as amended).

17 Ie the minimum training requirements of the Directive: General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 20(2).

18 Ie elsewhere in the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250 (as amended).

19 Ie under the Directive art 8.

20 For the meaning of 'EEA' see PARA 46 note 6 ante.

21 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 20(3)(a)(i).

22 Ibid art 20(3)(a)(ii).

23 Ibid art 20(3)(a)(iii).

24 Ie in accordance with the requirements of the Directive art 8: General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 20(3)(a)(iv).

25 Ie as set out in the Directive art 9(2).

26 Ie as laid down by the Directive.

27 For the meaning of 'relevant date' see PARA 47 note 11 ante; definition applied by the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 20(3)(b).

28 Ibid art 20(3)(b)(i).

29 Ibid art 20(3)(b)(ii).

30 Ie the period required by the Directive art 9(2): General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 20(3)(b).

31 Ie the requirements of the Directive.

32 Ie as set out in the Directive: General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 20(3)(c).

33 Ie the requirements of the Directive. General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 20(3)(d).

## **UPDATE**

### **65-92 The competent authorities ... Rules and orders**

Day now appointed in respect of provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250: London Gazette, 26 August 2005.

### **88 The competent authorities**

TEXT AND NOTES--SI 2003/1250 art 19 substituted, art 20 revoked, Sch 7A added: SI 2007/3101.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/ (3) REGISTRATION, TRAINING AND QUALIFICATION/(ii) Medical Education and Standards of Proficiency/C. SPECIALIST AND POSTGRADUATE MEDICAL EDUCATION AND TRAINING/89. Appeals against a decision of the Board.

## **89. Appeals against a decision of the Board.**

The Postgraduate Medical Education and Training Board (the 'Board')<sup>1</sup> must secure that a person falling within heads (1) to (11) below has the right of appeal against the decision, act or omission specified in the relevant head to a panel of independent persons, called 'an appeal panel', which must be convened by the Board as soon as practicable<sup>2</sup>. The persons to whom this provision applies are:

- 81 (1) any hospital, institution or other person who satisfies an appeal panel that it or he has a substantial interest in a decision relating to the approval of education and training leading to the award of a certificate of completion of training<sup>3</sup> where the Board has<sup>4</sup>:
- 43
64. (a) refused to approve that education and training other than by virtue of a restriction imposed by rules<sup>5</sup>;
65. (b) approved that education and training subject to conditions<sup>6</sup>; or
66. (c) withdrawn approval from that education and training<sup>7</sup>;
- 44
- 82 (2) a general practitioner<sup>8</sup> whom the Board has refused to approve<sup>9</sup>, has approved subject to conditions<sup>10</sup>, or from whom the Board has withdrawn approval<sup>11</sup>;
- 83 (3) a person to whom the Board refuses to award a certificate of completion of training<sup>12</sup>;
- 84 (4) a person whose certificate of completion of training the Board withdraws<sup>13</sup>;
- 85 (5) a person who fails to satisfy the Board that he is an eligible general practitioner<sup>14</sup>;
- 86 (6) a person to whom, in respect of training or qualifications in general practice, the Board fails to give a decision within three months of the date on which the applicant submits his application, together with full supporting documentation<sup>15</sup>;
- 87 (7) a person who fails to satisfy the Board that he is an eligible specialist<sup>16</sup>;
- 88 (8) a person to whom, in respect of specialist training or qualifications, the Board fails to give a decision within three months of the date on which the applicant submits his application, together with full supporting documentation<sup>17</sup>;
- 89 (9) a person to whom the Board refuses to award a certificate of completion of training when exercising its functions as competent authority<sup>18</sup>;
- 90 (10) a person who has made an application to the Board as a consequence of its functions as competent authority<sup>19</sup> and to whom it fails to give a decision within the specified time period<sup>20</sup>; and
- 91 (11) a person to whom the Board refuses to award a certificate of acquired rights<sup>21</sup>.

Having considered an appeal, an appeal panel may dismiss the appeal<sup>22</sup>, allow the appeal and quash the decision appealed against<sup>23</sup>, substitute for the decision appealed against any other decision that the Board could have made<sup>24</sup>, or remit the case to the Board to be disposed of in accordance with the directions of the appeal panel<sup>25</sup>. However, where an appeal is made under head (6), (8) or (10) above, an appeal panel may, having considered the appeal, dismiss the

appeal<sup>26</sup>, or allow the appeal and direct the Board to take a decision within a specified time<sup>27</sup>, or make any decision that the Board could have made<sup>28</sup>.

The Board may pay such allowances and expenses to persons appointed to an appeal panel as it may determine<sup>29</sup>.

1 As to the Board see PARA 71 ante.

2 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 21(1). Article 21 is to come into force on a day to be specified by the Secretary of State and notified in the London, Edinburgh and Belfast Gazettes: see art 1(2), (3). Article 21(6)-(8) came into force on 22 October 2003, as did art 21(1)-(5) for the purpose of making rules under art 21(6). At the date at which this volume states the law no day had been specified for the commencement of art 21 for remaining purposes. As to the Secretary of State see PARA 5 ante.

3 Ie pursuant to ibid art 4(5): see PARA 83 text to notes 10-16 ante. For the meaning of 'certificate of completion of training' see PARA 87 note 2 ante.

4 Ibid art 21(2)(a).

5 Ie rules made under ibid art 4(10) by virtue of art 4(11) (see PARA 83 text to note 22 ante): art 21(2)(a)(i).

6 Ie under ibid art 4(7) (see PARA 83 text to note 18 ante): art 21(2)(a)(ii).

7 Ie under ibid art 4(8) (see PARA 83 text to notes 19-21 ante), other than by virtue of a restriction imposed by rules it has made under art 4(10) by virtue of art 4(11) (see PARA 83 text to note 22 ante) (art 21(2)(a)(iii)(aa)); or under art 9(4) (see PARA 86 text to note 20 ante) (art 21(2)(a)(iii)(bb)).

8 For the meaning of 'general practitioner' see PARA 49 note 23 ante.

9 Ie under the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 4(5)(d) (see PARA 83 text to notes 14, 15 ante): art 21(2)(b)(i).

10 Ie imposed under ibid art 4(7) (see PARA 83 text to note 18 ante): art 21(2)(b)(ii).

11 Ie under art 4(8) (see PARA 83 text to notes 19-21 ante): art 21(2)(b)(iii).

12 Ie pursuant to ibid art 8 (see PARA 87 ante): art 21(2)(c).

13 Ie pursuant to ibid art 8(12) (see PARA 87 text to notes 23-25 ante): art 21(2)(d).

14 Ie in accordance with ibid art 11(3) (see PARA 50 text to notes 14-18 ante): art 21(2)(e). The right of appeal under art 21(2)(e), (g), (i) (see the text to notes 16, 18 infra) includes a right of appeal against a decision of the Board as to the length of additional training, the fields to be covered by it or any examination, assessment (including a specified period of assessment) or other test of competence that the Board has specified under art 11(5) (see PARA 50 text to notes 24-26 ante), art 14(9) (see PARA 46 text to notes 24-26 ante), or art 20(3)(a)(ii) (see PARA 88 text to note 22 ante): art 21(3).

15 Ie a decision under ibid art 11(3) (see PARA 50 text to notes 14-18 ante): art 21(2)(f).

16 Ie in accordance with ibid art 14(4), (5) (see PARA 46 text to notes 8-19 ante): art 21(2)(g). See also note 14 supra.

17 Ie a decision under ibid art 14(4), (5) (see PARA 46 text to notes 8-19 ante): art 21(2)(h).

18 Ie as specified in ibid art 20(3)(a) (see PARA 88 text to notes 18-24 ante): art 21(2)(i). See also note 14 supra.

19 Ie as specified in ibid art 20(3)(a): see PARA 88 text to notes 18-24 ante.

20 Ie specified in ibid art 20(3)(a)(iii) (see PARA 88 text to note 23 ante): art 21(2)(j).

21 Ie under ibid art 12(3) (see PARA 51 text to notes 13-15 ante): art 21(2)(k). For the meaning of 'certificate of acquired rights' see PARA 50 note 4 ante.

22 Ibid art 21(4)(a).



- 23 Ibid art 21(4)(b).
- 24 Ibid art 21(4)(c).
- 25 Ibid art 21(4)(d).
- 26 Ibid art 21(5)(a).
- 27 Ibid art 21(5)(b)(i).
- 28 Ibid art 21(5)(b)(ii).
- 29 Ibid art 21(8).

## **UPDATE**

### **65-92 The competent authorities ... Rules and orders**

Day now appointed in respect of provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250: London Gazette, 26 August 2005.

### **89 Appeals against a decision of the Board**

TEXT AND NOTES--SI 2003/1250 art 21 amended: SI 2007/3101.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/ (3) REGISTRATION, TRAINING AND QUALIFICATION/(ii) Medical Education and Standards of Proficiency/C. SPECIALIST AND POSTGRADUATE MEDICAL EDUCATION AND TRAINING/90. Rules relating to appeals.

## 90. Rules relating to appeals.

The Postgraduate Medical Education and Training Board (the 'Board')<sup>1</sup> must make rules<sup>2</sup> as to the procedure to be followed and the rules of evidence to be observed by an appeal panel hearing an appeal<sup>3</sup>. The rules must in particular provide<sup>4</sup>:

- 92 (1) for the period within which a person is permitted to appeal to the appeal panel against a decision, act or omission of the Board<sup>5</sup>;
- 93 (2) for the Board to maintain a list of persons who may be appointed to an appeal panel<sup>6</sup>;
- 94 (3) for an appeal panel to consist of three members and a chair<sup>7</sup>;
- 95 (4) for two members of an appeal panel to be registered medical practitioners<sup>8</sup>, and for one member to be a person who is not and never has been a registered medical practitioner, and who does not hold any qualification that is registrable under the Medical Act 1983<sup>9</sup>;
- 96 (5) for the chair of an appeal panel to be legally qualified<sup>10</sup>;
- 97 (6) that no person who is a member of the Board<sup>11</sup>, the statutory committees<sup>12</sup> or any other committee of the Board<sup>13</sup>, may be appointed to an appeal panel<sup>14</sup>;
- 98 (7) that proceedings of an appeal panel must take place in public unless the person or body who is appealing requests a private hearing<sup>15</sup>; and
- 99 (8) that an appeal panel must give reasons for its decision<sup>16</sup>.

1 As to the Board see PARA 71 ante.

2 As to the making of rules by the Board see PARA 92 post.

3 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 21(6). At the date at which this volume states the law no such rules had been made. As to appeal panels and appeals see PARA 89 ante.

4 Ibid art 21(7).

5 Ibid art 21(7)(a).

6 Ibid art 21(7)(b).

7 Ibid art 21(7)(c).

8 For the meaning of 'registered medical practitioner' see PARA 4 ante.

9 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 21(7)(d). As to the registration of qualifications under the Medical Act 1983 see PARAS 99, 102, 107, 109, 111 post.

10 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 21(7)(e). The chair must have a 10 year general qualification within the meaning of the Courts and Legal Services Act 1990 s 71 (see LEGAL PROFESSIONS vol 65 (2008) PARA 742), be an advocate or solicitor in Scotland of at least 10 years' standing, or be a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least 10 years' standing: see the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 21(7)(e)(i)-(iii).

11 As to the membership of the Board see PARA 74 ante.

12 For the meaning of 'statutory committees' see PARA 71 note 20 ante.

13 As to the power of the Board to establish committees see PARA 77 ante.

14 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 21(7)(f).

15 Ibid art 21(7)(g).

16 Ibid art 21(7)(h).

## **UPDATE**

### **65-92 The competent authorities ... Rules and orders**

Day now appointed in respect of provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250: London Gazette, 26 August 2005.

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## **91. Appeals to a court against a decision of an appeal panel.**

As from a day to be appointed the following provisions have effect<sup>1</sup>. An appeal from any decision of an appeal panel<sup>2</sup> lies to the relevant court<sup>3</sup> but must be brought within 28 days beginning with the date on which the appellant was notified of the decision<sup>4</sup>. In any such appeal, the Postgraduate Medical Education and Training Board (the 'Board')<sup>5</sup> is the respondent<sup>6</sup>. Generally, the relevant court may dismiss the appeal<sup>7</sup>, allow the appeal and quash the decision appealed against<sup>8</sup>, substitute for the decision appealed against any other decision the Board could have made<sup>9</sup>, or remit the case to the Board to be disposed of in accordance with the directions of the court<sup>10</sup>. However, in certain cases<sup>11</sup>, the relevant court may dismiss the appeal<sup>12</sup>, or allow the appeal and remit the case to the Board to be disposed of in accordance with directions of the court<sup>13</sup>, or make any decision that the Board could have made<sup>14</sup>. The court may make such order as to costs as it thinks fit<sup>15</sup>.

1 The General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 22 is to come into force on a day to be specified by the Secretary of State and notified in the London, Edinburgh and Belfast Gazettes: see art 1(2), (3). At the date at which this volume states the law no such day had been specified.

2 As to appeal panels see PARA 89 ante.

3 'Relevant court' means the county court: see the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 22(5). As to county courts see COURTS.

4 Ibid art 22(1).

5 As to the Board see PARA 71 ante.

6 General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 22(2).

7 See ibid art 22(3)(a).

8 Ibid art 22(3)(b).

9 Ibid art 22(3)(c).

10 Ibid art 22(3)(d).

11 Ie where the appeal is against a decision of an appeal panel made under ibid art 21(5): see PARA 89 text to notes 26-28 ante.

12 Ibid art 22(4)(a).

13 Ibid art 22(4)(b)(i).

14 Ibid art 22(4)(b)(ii).

15 Ibid art 22(3). As to costs generally see CIVIL PROCEDURE vol 12 (2009) PARA 1729 et seq.

## **UPDATE**

**65-92 The competent authorities ... Rules and orders**

Day now appointed in respect of provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250: London Gazette, 26 August 2005.

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## **92. Rules and orders.**

Any rules<sup>1</sup> made by the Postgraduate Medical Education and Training Board (the 'Board')<sup>2</sup> or the General Medical Council<sup>3</sup> may make different provision with respect to different cases or classes of case or in respect of different areas of the United Kingdom<sup>4</sup>. Rules made with regard to fees<sup>5</sup> or the removal from office of a Board member<sup>6</sup> do not come into force until approved by order by the Secretary of State<sup>7</sup>. Except for such rules, the Board must publish the rules made, electronically or otherwise<sup>8</sup>.

The power of the Secretary of State to make an order<sup>9</sup> is exercisable by statutory instrument, and a statutory instrument containing such an order is subject to annulment in pursuance of a resolution of either House of Parliament<sup>10</sup>.

1    Ie under the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250 (as amended).

2    As to the Board see PARA 71 ante.

3    As to the General Medical Council see PARA 13 et seq ante.

4    General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 25(1). For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

5    Ie under ibid art 24: see PARA 45 note 8 ante.

6    Ie under ibid Sch 2 para 2(3): see PARA 74 text to note 18 ante.

7    Ibid art 25(2). The Secretary of State must not approve such rules unless he has consulted the Scottish Ministers, the Department of Health, Social Services and Public Safety in Northern Ireland, and the National Assembly for Wales: art 25(2)(a)-(c). As to the Scottish Ministers and the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to the Secretary of State see PARA 5 ante.

8    Ibid art 25(3).

9    Ie under the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250 (as amended), including an order made under art 25(2) (see the text to notes 5-7 supra).

10   Ibid art 25(4). For the purposes of the Statutory Instruments Act 1946 s 1, this provision has effect as if contained in an Act of Parliament: General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 25(4). As to the annulment of statutory instruments see STATUTES vol 44(1) (Reissue) PARA 1516.

## **UPDATE**

### **65-92 The competent authorities ... Rules and orders**

Day now appointed in respect of provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250: London Gazette, 26 August 2005.

## **92 Rules and orders**

NOTE 4--In exercise of the powers conferred on it by SI 2003/1250 art 25(1), the Board has made the Postgraduate Medical Education and Training Board (Fees) Rules 2009, approved by SI 2009/385.

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### **(iii) Qualifications and Experience required for Registration**

#### **93. Primary United Kingdom qualifications.**

'Primary United Kingdom qualification' means any of the following qualifications<sup>1</sup>: (1) degree of bachelor of medicine or bachelor of surgery, granted by any university in the United Kingdom<sup>2</sup>; (2) licentiate of the Royal College of Physicians of London, the Royal College of Surgeons of England, the Royal College of Physicians of Edinburgh, the Royal College of Surgeons of Edinburgh, or the Royal College, formerly Royal Faculty, of Physicians and Surgeons of Glasgow<sup>3</sup>; (3) membership of the Royal College of Surgeons of England granted before 30 March 1992<sup>4</sup>; (4) licentiate in medicine and surgery of the Society of Apothecaries of London<sup>5</sup>.

Any two or more of the universities and other bodies specified above may, with the approval and under the directions of the education committee<sup>6</sup>, unite or co-operate in conducting examinations held for the purpose of granting primary United Kingdom qualifications<sup>7</sup>.

1 Medical Act 1983 ss 4(3), 55(1). For the meaning of 'qualification' see PARA 34 note 2 ante. As to the control of the standards of education, training and examinations see PARA 57 et seq ante.

2 Ibid s 4(3)(a). For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

3 Ibid s 4(3)(b) (s 4(3)(b), (c) amended by the Medical Qualifications (Amendment) Act 1991 s 1). As to the medical Royal Colleges see PARA 64 ante.

4 le granted before the coming into force of the Medical Qualifications (Amendment) Act 1991 s 1: Medical Act 1983 s 4(3)(c) (as amended: see note 3 supra); Medical Qualifications (Amendment) Act 1991 (Commencement) Order 1992, SI 1992/804.

5 Medical Act 1983 s 4(3)(d). As to apothecaries see PARA 935 et seq post.

6 As to the education committee and its general function see PARA 57 ante.

7 Medical Act 1983 s 4(4).

#### **UPDATE**

#### **93-103 Qualifications and Experience required for Registration**

Directive 93/16 replaced: European Parliament and EC Council Directive 2005/36 on the recognition of professional qualifications.

#### **93 Primary United Kingdom qualifications**

TEXT AND NOTES--Medical Act 1983 s 4(3)(a), (4) amended, s 4(4A) added: SI 2008/1774.



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#### **94. Qualifying examinations.**

A qualifying examination for the purposes of the registration provisions of the Medical Act 1983<sup>1</sup> is an examination held by any of the following bodies or combinations of bodies for the purpose of granting one or more primary United Kingdom qualifications<sup>2</sup>. The bodies and combinations of bodies entitled to hold qualifying examinations are: (1) any of the universities of Oxford, Cambridge, London, Manchester, Birmingham, Liverpool, Leeds, Sheffield, Newcastle, Bristol, Nottingham, Southampton, Leicester, Wales, Glasgow, Aberdeen, Edinburgh, Dundee, the Queen's University of Belfast, or a combination of any two or more of these universities<sup>3</sup>; (2) a combination of the University of Leicester and the University of Warwick<sup>4</sup>; (3) a combination of the Royal College of Physicians of London and the Royal College of Surgeons of England<sup>5</sup>; (4) a combination of the Royal College of Physicians of Edinburgh and the Royal College of Surgeons of Edinburgh and the Royal College of Physicians and Surgeons of Glasgow<sup>6</sup>; (5) the Society of Apothecaries of London<sup>7</sup>; and (6) a combination of any two or more of the bodies specified in heads (3) to (5) above, with the approval and under the direction of the education committee<sup>8</sup>.

If it appears to the education committee that the standard of proficiency required from candidates at examinations held or to be held by any university or combination of universities in the United Kingdom<sup>9</sup> for the purpose of granting one or more primary United Kingdom qualifications does or will conform to the prescribed standard of proficiency<sup>10</sup>, the committee may represent to the Privy Council<sup>11</sup> that it is expedient that those examinations should become qualifying examinations<sup>12</sup>. Her Majesty may by Order in Council give effect to any such representations made to the Privy Council, and any such order may make such amendments in the Medical Act 1983<sup>13</sup> as are necessary for giving effect to the order<sup>14</sup>.

1    le for the purposes of the Medical Act 1983 Pt II (ss 3-18) but subject to its provisions: see s 4(1).

2    Ibid s 4(1). For the meaning of 'primary United Kingdom qualification' see PARA 93 ante.

3    Ibid s 4(2)(a).

4    Ibid s 4(2)(aa) (added by the Medical Act 1983 (Medical Education) Order 2000, SI 2000/1841, art 2).

5    Medical Act 1983 s 4(2)(b). As to the medical Royal Colleges see PARA 64 ante.

6    Ibid s 4(2)(c).

7    Ibid s 4(2)(d). As to apothecaries see PARA 935 et seq post.

8    Ibid s 4(2)(e). As to the education committee and its general function see PARA 57 ante.

9    For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

10   For the meaning of 'prescribed standard of proficiency' see PARA 57 note 6 ante.

11   As to the exercise by the Privy Council of its powers under the Medical Act 1983 see PARA 32 ante. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

12   Medical Act 1983 s 8(1).

13   le in ibid s 4(2): see the text to notes 3-8 supra.

14 Ibid s 8(2). The requirement of s 51(2) (see PARA 32 text to note 2 ante) that any statutory instrument containing an Order in Council is subject to annulment in pursuance of a resolution of either House of Parliament does not apply to an order made under s 8(2): see s 51(3). As to the order that has been made see the Medical Act 1983 (Medical Education) Order 2000, SI 2000/1841. As to Orders in Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 907.

## **UPDATE**

### **93-103 Qualifications and Experience required for Registration**

Directive 93/16 replaced: European Parliament and EC Council Directive 2005/36 on the recognition of professional qualifications.

### **94 Qualifying examinations**

TEXT AND NOTES 1-8--Medical Act 1983 s 4(1), (2) now s 4(1), (1A)-(1D) (substituted by SI 2008/1774).

TEXT AND NOTES 9-14--Repealed: SI 2008/1774.

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## **95. Experience required for full registration.**

After passing a qualifying examination<sup>1</sup>, a person must satisfy certain requirements as to experience before he is entitled to be registered as a fully registered<sup>2</sup> medical practitioner under the statutory provisions relating to registration of holders of primary United Kingdom qualifications<sup>3</sup>. The requirements are that he must have been engaged for the prescribed period<sup>4</sup> in employment in a resident medical capacity<sup>5</sup> in one or more approved<sup>6</sup> hospitals<sup>7</sup>, approved institutions<sup>8</sup> or approved medical practices<sup>9</sup> and have obtained an appropriate certificate<sup>10</sup>.

1 As to qualifying examinations see PARA 94 ante.

2 For the meaning of 'fully registered' see PARA 3 ante.

3 See the Medical Act 1983 s 10(1), (2) (s 10(1) amended by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 15(1)). For the meaning of 'primary United Kingdom qualification' see PARA 93 ante. As to the statutory provisions for registration of such persons see the Medical Act 1983 s 3 (as substituted); and PARA 99 post.

4 For these purposes, 'prescribed' means prescribed by regulations of the education committee: *ibid* s 11(4). In making regulations under s 10(2), the education committee must have regard to the requirements of Directive 93/16 art 23 and such regulations do not have effect until approved by order of the Privy Council: Medical Act 1983 s 11(5) (substituted by the European Primary Medical Qualifications Regulations 1996, SI 1996/1591, reg 7, Sch 2 para 3; and amended by the National Health Service (Primary Care) Act 1997 s 35(6)). For the meaning of 'Directive 93/16' see PARA 57 note 9 ante; and as to the requirements of art 23 see PARA 57 text to notes 11-18 ante. The Privy Council may approve regulations of the education committee made under the Medical Act 1983 s 10(2) either as submitted to it or with such modifications as appear to it requisite; but where the Privy Council proposes to approve any such regulations subject to modifications it must notify to the education committee the modifications it proposes to make and consider any observations of the committee on the proposed modifications: s 11(6). The power of the Privy Council to make such orders is exercisable by statutory instrument: see s 51(1). No such order may be made unless a draft has been laid before Parliament and approved by resolution of each House of Parliament: s 51(3). At the date at which this volume states the law no order had been made under s 11(5), but by virtue of s 56(1), Sch 6 paras 3, 14 and the Interpretation Act 1978 s 17(2)(b), the Medical Act 1950 (Period of Employment as House Officers) Regulations Approval Order of Council 1952, SI 1952/2050, which prescribes a period of 12 months, has effect as if made under the Medical Act 1983 ss 10, 11 (as amended). As to the laying of documents before Parliament see PARLIAMENT vol 34 (Reissue) PARA 941.

5 References to 'employment in a resident medical capacity' are to be construed as references to employment in the practice of any branch of medicine prescribed for the purposes of the Medical Act 1983 s 10 where: (1) in the case of an approved hospital or an approved institution, the person employed is resident in the hospital or institution where he is employed or conveniently near to it and is by the terms of his employment required to be so resident (s 11(1), (3)(a)); or (2) in the case of an approved medical practice, the person employed satisfies such conditions as to residence as may be prescribed (s 11(3)(b) (amended by the National Health Service (Primary Care) Act 1997 s 35(3)(a); and the National Health Service (Primary Care) Act 1997 s 35(3)(b)). For the purposes of the Medical Act 1983 s 11(3)(b) (as amended) and in the definition of 'medical practice' (see note 9 *infra*), 'prescribed' means prescribed by regulations made by the Secretary of State: s 11(4) (definition amended by the National Health Service (Primary Care) Act 1997 s 35(4)(b)). Such regulations made by the Secretary of State must be made by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: see the Medical Act 1983 s 11(7) (added by the National Health Service (Primary Care) Act 1997 s 35(7)). As to the regulations that have been made see the Medical Act 1983 (Approved Medical Practices and Conditions of Residence) and National Health Service (General Medical Services) (Amendment) Regulations 1998, SI 1998/1664 (amended by SI 2000/3040; SI 2004/696; SI 2004/865; SI 2004/1016). As to the Secretary of State see PARA 5 ante.

6 'Approved' means approved for the time being by any university or other body specified in the Medical Act 1983 s 4(3) (see PARA 93 text to notes 1-5 ante) as providing experience required by one or more prescribed patterns of experience: s 11(4). For the meaning of 'prescribed pattern of experience' see PARA 57 note 8 ante.

7 Ibid s 10(2)(a) (s 10(2)(a)-(c) substituted by the National Health Service (Primary Care) Act 1997 s 35(2)).

8 Medical Act 1983 s 10(2)(b) (as substituted: see note 7 supra). 'Institution' includes a health centre if, and only if, it is a centre provided under the National Health Service Act 1977 ss 2, 3; Medical Act 1983 s 12(1). Employment in such a centre is not treated as employment for the purposes of ss 10, 11 (as amended) unless it is either: (1) employment by a fully registered medical practitioner in the provision of primary medical services under the National Health Service Act 1977 Pt I (ss 1-28Y) (as amended) (Medical Act 1983 s 12(2)(a) (amended by the Health and Social Care (Community Health and Standards) Act 2003 s 184, Sch 11 paras 47, 49)); or (2) employment in the provision of the services of specialists or other services provided for out-patients in a health centre provided as mentioned in the Medical Act 1983 s 12(1) (s 12(2)(b)). The education committee may by regulations provide that the period of employment in a health centre which may be reckoned towards the completion of any of the periods mentioned in s 10(3)(a) (see PARA 96 text to note 5 post) must not exceed such period as may be specified in the regulations: s 12(3). In making such regulations, the education committee must have regard to the requirements of Directive 93/16 art 23; Medical Act 1983 s 12(4) (added by the European Primary Medical Qualifications Regulations 1996, SI 1996/1591, reg 7, Sch 2 para 4). Regulations made by the education committee under the Medical Act 1983 s 12(3) are not statutory instruments and are not recorded in this work.

9 Ibid s 10(2)(c) (as substituted: see note 7 supra). 'Medical practice' means a prescribed description of practice in which one or more medical practitioners perform primary medical services under the National Health Service Act 1977 Pt I (as amended) (see HEALTH SERVICES vol 54 (2008) PARA 263); Medical Act 1983 s 11(4) (definition added by the National Health Service (Primary Care) Act 1997 s 35(4)(a); and amended by the Health and Social Care (Community Health and Standards) Act 2003 s 184, Sch 11 paras 47, 48(a)). See also note 5 supra.

10 Medical Act 1983 s 10(2). As to such certificates see PARA 96 post. For alternative requirements as to experience see PARA 97 post.

## **UPDATE**

### **93-103 Qualifications and Experience required for Registration**

Directive 93/16 replaced: European Parliament and EC Council Directive 2005/36 on the recognition of professional qualifications.

### **95 Experience required for full registration**

NOTE 5--SI 1998/1664 replaced: Medical Act 1983 (Approved Medical Practices and Conditions of Residence) Regulations 2005, SI 2005/2413.

NOTE 8--1983 Act s 12(1) amended, s 12(2)(a) further amended: National Health Service (Consequential Provisions) Act 2006 Sch 1 para 77.

NOTE 9--Definition of 'medical practice' in 1983 Act s 11(4) further amended: 2006 Act Sch 1 para 76.

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## **96. Certificates as to experience.**

A person who has been employed as specified<sup>1</sup> may apply to his examining body<sup>2</sup> for a certificate, and that body must grant him a certificate in the prescribed<sup>3</sup> form if it is satisfied<sup>4</sup>: (1) that during the time he has been so employed he has been engaged in at least two prescribed branches of medicine for the minimum period prescribed for each branch<sup>5</sup>; (2) that the combination of posts which he has held while so employed was such as to provide him with the experience required by a prescribed pattern of experience<sup>6</sup> recognised by that body as applicable to persons for whom it is the examining body<sup>7</sup>; and (3) that his service while so employed has been satisfactory<sup>8</sup>.

Where, on an application in that behalf, a person satisfies the General Medical Council<sup>9</sup> that by reason of lasting physical disability he will be or has been prevented from embarking on or completing any period of experience of the practice of a prescribed branch of medicine, the Council may if it thinks fit direct<sup>10</sup> that the applicant may count in lieu thereof experience of the practice of some other prescribed branch of medicine, whether or not one in the practice of which he has already had experience, acquired in the same manner and for the same period, or, as the case may be, for so much of that period as will have remained uncompleted<sup>11</sup>.

1    Ie as specified in the Medical Act 1983 s 10(2): see PARA 95 ante.

2    For the meaning of 'examining body' see PARA 63 note 7 ante.

3    For the meaning of 'prescribed' see PARA 95 note 4 ante.

4    See Medical Act 1983 s 10(3).

5    Ibid s 10(3)(a). The education committee may by regulations provide that the period of employment in a medical practice which may be reckoned towards the completion of any of the periods mentioned in s 10(3)(a) must not exceed such period as may be specified in the regulations: s 11(4A) (added by the National Health Service (Primary Care) Act 1997 s 35(5)). At the date at which this volume states the law no such regulations had been made. For the meaning of 'medical practice' see PARA 95 note 9 ante. As to the making of regulations by the education committee see PARA 95 note 4 ante. As to the education committee and its general function see PARA 57 ante.

6    For the meaning of 'a prescribed pattern of experience' see PARA 57 note 8 ante.

7    Medical Act 1983 s 10(3)(b).

8    Ibid s 10(3)(c).

9    As to the General Medical Council see PARA 13 et seq ante.

10   Where the Council gives such a direction it must give notice of it to the person's examining body: Medical Act 1983 s 10(5).

11   Ibid s 10(4).

## **UPDATE**

### **93-103 Qualifications and Experience required for Registration**

Directive 93/16 replaced: European Parliament and EC Council Directive 2005/36 on the recognition of professional qualifications.

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## **97. Alternative requirements as to experience.**

Alternative requirements as to experience may be applied in the case of a person claiming registration under the registration provisions<sup>1</sup> of the Medical Act 1983 who claims registration by virtue of a qualification<sup>2</sup> granted before 1 January 1953<sup>3</sup>, or who is the holder of a primary United Kingdom qualification<sup>4</sup> and also of a qualification granted outside the United Kingdom<sup>5</sup> which is recognised by the General Medical Council<sup>6</sup> for this purpose as furnishing a sufficient guarantee of the possession of knowledge and skill corresponding with the prescribed knowledge and skill<sup>7</sup>.

On application made to it by such a person, the Council may direct that, as an alternative to the normal requirements as to experience<sup>8</sup>, it will be sufficient for him to satisfy the Council that he has acquired experience of the practice of medicine, whether in the course of employment in the United Kingdom or in the course of employment outside the United Kingdom, which is not less extensive than that required for the normal certificate<sup>9</sup> as to experience<sup>10</sup>.

1    Ie under the Medical Act 1983 s 3 (as substituted): see PARA 99 post.

2    For the meaning of 'qualification' see PARA 34 note 2 ante.

3    Medical Act 1983 s 14(2)(a).

4    For the meaning of 'primary United Kingdom qualification' see PARA 93 ante.

5    For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

6    As to the General Medical Council see PARA 13 et seq ante.

7    Medical Act 1983 s 14(2)(b). As to the preservation of the rights to registration as medical practitioners in the United Kingdom of persons who have, on or before 30 April 1985, acquired medical qualifications awarded in the Republic of Ireland see the Irish Republic (Termination of 1927 Agreement) Order 1979, SI 1979/289, art 3. See also the Medical Act 1983 s 56, Sch 6 para 4 (amended by the Dentists Act 1984 s 54(1), Sch 5 para 15); and PARA 11 ante. For the meaning of 'the prescribed knowledge and skill' see PARA 57 note 4 ante.

8    Ie the requirements of the Medical Act 1983 s 10: see PARA 95 ante.

9    Ie the certificate under ibid s 10: see PARA 96 ante.

10   Ibid s 14(1). In giving directions under s 14(1) in the case of applicants falling within s 14(2)(b) (see the text to notes 4-7 supra), the General Medical Council must have regard to the requirements of Directive 93/16 art 23: Medical Act 1983 s 14(3) (added by the European Primary Medical Qualifications Regulations 1996, SI 1996/1591, reg 7, Sch 2 para 5). For the meaning of 'Directive 93/16' see PARA 57 note 9 ante; and as to the requirements of art 23 see PARA 57 text to notes 11-18 ante.

## **UPDATE**

### **93-103 Qualifications and Experience required for Registration**

Directive 93/16 replaced: European Parliament and EC Council Directive 2005/36 on the recognition of professional qualifications.

## **97 Alternative requirements as to experience**

TEXT AND NOTES--See the Medical Act 1983 s 14A (full registration of EEA nationals etc without certain acquired rights certificates) (added by SI 2007/3101).

NOTE 10--Medical Act 1983 s 14(3) amended: SI 2007/3101.



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## **98. Primary qualifications obtained in other EEA states.**

A primary European qualification is any of the following obtained in an EEA state<sup>1</sup> other than the United Kingdom<sup>2</sup>: (1) a European qualification<sup>3</sup> which was obtained on or after the implementation date<sup>4</sup> and is not evidence of training commenced before that date<sup>5</sup>; (2) a qualification<sup>6</sup> obtained before the implementation date, or on or after that date where training of which it is evidence commenced before that date<sup>7</sup>; (3) a qualification not listed as a European qualification<sup>8</sup>; (4) a qualification which is evidence of training commenced before 3 October 1990 and undertaken on the territory of the former German Democratic Republic<sup>9</sup>; (5) a qualification which is evidence of training commenced before the specified date and undertaken in the former Czechoslovakia, the former Soviet Union or Yugoslavia<sup>10</sup>, or was awarded by one of those states before the specified date<sup>11</sup>.

1 For the meaning of 'EEA state' see PARA 3 note 2 ante.

2 Medical Act 1983 s 17(1) (s 17 substituted by the European Primary Medical Qualifications Regulations 1996, SI 1996/1591, reg 4(1)). For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

3 I.e. a qualification listed in the Medical Act 1983 s 17, Sch 2 (substituted by the European Qualifications (Health Care Professions) Regulations 2003, SI 2003/3148, reg 9(1), (5), Sch 4 Pt I; and amended by the European Qualifications (Health and Social Care Professions and Accession of New Member States) Regulations 2004, SI 2004/1947, reg 3(1), (6)). The Medical Act 1983 Sch 2 (as substituted and amended) lists in respect of each EEA state those qualifications which constitute primary European qualifications by setting out the title of the qualification, the awarding body and, where applicable, the certificate accompanying the qualification.

4 'The implementation date' means in the case of Greece, 1 January 1981; in the case of Spain and Portugal, 1 January 1986; in the case of Austria, Finland, Iceland, Norway and Sweden, 1 January 1994; in the case of Liechtenstein, 1 May 1995; in the case of Switzerland, 1 June 2002; in the case of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, 1 May 2004; and in the case of any other EEA state, 20 December 1976: *ibid* s 17(6) (as substituted (see note 2 supra); and amended by the European Qualifications (Health Care Professions) Regulations 2003, SI 2003/3148, reg 9(1), (4)(b), and the European Qualifications (Health and Social Care Professions and Accession of New Member States) Regulations 2004, SI 2004/1947, reg 3(1), (5)(d)).

5 Medical Act 1983 s 17(1)(a) (as substituted: see note 2 supra).

6 For the meaning of 'qualification' see PARA 34 note 2 ante.

7 Medical Act 1983 s 17(1)(b) (as substituted: see note 2 supra). In the case of any such qualification, either: (1) it must be such that the registrar is satisfied with respect to it, by means of a certificate of the medical authorities of the EEA state in which it was obtained or otherwise, that it accords with the standards laid down by Directive 93/16 (Medical Act 1983 s 17(2)(a) (as so substituted)); or (2) evidence of it must be accompanied by a certificate of the medical authorities of any EEA state that the holder has effectively and lawfully been engaged in actual medical practice for at least three consecutive years during the five years preceding the date of the certificate (s 17(2)(b) (as so substituted)). In s 17(2)-(4A) (as substituted and added), references to the medical authorities of an EEA state are references to the authorities and bodies designated in accordance with Directive 93/16: s 17(5) (as so substituted; and amended by the European Qualifications (Health and Social Care Professions and Accession of New Member States) Regulations 2004, SI 2004/1947, reg 3(1), (5)(c)). For the meaning of 'the registrar' see PARA 23 note 1 ante. For the meaning of 'Directive 93/16' see PARA 57 note 9 ante.

Where a member state has issued a certificate stating that a qualification has been awarded following training in accordance with the specified requirements, or has confirmed the authenticity of a qualification and the fact that the holder of the qualification has completed all the requisite training requirements, another member state is bound by that certificate or authentication; however, in the event of new factors coming to light which give

rise to serious doubts as to the authenticity of the qualification or as to whether it complies with the applicable rules, it is permissible for the latter member state to re-open the matter of verification with the authorities of the member state awarding the relevant qualification: Case-110/1 *Tennah-Durez v Conseil National de l'Ordre des Medecins* [2003] All ER (EC) 850, [2004] 1 CMLR 417, ECJ.

8 le in the Medical Act 1983 Sch 2 (as substituted and amended) (see note 3 supra): s 17(1)(c) (as substituted: see note 2 supra). In the case of any such qualification, evidence of it must be accompanied by a certificate of the medical authorities of the EEA state in which it was obtained to the effect that: (1) it was awarded following training which satisfied the requirements of Directive 93/16 art 23 (Medical Act 1983 s 17(3)(a) (as so substituted)); and (2) it is treated by that state as if it were a qualification listed in relation to that state in Annex A of Directive 93/16 (Medical Act 1983 s 17(3)(b) (as so substituted; and amended by the European Qualifications (Health Care Professions) Regulations 2003, SI 2003/3148, reg 9(1), (4)(a)). See also note 7 supra. As to the requirements of Directive 93/16 art 23 see PARA 57 text to notes 11-18 ante.

9 Medical Act 1983 s 17(1)(d) (as substituted: see note 2 supra). In the case of any such qualification: (1) it must be such that the registrar is satisfied with respect to it, by means of a certificate of the German medical authorities or otherwise, that the holder is entitled by virtue of it to engage in medical practice throughout the territory of Germany on the same conditions as the holder of a German qualification listed in Sch 2 (as substituted) (s 17(4)(a) (as so substituted)); and (2) evidence of it must be accompanied by a certificate of the German medical authorities that the holder has effectively and lawfully been engaged in actual medical practice in Germany for at least three consecutive years during the five years preceding the date of the certificate (s 17(4)(b) (as so substituted)). See also note 7 supra.

10 Ibid s 17(1)(e)(i) (s 17(1)(e), (4A) added by the European Qualifications (Health and Social Care Professions and Accession of New Member States) Regulations 2004, SI 2004/1947, reg 3(1), (5)(a), (b)).

11 Medical Act 1983 s 17(1)(e)(ii) (as added: see note 10 supra). The specified date in the case of the former Czechoslovakia is 1 January 1993; in the case of the former Soviet Union is 20 August 1991 in relation to Estonia, 21 August 1991 in relation to Latvia and 11 March 1990 in relation to Lithuania; and in the case of Yugoslavia is 25 June 1991: s 17(4A) Table (as so added). In the case of any such qualification: (1) it must be such that the registrar is satisfied with respect to it (by means of a certificate from the medical authorities of the relevant EEA state) that that qualification has, on its territory, the same legal validity as regards access to and practice of the medical profession as the qualification listed in relation to that state in Sch 2 (as substituted and amended) (s 17(4A)(a) (as so added)); and (2) evidence of it must be accompanied by a certificate from those authorities stating that the holder has effectively and lawfully been engaged in the activity in question on the territory of that state for at least 3 consecutive years during the 5 years preceding the date of issue of that certificate (s 17(4A)(b) (as so added)). The relevant EEA state is: in the case of the former Czechoslovakia, the Czech Republic or Slovakia; in the case of the former Soviet Union, Estonia, Latvia or Lithuania; in the case of Yugoslavia, Slovenia: s 17(4A) Table (as so added). See also note 7 supra.

## UPDATE

### 93-103 Qualifications and Experience required for Registration

Directive 93/16 replaced: European Parliament and EC Council Directive 2005/36 on the recognition of professional qualifications.

### 98 Primary qualifications obtained in other EEA states

TEXT AND NOTES--Medical Act 1983 s 17 amended, Sch 2 repealed: SI 2007/3101.

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#### **(iv) Registration of United Kingdom and EEA Practitioners**

##### **99. Full registration of holders of primary qualifications.**

Subject to the provisions of the Medical Act 1983, any person who: (1) holds one or more primary United Kingdom qualifications<sup>1</sup> and has passed a qualifying examination<sup>2</sup> and satisfies the specified requirements<sup>3</sup> as to experience<sup>4</sup>; or (2) being a national of any EEA state<sup>5</sup>, holds one or more primary European qualifications<sup>6</sup>, is entitled to be registered as a fully registered medical practitioner<sup>8</sup>.

A person registered with full or provisional registration<sup>9</sup> is entitled to have registered the primary United Kingdom qualification, or qualifications, or primary European qualification, or qualifications, which he holds when he is so registered<sup>10</sup>. He is also entitled to have registered: (a) any other primary United Kingdom qualification or primary European qualification<sup>11</sup> which he obtains after registration<sup>12</sup>; (b) any additional qualification<sup>13</sup> which the education committee<sup>14</sup> determines ought to be so registrable which he holds when he is registered or obtains thereafter<sup>15</sup>; (c) any overseas qualification which is for the time being registrable<sup>16</sup> which he holds when he is registered or obtains thereafter<sup>17</sup>.

Generally<sup>18</sup>, any right of persons to full or provisional registration<sup>19</sup> or to the registration of qualifications<sup>20</sup> is conditional on the making of an application supported by the required evidence<sup>21</sup>.

1 For the meaning of 'primary United Kingdom qualification' see PARA 93 ante.

2 For the meaning of 'qualifying examination' see PARA 94 ante.

3 I.e. the requirements of the Medical Act 1983 Pt II (ss 3-18) (as amended): see PARAS 95-97 ante.

4 Ibid s 3(1)(a) (s 3 substituted by the European Primary Medical Qualifications Regulations 1996, SI 1996/1591, reg 3(1)).

5 For the meanings of 'national' and 'EEA state' see PARA 3 note 2 ante.

6 Medical Act 1983 s 3(1)(b) (as substituted: see note 4 supra). For the meaning of 'primary European qualification' see PARA 98 ante. Any person who is not a national of an EEA state but is, by virtue of a right conferred by EC Council Regulation 1612/68 (OJ L257, 19.10.1968, p 2) art 11 or any other enforceable Community right, entitled to be treated for the purposes of access to the medical profession no less favourably than a national of such a state, must be treated for the purposes of the Medical Act 1983 s 3(1)(b) (as substituted) as if he were such a national: s 3(2) (as so substituted). As to the meaning of 'enforceable Community right' see the European Communities Act 1972 s 2(1); and the Interpretation Act 1978 s 5, Sch 1.

7 For the meaning of 'fully registered' see PARA 3 ante.

8 Medical Act 1983 s 3(1) (as substituted: see note 4 supra). If satisfied that the applicant is entitled to be registered in accordance with the application, the appropriate registrar must issue to the applicant a certificate of registration: see Sch 3 para 5(1); and PARA 38 ante. As to the provisions providing for the continuance of the right to full and provisional registration of persons awarded a primary Irish qualification before 30 April 1985 see the Irish Republic (Termination of 1927 Agreement) Order 1979, SI 1979/289, art 3. See also the Medical Act 1983 s 56(1), Sch 6 para 4 (amended by the Dentists Act 1984 s 54(1), Sch 5 para 15); and PARA 11 ante. In general, persons obtaining primary qualifications in the Republic of Ireland are entitled to full registration as European Union practitioners. As to the medical registers see PARA 34 et seq ante. As to appeals against a decision not to register the applicant see PARA 126 et seq post.

- 9 le under the Medical Act 1983 s 3 (as substituted), ss 15, 15A (as added) (see PARAS 102, 103 post).
- 10 Ibid s 16(1) (amended by the Medical Act 1983 (Provisional Registration) Regulations 2000, SI 2000/3041, regs 2, 4(1)). If satisfied that the applicant is entitled to have the qualification registered in accordance with the application, the appropriate registrar must issue him with a certificate of registration: see the Medical Act 1983 Sch 3 para 5(3); and PARA 38 ante. As to appeals against a decision not to register a qualification see PARA 126 post.
- 11 le as specified in the Medical Act 1983 Sch 2 (as substituted).
- 12 Ibid s 16(1)(a). As to appeals against a decision not to register a qualification see PARA 126 post.
- 13 'Additional qualification' means any qualification granted in an EEA state other than a primary United Kingdom qualification or a primary European qualification specified in ibid Sch 2 (as substituted): ss 16(2), 55(1) (s 16(2) amended by the European Primary Medical Qualifications Regulations 1996, SI 1996/1591, reg 7, Sch 2 para 6). For the meaning of 'qualification' see PARA 34 note 2 ante.
- 14 As to the education committee and its general function see PARA 57 ante.
- 15 Medical Act 1983 s 16(1)(b). If the education committee determines that any such qualification ought not to be so registrable if granted before or after a particular date, a person holding that qualification is not entitled to have it registered if it was granted to him before or, as the case may be, after that date: s 16(3). As to appeals against a decision not to register a qualification see PARA 126 post.
- 16 le by virtue of ibid s 26(1)(b): see PARA 107 text to notes 4-5 post.
- 17 Ibid s 16(1)(c) (amended by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 9(2)). As to appeals against a decision not to register a qualification see PARA 126 post.
- 18 le subject to the provisions of ibid s 33, Sch 3: see PARA 114 et seq post.
- 19 le under ibid s 3 (as substituted) (see the text to notes 1-8 supra), ss 15, 15A (as added) (see PARAS 102, 103 post).
- 20 le under ibid s 16 (see the text to notes 9-17 supra), s 26 (see PARA 107 post).
- 21 See ibid Sch 3 para 1(1).

## **UPDATE**

### **93-103 Qualifications and Experience required for Registration**

Directive 93/16 replaced: European Parliament and EC Council Directive 2005/36 on the recognition of professional qualifications.

### **99-103 Registration of United Kingdom and EEA Practitioners**

As to temporary registration in circumstances where a major emergency involving the loss of human life or illness has occurred, is occurring or is about to occur, see the Medical Act 1983 s 18A; and PARA 103A.

### **99 Full registration of holders of primary qualifications**

TEXT AND NOTES 1-8--Medical Act 1983 s 3 amended: SI 2006/1914, SI 2007/3101.

NOTE 9--Also under the Medical Act 1983 s 18A (as added) (see PARA 103A): s 16(1) (further amended by SI 2008/1774).

NOTES 18-21--Medical Act 1983 Sch 3 para 1(1) amended: SI 2007/3101.

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### **100. Visiting EEA practitioners.**

On complying with the conditions detailed below, a national of any EEA state<sup>1</sup> who is lawfully established in medical practice in an EEA state other than the United Kingdom<sup>2</sup>, on visiting the United Kingdom, may lawfully render medical services there temporarily without first being registered under the Medical Act 1983<sup>3</sup>. The conditions are that he must provide the registrar<sup>4</sup> with: (1) a declaration in writing<sup>5</sup> giving particulars of the services to be rendered and the period or periods in which he expects to render them<sup>6</sup>; and (2) a certificate or certificates issued by the competent authority or body<sup>7</sup> showing that he is lawfully practising medicine in an EEA state other than the United Kingdom<sup>8</sup> and that he holds medical qualifications which EEA states are required to recognise<sup>9</sup>. If these requirements are complied with, the registrar must register the person in the register of medical practitioners<sup>10</sup> as a visiting EEA practitioner, for such period or periods as the registrar considers appropriate<sup>11</sup>. The registration ceases if the practitioner becomes established in medical practice in the United Kingdom<sup>12</sup> or if he renders, save in a case of urgency, medical services in the United Kingdom otherwise than in accordance with the declaration made by him<sup>13</sup>.

1 For the meanings of 'national' and 'EEA state' see PARA 3 note 2 ante. Any person who is not a national of an EEA state, but is, by virtue of a right conferred by EC Council Regulation 1612/68 (OJ L257, 19.10.1968, p 2) on freedom of movement for workers art 11 or any other enforceable Community right, entitled to be treated for the purposes of access to the medical profession no less favourably than a national of such a state, must be treated for these purposes as if he were such a national: Medical Act 1983 s 18(6) (added by the European Primary Medical Qualifications Regulations 1996, SI 1996/1591, reg 5(5)). As to the meaning of 'enforceable Community right' see the European Communities Act 1972 s 2(1); and the Interpretation Act 1978 s 5, Sch 1.

2 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

3 Ie under the Medical Act 1983 Pt II (ss 3-18) (see PARA 99 ante), Pt III (ss 19-29) (see PARAS 104-113 post): see the Medical Act 1983 s 18(1) (s 18(1)-(5) amended by the European Primary Medical Qualifications Regulations 1996, SI 1996/1591, reg 5(1)-(4)). The Medical Act 1983 s 18(1) (as amended) does not apply to a person, and that person must not be registered as a visiting EEA practitioner, at any time when he is subject to a disqualifying decision imposed by a member state or its competent authority, or at a time when he is subject to a prohibition imposed by a fitness to practise panel under s 45 (as substituted) (see PARA 150 post): ss 44(7), 45(4) (both substituted by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 13). As to appeals against a decision not to register a person under the Medical Act 1983 s 44(7) (as substituted) see PARA 126 post.

4 For the meaning of 'the registrar' see PARA 23 note 1 ante.

5 For the meaning of 'writing' see PARA 20 note 22 ante.

6 Medical Act 1983 s 18(2)(a). In an urgent case, the documents to be provided under s 18(2) may be provided after the services have been rendered, but where they are so provided they must be provided as soon as possible thereafter and in any event not more than 15 days after the date on which the practitioner first rendered such services: s 18(3) (as amended: see note 3 supra). The prohibitions against the recovery of charges for medical services unless a person is fully registered (see PARA 222 post) and the unlawful use of titles (see PARA 190 post) do not apply to a person if he has previously complied with the requirements of s 18(2) or subsequently complies with those requirements as modified in respect of urgent cases by s 18(3) (as amended): see s 46(2) (amended by the European Primary Medical Qualifications Regulations 1996, SI 1996/1591, Sch 2, PARA 11); and the Medical Act 1983 s 49(2) (amended by the European Primary Medical Qualifications Regulations 1996, SI 1996/1591, Sch 2, PARA 12).

7 Ie the authority or body designated by the EEA state concerned as competent for the purposes of Directive 93/16 art 17(3): Medical Act 1983 s 18(2) (as amended: see note 3 supra). Such a certificate must bear a date

not less recent than 12 months prior to the date on which it is provided: s 18(2)(b). For the meaning of 'Directive 93/16' see PARA 57 note 9 ante. For the meaning of 'month' see PARA 13 note 14 ante.

8 Ibid s 18(2)(b)(i) (as amended: see note 3 supra). See also note 6 supra.

9 le by Directive 93/16: Medical Act 1983 s 18(2)(b)(ii) (as amended: see note 3 supra). See also note 6 supra.

10 For the meaning of 'the register of medical practitioners' see PARA 34 ante.

11 Medical Act 1983 s 18(4) (as amended: see note 3 supra). In making his decision, the registrar is to have regard to the particulars given in the declaration referred to in s 18(2)(a) (see the text to notes 4-6 supra): s 18(4). Registration is to be in the visiting EEA practitioners list: see s 30(1)(d) (amended by the European Primary Medical Qualifications Regulations 1996, SI 1996/1591, Sch 2 para 7). As to such list see PARA 34 ante. No application is required for such registration and no fee is chargeable: see the Medical Act 1983 ss 32(5), 33, Sch 3 para 7(1) (s 32(5) amended by the European Primary Medical Qualifications Regulations 1996, SI 1996/1591, Sch 2 para 8). The registrar may issue certificates of registration to visiting EEA practitioners: Medical Act 1983 Sch 3 para 7(2) (amended by the European Primary Medical Qualifications Regulations 1996, SI 1996/1591, Sch 2 para 14(3)). As to appeals against a decision that a person should not, or should no longer, be registered under the Medical Act 1983 s 18 (as amended) see PARA 126 post.

12 Ibid s 18(5)(a).

13 le the declaration made under ibid s 18(2)(a) (see the text to notes 4-6 supra): s 18(5)(b).

## **UPDATE**

### **93-103 Qualifications and Experience required for Registration**

Directive 93/16 replaced: European Parliament and EC Council Directive 2005/36 on the recognition of professional qualifications.

### **99-103 Registration of United Kingdom and EEA Practitioners**

As to temporary registration in circumstances where a major emergency involving the loss of human life or illness has occurred, is occurring or is about to occur, see the Medical Act 1983 s 18A; and PARA 103A.

### **100 Visiting EEA practitioners**

TEXT AND NOTES--Medical Act 1983 s 18 substituted, Sch 2A added: SI 2007/3101.

NOTES 3, 6--Medical Act 1983 s 45, 46(2), 49(2) repealed: SI 2007/3101.

NOTE 11--Medical Act 1983 s 30(1)(d), Sch 3 para 7 substituted, s 32(5) amended: SI 2007/3101.

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### **101. EEA practitioners subject to disqualifying decisions.**

A person who is subject to a disqualifying decision<sup>1</sup> in an EEA state<sup>2</sup> in which he is or has been established in medical practice is not entitled to be registered<sup>3</sup> for so long as the decision remains in force in relation to him<sup>4</sup>. If a person has been registered and it is subsequently shown to the satisfaction of the registrar<sup>5</sup> that he was subject to a disqualifying decision in force at the time of registration, and that the decision remains in force, the registrar must remove the person's name from the register<sup>6</sup>. Such a decision not to register a person or to remove a person's name from the register, is an appealable registration decision<sup>7</sup>.

If a person has been registered as a fully registered<sup>8</sup> medical practitioner at a time when a disqualifying decision was in force in respect of him, and he has been so registered for a period of not less than one month throughout which the decision had effect, a fitness to practise panel<sup>9</sup> may direct that his registration be suspended for such period, not exceeding the length of the first-mentioned period, as the panel think fit, and the period of suspension begins on a date to be specified in the panel's direction<sup>10</sup>.

1 'A disqualifying decision' in respect of a person is a decision, made by responsible authorities of the EEA state (see note 2 *infra*) in which he was established in medical practice or in which he acquired a primary United Kingdom or primary European qualification, and:

- 19 (1) expressed to be made on the grounds that he has committed a criminal offence or on grounds related to his professional conduct, professional performance or physical or mental health (Medical Act 1983 s 44(2)(a) (s 44 substituted by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2,13)); and
- 20 (2) having in that state the effect either that he is no longer registered or otherwise officially recognised as a medical practitioner, or that he is prohibited from practising medicine there (Medical Act 1983 s 44(2)(b) (as so substituted)).

For the meaning of 'primary United Kingdom qualification' see PARA 93 *ante*. For the meaning of 'primary European qualification' see PARA 98 *ante*.

2 For the meaning of 'EEA state' see PARA 3 note 2 *ante*.

3 *Ie* by virtue of the Medical Act 1983 s 3(1)(b) (as substituted): see PARA 99 text to notes 4-6 *ante*.

4 *Ibid* s 44(1) (as substituted: see note 1 *supra*). Where on or after the date on which a person was registered a disqualifying decision relating to him comes into force, the provisions relating to the power to order immediate suspension and the provisions relating to disciplinary proceedings apply, with any necessary modifications, as if it had been found that he had been convicted of the criminal offence referred to in the disqualifying decision, or that his professional conduct, professional performance or physical or mental health had been such as is imputed to him by that decision, as the case may be: s 44(6) (as so substituted). As to the provisions relating to the power to order immediate suspension and to disciplinary proceedings see PARA 138 *et seq post*.

5 For the meaning of 'the registrar' see PARA 23 note 1 *ante*.

6 Medical Act 1983 s 44(3) (as substituted: see note 1 *supra*). For the meaning of 'the register' see PARA 34 note 3 *ante*. Where the registrar receives information that a practitioner, registered by virtue of s 3(1)(b) (as substituted) (see PARA 99 text to note 6 *ante*) for a period of not less than one month, is subject to a disqualifying decision which decision has been in force throughout the period he has been registered, the registrar may refer the matter for consideration by a fitness to practise panel: General Medical Council (Fitness to Practise) (Disqualifying Decisions and Determinations by Regulatory Bodies) Procedure Rules Order of

Council 2004, SI 2004/2607, r 3, 3(a). For the meaning of 'practitioner' see PARA 182 note 1 post. As to the consideration of such matters by a fitness to practise panel see PARA 182 post.

7     le for the purposes of the Medical Act 1983 s 34B, Sch 3A (both as added) (see PARA 126 post): s 44(4). Section 44(4) is to come into force on a day to be appointed: see the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, art 1(2), (3). At the date at which this volume states the law no such day had been appointed. As to the transitional provisions in force until the Medical Act 1984 s 44 is brought into force see the Medical Act 1983 (Amendment) Order 2002 (Transitional Provision) Order of Council 2004, SI 2004/2610.

8     For the meaning of 'fully registered' see PARA 3 ante.

9     As to the constitution of fitness to practise panels see PARAS 138-140 post. As to fitness to practise panels as statutory committees see PARA 26 ante. As to the functions of fitness to practise panels see PARA 144 et seq post. As to proceedings relating to fitness to practise and the procedure before fitness to practise panels see PARA 151 et seq post.

10    Medical Act 1983 s 44(5)(a) (as substituted: see note 1 supra). The provisions of s 35E(1), (3) (as added) (see PARA 144 note 7, text to notes 25-28 post), s 40 (as substituted) (see PARA 188 post) and Sch 4 paras 1, 2, 8, 9, 10, 12, 13 (as substituted) (see PARAS 142, 144, 152, 153, 157, 158 post) have effect, with any necessary modifications, in relation to such suspension: s 44(5)(b) (as so substituted).

## **UPDATE**

### **93-103 Qualifications and Experience required for Registration**

Directive 93/16 replaced: European Parliament and EC Council Directive 2005/36 on the recognition of professional qualifications.

### **99-103 Registration of United Kingdom and EEA Practitioners**

As to temporary registration in circumstances where a major emergency involving the loss of human life or illness has occurred, is occurring or is about to occur, see the Medical Act 1983 s 18A; and PARA 103A.

### **101 EEA practitioners subject to disqualifying decisions**

TEXT AND NOTES--Medical Act 1983 s 44 amended: SI 2007/3101. See also Medical Act 1983 s 44B (provision of information in respect of fitness to practise matters) (added by SI 2006/1914, amended by SI 2007/3101), and Medical Act 1983 s 44BA (fitness to practise of exempt persons: sufficient evidence) (added by SI 2007/3101).



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## **102. Provisional registration.**

For the purpose of enabling persons wishing to obtain certificates of experience<sup>1</sup> to undertake the necessary employment<sup>2</sup>, a person who, apart from any requirement as to experience, would by virtue of any qualification<sup>3</sup> or qualifications held by him be entitled to be registered<sup>4</sup> as a fully registered<sup>5</sup> medical practitioner is entitled to be registered provisionally<sup>6</sup> and to have his qualification or qualifications registered<sup>7</sup>. A person who is provisionally registered is deemed to be registered as a fully registered medical practitioner so far as is necessary to enable him to be engaged in employment in a resident medical capacity<sup>8</sup> in one or more approved<sup>9</sup> hospitals, institutions or medical practices<sup>10</sup> but not further<sup>9</sup>.

1    I.e. certificates under the Medical Act 1983 s 10: see PARA 96 ante.

2    I.e. employment as mentioned in *ibid* s 10(2) (see PARA 95 text to notes 4-10 ante): see s 15(1).

3    For the meaning of 'qualification' see PARA 34 note 2 ante.

4    I.e. under the Medical Act 1983 s 3 (as substituted): see PARA 99 ante.

5    For the meaning of 'fully registered' see PARA 3 ante.

6    Medical Act 1983 s 15(2). 'Provisionally registered' means provisionally registered under ss 15, 15A (as added) (see PARA 103 post) or s 21 (see PARA 108 post): s 55(1) (definition amended by the Medical Act 1983 (Provisional Registration) Regulations 2000, SI 2000/3041, regs 2, 4(6)(b)). If satisfied that the applicant is entitled to be registered in accordance with the application, the appropriate registrar must issue to the applicant a certificate of registration: see the Medical Act 1983 Sch 3 para 5(1); and PARA 38 ante. As to the procedure for registration see PARA 114 post. As to the fee payable on registration see PARA 118 post. As to appeals against a decision not to register an applicant see PARA 126 post.

7    See *ibid* s 16(1); and PARA 99 text to notes 9-18 ante.

8    For the meaning of 'employment in a resident medical capacity' see PARA 95 note 5 ante.

9    For the meaning of 'approved' see PARA 95 note 6 ante.

10   For the meaning of 'medical practice' see PARA 95 note 9 ante.

11   Medical Act 1983 s 15(3) (amended by the National Health Service (Primary Care) Act 1997 s 41(10), Sch 2 para 61(4)).

## **UPDATE**

### **93-103 Qualifications and Experience required for Registration**

Directive 93/16 replaced: European Parliament and EC Council Directive 2005/36 on the recognition of professional qualifications.

### **99-103 Registration of United Kingdom and EEA Practitioners**

As to temporary registration in circumstances where a major emergency involving the loss of human life or illness has occurred, is occurring or is about to occur, see the Medical Act 1983 s 18A; and PARA 103A.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/ (3) REGISTRATION, TRAINING AND QUALIFICATION/(iv) Registration of United Kingdom and EEA Practitioners/103. Provisional registration for EEA nationals.

### **103. Provisional registration for EEA nationals.**

For the purpose of enabling a national of an EEA state<sup>1</sup> to be employed so as to enable him to acquire the clinical experience under appropriate supervision which he needs in order to obtain a primary European qualification<sup>2</sup>, such a person who, but for the acquisition of suitable clinical experience, has completed the training required for a primary European qualification<sup>3</sup> is entitled to be registered provisionally<sup>4</sup>. A person who is so provisionally registered is deemed to be registered<sup>5</sup> as a fully registered<sup>6</sup> medical practitioner so far as is necessary to enable him to be engaged in employment in a resident medical capacity<sup>7</sup> in one or more approved<sup>8</sup> hospitals, institutions or medical practices<sup>9</sup> but not further<sup>10</sup>.

1 Any person who is not a national of an EEA state but is, by virtue of a right conferred by EC Council Regulation 1612/68 (OJ L257, 19.10.1968, p 2) on freedom of movement for workers art 11 or any other enforceable Community right, entitled to be treated for the purposes of access to and the practice of the medical profession no less favourably than a national of such a state, is treated for these purposes as if he were such a national: Medical Act 1983 s 15A(3) (s 15A added by the Medical Act 1983 (Provisional Registration) Regulations 2000, SI 2000/3041, regs 2, 3). For the meanings of 'national' and 'EEA state' see PARA 3 note 2 ante. As to the meaning of 'enforceable Community right' see the European Communities Act 1972 s 2(1); and the Interpretation Act 1978 s 5, Sch 1.

2 Medical Act 1983 s 15A(1) (as added: see note 1 supra). For the meaning of 'primary European qualification' see PARA 98 ante.

3 A person has completed the training required for a primary European qualification, but for the acquisition of suitable clinical experience, where he has obtained a medical degree which guarantees that he has fulfilled the requirements of Directive 93/16 art 23 para 1(a)-(c): Medical Act 1983 s 15A(5) (as added: see note 1 supra). For the meaning of 'Directive 93/16' see PARA 57 note 9 ante; and as to the requirements of art 23 see PARA 57 text to notes 11-18 ante.

4 Medical Act 1983 s 15A(2) (as added: see note 1 supra). If satisfied that the applicant is entitled to be registered in accordance with the application, the appropriate registrar must issue to the applicant a certificate of registration: see Sch 3 para 5(1); and PARA 38 ante. As to appeals against a decision not to register an applicant see PARA 126 post.

5 *le* under *ibid* s 3 (as substituted): see PARA 99 ante.

6 For the meaning of 'fully registered' see PARA 3 ante.

7 For the meaning of 'employment in a resident medical capacity' see PARA 95 note 5 ante.

8 For the meaning of 'approved' see PARA 95 note 6 ante.

9 For the meaning of 'medical practice' see PARA 95 note 9 ante.

10 Medical Act 1983 s 15(3) (amended by the National Health Service (Primary Care) Act 1997 s 41(10), Sch 2 para 61(4)); applied by the Medical Act 1983 s 15A(4) (as added: see note 1 supra).

## **UPDATE**

### **93-103 Qualifications and Experience required for Registration**

Directive 93/16 replaced: European Parliament and EC Council Directive 2005/36 on the recognition of professional qualifications.

### **99-103 Registration of United Kingdom and EEA Practitioners**

As to temporary registration in circumstances where a major emergency involving the loss of human life or illness has occurred, is occurring or is about to occur, see the Medical Act 1983 s 18A; and PARA 103A.

### **103 Provisional registration for EEA nationals**

TEXT AND NOTES--Medical Act 1983 s 15A amended: SI 2007/3101.

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**103A. Temporary registration with regard to emergencies involving loss of human life or human illness etc.**

If the Secretary of State advises the registrar that an emergency has occurred, is occurring or is about to occur and that action ought to be considered under this provision, the registrar may register (1) a person as a fully registered medical practitioner, if the registrar considers that the person is a fit, proper and suitably experienced person to be registered as a fully registered medical practitioner with regard to the emergency; or (2) the persons comprising a specified group of persons as fully registered medical practitioners, if the registrar considers that the group is comprised of persons who are of a type who may reasonably be considered fit, proper and suitably experienced persons to be registered as fully registered medical practitioners with regard to the emergency: Medical Act 1983 s 18A(1) (s 18A added by SI 2008/1774). For these purposes 'emergency' means an emergency of the type described in the Civil Contingencies Act 2004 s 19(1)(a) (meaning of 'emergency'), read with s 19(2)(a), (b) (see CONSTITUTIONAL LAW AND HUMAN RIGHTS): Medical Act 1983 s 18A(9). For the meaning of 'the registrar' see PARA 23 NOTE 1. The registrar may register by virtue of head (2) all of the persons comprising a specified group of persons without first identifying each person in the group: s 18A(2). The registration of a person under this provision is subject to such conditions as the registrar may specify, and the registrar may at any time vary the conditions to which a person's registration under this provision is subject (including by adding to the conditions or revoking any conditions): s 18A(3). The registration of any person registered under this provision by virtue of head (2) as one of a specified group may be subject to the same conditions as the registration of other members of the group, or it may be subject to different conditions: s 18A(4). A person's registration under this provision ceases to have effect if revoked by the registrar, which (a) the registrar must do if the Secretary of State advises the registrar that the circumstances that led the Secretary of State to advise the registrar as mentioned in s 18A(1) no longer exist; (b) the registrar may do for any other reason at any time, including where the registrar has grounds for suspecting that the person's fitness to practise may be impaired: s 18A(5). The registration of a person registered by virtue of head (2) as one of a specified group may be revoked without revoking the registration of the other members of the group, or it may be revoked by virtue of a decision to revoke the registration of all the members of the group: s 18A(6). Part 5 (ss 35-44D), apart from ss 35, 35A(1), (4)-(8), 35B(2), (3), do not apply to persons registered under s 18A: s 18A(7). If a person breaches any condition to which the person's registration under this provision is subject, anything done by the person in breach of that condition is to be treated as not being done by a registered medical practitioner: s 18A(8).

**UPDATE**

**93-103 Qualifications and Experience required for Registration**

Directive 93/16 replaced: European Parliament and EC Council Directive 2005/36 on the recognition of professional qualifications.

**99-103 Registration of United Kingdom and EEA Practitioners**

As to temporary registration in circumstances where a major emergency involving the loss of human life or illness has occurred, is occurring or is about to occur, see the Medical Act 1983 s 18A; and PARA 103A.

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## **(v) Registration of Overseas Practitioners**

### **104. Full registration by virtue of overseas qualifications.**

Where an exempt person<sup>1</sup> satisfies the registrar<sup>2</sup>:

- 100 (1) that he holds an acceptable overseas qualification<sup>3</sup> other than a primary European qualification<sup>4</sup>;
- 101 (2) that he has acquired experience in the practice of medicine, whether in the course of employment in the United Kingdom or in the course of employment outside the United Kingdom, which is not less extensive than that required for a certificate of experience for full registration<sup>5</sup>; and
- 102 (3) that he is of good character<sup>6</sup>,

that person must, if the General Medical Council<sup>7</sup> thinks fit so to direct, be registered as a fully registered<sup>8</sup> medical practitioner<sup>9</sup>.

In determining such an application for registration, the Council must take into account: (a) if the applicant holds a qualification granted outside the European Economic Area<sup>10</sup> which has been accepted by another EEA state as qualifying him to practise as a medical practitioner in that state, the acceptance of the qualification<sup>11</sup>; and (b) all medical qualifications, knowledge or experience, wherever acquired, which are relevant to the determination of his application<sup>12</sup>. The requirements of the Medical Act 1983<sup>13</sup> relating to a person prevented from embarking on, or completing, a period of experience apply to the experience required for these provisions<sup>14</sup>.

1 'Exempt person' means a person who:

- 21 (1) is a national of an EEA state other than the United Kingdom (Medical Act 1983 s 19(2)(a) (s 19 substituted by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 6(1), (2));
- 22 (2) is a national of the United Kingdom who is exercising an enforceable Community right (Medical Act 1983 s 19(2)(b) (as so substituted); or
- 23 (3) is not a national of an EEA state, but is, by virtue of a right conferred by EC Council Regulation 1612/68 (OJ L257, 19.10.1968, p 2) on freedom of movement for workers art 11 or any other enforceable Community right, entitled to be treated, for the purposes of access to the medical profession, no less favourably than a national of such a state (Medical Act 1983 s 19(2) (c) (as so substituted).

For the meanings of 'national' and 'EEA state' see PARA 3 note 2 ante. For the meaning of 'United Kingdom' see PARA 1 note 3 ante. As to the meaning of 'enforceable Community right' see the European Communities Act 1972 s 2(1); and the Interpretation Act 1978 s 5, Sch 1.

2 For the meaning of 'the registrar' see PARA 23 note 1 ante.

3 For the meaning of 'acceptable overseas qualification' see PARA 109 note 4 post.

4 Medical Act 1983 s 19(1)(a) (as substituted: see note 1 supra). For the meaning of 'primary European qualification' see PARA 98 ante.

5 Ie a certificate under ibid s 10 (see PARA 96 ante): s 19(1)(b) (as substituted: see note 1 supra).

- 6 Ibid s 19(1)(c) (as substituted: see note 1 supra).
- 7 As to the General Medical Council see PARA 13 et seq ante.
- 8 For the meaning of 'fully registered' see PARA 3 ante.
- 9 Medical Act 1983 s 19(1) (as added: see note 1 supra). On registering a person, the registrar must issue to the applicant a certificate of registration: see s 33, Sch 3 para 5(2); and PARA 38 ante. As to appeals against a decision not to direct that a person should be registered see PARA 126 post.
- 10 The European Economic Area is the area created by the EEA Agreement (see PARA 3 note 2 ante).
- 11 Medical Act 1983 s 19(3)(a) (as substituted: see note 1 supra).
- 12 Ibid s 19(3)(b) (as substituted: see note 1 supra).
- 13 Ie ibid s 10(4): see PARA 96 text to notes 9-11 ante.
- 14 Ibid s 19(4) (as substituted: see note 1 supra).

## **UPDATE**

### **104 Full registration by virtue of overseas qualifications**

TEXT AND NOTES--Medical Act 1983 s 19 amended, s 19A added: SI 2007/3101.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/ (3) REGISTRATION, TRAINING AND QUALIFICATION/(v) Registration of Overseas Practitioners/105. Full registration for eligible specialists and qualified general practitioners.

### **105. Full registration for eligible specialists and qualified general practitioners.**

Where a person satisfies the registrar<sup>1</sup>: (1) that he holds an acceptable overseas qualification<sup>2</sup> other than a primary European qualification<sup>3</sup>; (2) that he is an eligible specialist<sup>4</sup> or a qualified general practitioner<sup>5</sup>; (3) that he is of good character<sup>6</sup>; and (4) that he has the necessary knowledge of English<sup>7</sup> or is an exempt person<sup>8</sup>; that person must, if the General Medical Council thinks fit so to direct, be registered as a fully registered<sup>9</sup> medical practitioner<sup>10</sup>.

1 For the meaning of 'the registrar' see PARA 23 note 1 ante.

2 For the meaning of 'acceptable overseas qualification' see PARA 109 note 4 post.

3 Medical Act 1983 s 21A(1)(a) (s 21A added by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 6(1), (5)). For the meaning of 'primary European qualification' see PARA 98 ante.

4 'Eligible specialist' means a person who:

24 (1) has specialist medical qualifications awarded outside the United Kingdom in a medical speciality in which the United Kingdom awards a certificate of completion of specialist training, and has satisfied the competent authority that those qualifications are equivalent to such a certificate (Medical Act 1983 s 21A(2)(a) (as added: see note 3 supra)); or

25 (2) has specialist medical qualifications awarded outside the United Kingdom in a speciality in which the United Kingdom does not award a certificate of completion of specialist training, or has knowledge of or experience in any medical speciality derived from academic or research work (s 21A(2)(b) (as so added)),

and has satisfied the competent authority that these give him a level of knowledge and skill consistent with practice as a consultant in that speciality in the national health service: s 21A(2) (as so added). 'Competent authority' means the competent authority for the purpose of the European Specialist Medical Qualifications Order 1995, SI 1995/3208, art 9(2), (3) (see PARA 41 text to notes 5-13 ante): Medical Act 1983 s 21A(3) (as so added). As to the award of certificates of completion of specialist training see PARA 67 ante. As to the competent authorities see PARA 65 ante. For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

As from a day to be appointed, the provisions of s 21A(2), (3) (as added) are substituted by the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 31(5), Sch 9 para 5 so as to provide that 'eligible specialist' means a person who:

26 (a) has undertaken specialist medical training or been awarded specialist medical qualifications in a specialty in which the United Kingdom awards a certificate of completion of training, and has satisfied the Board that that specialist training or those qualifications, or both when considered together, are equivalent to a certificate of completion of training in the specialty in question (Medical Act 1983 s 21A(2)(a) (as so added; prospectively substituted));

27 (b) has undertaken specialist medical training or been awarded specialist medical qualifications outside the United Kingdom in a specialty in which the United Kingdom does not award a certificate of completion of training, or has knowledge of or experience in any medical specialty derived from academic or research work, and has satisfied the Board that these give him a level of knowledge and skill consistent with practice as a consultant in the national health service (s 21A(2)(b) (as so added; prospectively substituted));

28 (c) has specialist medical qualifications awarded outside the United Kingdom in a specialty in which the United Kingdom awarded a certificate of completion of specialist training and satisfied the former competent authority, or the Board pursuant to transitional arrangements, that those qualifications were equivalent to such a certificate (s 21A(2)(c) (as so added; prospectively substituted)); or

- 29 (d) has specialist medical qualifications awarded outside the United Kingdom in a specialty in which the United Kingdom did not award a certificate of completion of specialist training, or has knowledge of or experience in any medical specialty derived from academic or research work, and has satisfied the former competent authority, or the Board pursuant to transitional arrangements, that these give him a level of knowledge and skill consistent with practice as a consultant in that specialty in the national health service (s 21A(2)(d) (as so added; prospectively substituted)).

'The Board' means the Postgraduate Medical Education and Training Board (see PARA 71 ante); 'the former competent authority' means the specialist training authority of the medical Royal Colleges (see PARA 66 ante); and 'transitional arrangements' means arrangements made for a period of time following the transfer of certain functions from the former competent authority to the Board, or from the Joint Committee on Postgraduate Training for General Practice to the Board, as the case may be (see PARAS 69, 70 ante): s 21A(3) (as so added; prospectively substituted). As to the award of certificates of completion of training see PARA 87 ante. At the date at which this volume states the law no day had been appointed for the commencement of these provisions.

5 Ibid s 21A(1)(b) (as added: see note 3 supra). 'Qualified general practitioner' means a person who has been awarded a certificate of equivalent experience by the Joint Committee on Postgraduate Training for General Practice: s 21(A)(2) (as so added).

As from a day to be appointed, the provisions of s 21A(2) (as added) are substituted so as to provide that 'qualified general practitioner' means a person who: (1) has undertaken training in general practice or obtained qualifications in general practice, and has satisfied the Board that that training is, or those qualifications are, or both when considered together are equivalent to a certificate of completion of training in general practice; or (2) has been awarded a certificate of equivalent experience by the Joint Committee on Postgraduate Training for General Practice, or by the Board pursuant to transitional arrangements: s 21A(2) (as so added; prospectively substituted by the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 31(5), Sch 9 para 5). At the date at which this volume states the law no such day had been appointed.

6 Medical Act 1983 s 21A(1)(c) (as added: see note 3 supra).

7 'The necessary knowledge of English', in relation to an applicant for registration, means the knowledge which, in the interests of himself and his patients, is necessary for the practice of medicine in the United Kingdom: ibid s 55(1). The General Medical Council may provide facilities for testing the knowledge of English of such applicants for registration: s 1(4), Sch 1 para 11 (amended by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 9(3)). As to the General Medical Council see PARA 13 et seq ante.

8 Medical Act 1983 s 21A(1)(d) (as added: see note 3 supra). For the meaning of 'exempt person' see PARA 104 note 1 ante.

9 For the meaning of 'fully registered' see PARA 3 ante.

10 Medical Act 1983 s 21A(1) (as added: see note 3 supra). On registering a person, the registrar must issue to him a certificate of registration: see s 33, Sch 3 para 5(2); and PARA 38 ante. As to appeals against a decision not to direct that a person should be registered see PARA 126 post.

## UPDATE

### 105 Full registration for eligible specialists and qualified general practitioners

NOTE 4--Day now appointed in relation to the provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250: London Gazette, 26 August 2005.

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### **106. Temporary full registration of visiting overseas specialists.**

A person who is or intends to be in the United Kingdom<sup>1</sup> temporarily for the purpose of providing medical services of a specialist nature may apply to the General Medical Council<sup>2</sup> to be registered temporarily as a fully registered<sup>3</sup> medical practitioner<sup>4</sup>. If the Council is satisfied that he holds one or more acceptable overseas qualifications<sup>5</sup>, that he possesses special knowledge of and skill in a particular branch or branches of medicine<sup>6</sup>, that the medical services he is to provide lie within that branch or one or more of those branches of medicine<sup>7</sup>, and that he is of good character<sup>8</sup>, it may, if it thinks fit, direct that he be registered as a fully registered overseas practitioner for such period as it may specify in the direction<sup>9</sup>. No person may be so fully registered for a period exceeding 12 months<sup>10</sup> and at the expiration of the period specified in the direction the registration ceases to have effect<sup>11</sup>.

1 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

2 As to the General Medical Council see PARA 13 et seq ante.

3 For the meaning of 'fully registered' see PARA 3 ante.

4 Medical Act 1983 s 27(1).

5 Ibid s 27(1)(a) (s 27(1)(a), (b) amended, and s 27(1)(d) added, by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 6(1), (10)(a)-(c)). For the meaning of 'acceptable overseas qualification' see PARA 109 note 4 post.

6 Medical Act 1983 s 27(1)(b) (as amended: see note 5 supra).

7 Ibid s 27(1)(c).

8 Ibid s 27(1)(d) (as added: see note 5 supra).

9 Ibid s 27(1). On registering such a person, the registrar must issue to him a certificate of registration: see s 33, Sch 3 para 5(2); and PARA 38 ante. As to appeals against a decision not to direct that a person be registered temporarily or giving a direction that such registration be for a period of less than 12 months see PARA 126 post.

10 Ibid s 27(2). For the meaning of 'month' see PARA 13 note 14 ante.

11 Ibid s 27(3).

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### **107. Registration of qualifications of registered overseas practitioners.**

A person registered under the provisions relating to the registration of overseas practitioners<sup>1</sup> is entitled to have registered the acceptable overseas qualification<sup>2</sup> which he holds when he is so registered<sup>3</sup>. He is also entitled to have registered: (1) any overseas qualification which the General Medical Council<sup>4</sup> determines ought to be so registrable which he holds when he is registered or obtains thereafter<sup>5</sup>; (2) any additional qualification which the Council determines ought to be so registrable which he holds when he is registered or obtains thereafter<sup>6</sup>; and (3) any primary United Kingdom qualification<sup>7</sup> or primary European qualification<sup>8</sup> which he holds when he is registered or obtains thereafter<sup>9</sup>.

A person registered with limited registration<sup>10</sup> is entitled to have registered the acceptable overseas qualification or qualifications which he holds when he is so registered and, if such a person is subsequently registered with full registration<sup>11</sup>, he is on being so registered entitled to have registered, apart from the qualifications mentioned in heads (1) to (3) above, the acceptable overseas qualification or qualifications by virtue of which he was granted limited registration<sup>12</sup>.

1    Ie under the Medical Act 1983 s 19 (see PARA 104 ante), s 21 (see PARA 108 post), or s 21A (see PARA 105 ante).

2    For the meaning of 'acceptable overseas qualification' see PARA 109 note 4 post.

3    Medical Act 1983 s 26(1) (s 26(1), (2) amended by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 6(1), 9(a)(i)-(iv), (b)). On such an application for the registration of a qualification, the appropriate registrar, if satisfied that the applicant is entitled to have the qualification registered in accordance with the application, must issue to the applicant a certificate of registration: see the Medical Act 1983 s 33, Sch 3 para 5(3); and PARA 38 ante. As to appeals against a decision not to register a qualification see PARA 126 post.

4    As to the General Medical Council see PARA 13 et seq ante.

5    Medical Act 1983 s 26(1)(b) (as amended: see note 3 supra). If the Council determines that any such qualification as is mentioned in s 26(1)(b) (as amended) or s 26(1)(c) (see the text to note 6 infra) ought not to be so registrable if granted before or after a particular date, a person holding that qualification is not entitled to have it registered if it was granted to him before or, as the case may be, after that date: s 26(3). As to appeals against a decision not to register a qualification see PARA 126 post.

6    Ibid s 26(1)(c). See also note 5 supra.

7    For the meaning of 'primary United Kingdom qualification' see PARA 93 ante.

8    For the meaning of 'primary European qualification' see PARA 98 ante.

9    Medical Act 1983 s 26(1)(d). As to appeals against a decision not to register a qualification see PARA 126 post.

10   Ie under ibid s 22: see PARA 109 post.

11   Ie under ibid s 25: see PARA 111 post.

12   Ibid s 26(2) (as amended: see note 3 supra).

### **UPDATE**

## **107 Registration of qualifications of registered overseas practitioners**

TEXT AND NOTES--1983 Act s 26(2) omitted: SI 2006/1914.

NOTE 3--Medical Act 1983 s 26(1) amended: SI 2007/3101.

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### **108. Provisional registration of overseas practitioners.**

For the purpose of enabling a person wishing to satisfy the General Medical Council<sup>1</sup> that he has acquired the necessary experience in the practice of medicine<sup>2</sup> to be employed in the United Kingdom<sup>3</sup>, a person who satisfies the registrar<sup>4</sup> that he holds an appropriate qualification and that he is of good character<sup>5</sup> may apply to the General Medical Council to be registered provisionally and, if the Council thinks fit so to direct, that person must be so registered<sup>6</sup>. A provisionally registered person is deemed to be registered<sup>7</sup> as a fully registered<sup>8</sup> medical practitioner so far as is necessary to enable him to be engaged in employment in a resident medical capacity<sup>9</sup> in one or more approved<sup>10</sup> hospitals, approved institutions or approved medical practices<sup>11</sup>, but not further<sup>12</sup>.

1 As to the General Medical Council see PARA 13 et seq ante.

2 I.e. as specified in the Medical Act 1983 s 19(1)(b) (as substituted): see PARA 104 text to notes 5, 6 ante.

3 I.e. as mentioned in ibid s 10(2) (see PARA 95 text to notes 4-10 ante): s 21(1) (s 21(1), (2) amended by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 6(1), (4)(a)-(b)). For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

4 For the meaning of 'the registrar' see PARA 23 note 1 ante.

5 I.e. satisfies the registrar as to the matters specified in the Medical Act 1983 s 19(1)(a), (c): see PARA 104 text to notes 1-4, 7 ante.

6 Ibid s 21(2) (as amended: see note 3 supra). In relation to such an application for registration, the Medical Act 1983 s 19(3) (see PARA 104 text to notes 11-13 ante) applies as it applies in relation to an application for registration under s 19: s 21(2A) (s 21(2A) added by the European Primary Medical Qualifications Regulations 1996, SI 1996/1591, reg 6(4); and substituted by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 6(1), (4)(c)). On registering such a person, the registrar must issue to him a certificate of registration: see the Medical Act 1983 s 33, Sch 3 para 5(2); and PARA 38 ante. As to appeals against a decision not to direct that a person should be registered see PARA 126 post.

7 I.e. under ibid s 19: see PARA 104 ante.

8 For the meaning of 'fully registered' see PARA 3 ante.

9 For the meaning of 'employment in a resident medical capacity' see PARA 95 note 5 ante; definition applied by the Medical Act 1983 s 21(3).

10 For the meaning of 'approved' see PARA 95 note 6 ante; definition applied by ibid s 21(3).

11 For the meaning of 'medical practice' see PARA 95 note 9 ante; definition applied by ibid s 21(3).

12 Ibid s 21(3) (amended by the National Health Service (Primary Care) Act 1997 s 41(10), Sch 2 para 61(5)).

### **UPDATE**

### **108 Provisional registration of overseas practitioners**

TEXT AND NOTES--See also Medical Act 1983 ss 21B, 21C (registration of persons with an overseas qualification) (added by SI 2006/1914, amended by SI 2007/3101).

NOTE 6--Medical Act 1983 s 21(2) amended: SI 2007/3101.

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### **109. Limited registration of overseas practitioners.**

If a person satisfies the registrar<sup>1</sup>:

- 103 (1) that he has been selected for employment in the British Islands<sup>2</sup> of a description approved by the General Medical Council<sup>3</sup>;
- 104 (2) that he holds, has held, or has passed the examination necessary for obtaining some acceptable overseas qualification<sup>4</sup> or qualifications<sup>5</sup>;
- 105 (3) that he has the necessary knowledge of English<sup>6</sup> or is an exempt person<sup>7</sup>;
- 106 (4) that he is of good character<sup>8</sup>; and
- 107 (5) that he has the knowledge and skill, and has acquired the experience, which is necessary for practice as a medical practitioner with limited registration and which is appropriate in his case<sup>9</sup>,

then he is entitled, if the Council thinks fit to give the necessary direction, to be registered as a medical practitioner with limited registration<sup>10</sup>.

The limits of a person's limited registration are defined in the direction by virtue of which he is registered, which must specify a period, not exceeding his permitted period<sup>11</sup>, as the period for which his limited registration is to have effect<sup>12</sup>, and the particular employment or the descriptions of employment for the purposes of which he is registered<sup>13</sup>; and, unless the specified employment terminates<sup>14</sup> or the limited registration is erased<sup>15</sup>, that person's registration has effect for the period and for the purposes of the particular employment or the descriptions of employment specified in the direction<sup>16</sup>.

A person registered with limited registration is entitled, on being so registered, to have the acceptable overseas qualification or qualifications held by him registered<sup>17</sup>, and he is to be treated as a fully registered medical practitioner<sup>18</sup> in relation to:

- 108 (a) any employment in which he is engaged during the currency of his registration, being the particular employment or employment of a description for the purposes of which he is registered<sup>19</sup>;
- 109 (b) things done or omitted in the course of that employment<sup>20</sup>; and
- 110 (c) any other thing incidental to his work in that employment which, by virtue of any enactment, may not lawfully or validly be done except by a fully registered medical practitioner<sup>21</sup>,

but in relation to other matters he is to be treated as not so registered<sup>22</sup>. He must not, however, while engaged in the particular employment or in employment of a description for the purposes of which he is registered, work otherwise than under the supervision of a person who is registered as a fully registered medical practitioner<sup>23</sup>.

1 For the meaning of 'the registrar' see PARA 23 note 1 ante.

2 For the meaning of 'British Islands' see PARA 20 note 10 ante.



3 Medical Act 1983 s 22(1)(a) (s 22(1)(a) substituted by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 6(1), (6)(a)). As to the General Medical Council see PARA 13 et seq ante.

4 'Acceptable overseas qualification' means any qualification granted outside the United Kingdom and for the time being accepted by the Council for the purposes of the Medical Act 1983 s 22 (as amended) as furnishing a sufficient guarantee of the possession of the knowledge and skill requisite for the practice of medicine under the supervision of a person who is registered as a fully registered medical practitioner: ss 22(4), 55(1). For the meaning of 'qualification' see PARA 34 note 2 ante. For the meaning of 'fully registered' see PARA 3 ante.

5 Ibid s 22(1)(b).

6 For the meaning of 'the necessary knowledge of English' see PARA 105 note 7 ante. The Council may provide facilities for testing the knowledge of English of such applicants for registration: ibid s 1(4), Sch 1 para 11 (amended by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 9(3)).

7 Medical Act 1983 s 22(1)(c) (amended by the European Primary Medical Qualifications Regulations 1996, SI 1996/1591, reg 6(5); and the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, art 6(6)(b)). In determining an application by an exempt person for registration, the Council must take into account: (1) if the applicant holds, has held or has passed the examination necessary for obtaining a qualification granted outside the European Economic Area which has been accepted by another EEA state as qualifying him to practise as a medical practitioner in that state, the acceptance of the qualification (Medical Act 1983 s 22(1A)(a) (s 22(1A) added by the European Primary Medical Qualifications Regulations 1996, SI 1996/1591, reg 6(6); and substituted by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 6(1), (6)(c))); and (2) all medical qualifications, knowledge or experience, wherever acquired, which are relevant to the determination of his application (Medical Act 1983 s 22(1A)(b) (as so added and substituted)). For the meaning of 'exempt person' see PARA 104 note 1 ante. For the meaning of 'EEA state' see PARA 3 note 2 ante.

Medical training may comprise training received even mainly in a third country, ie outside the EEA, provided that the competent authority of the member state awarding the qualification is in a position to validate the training and to conclude on that basis that it duly serves to meet the specified requirements for the training of doctors; and where a member state has issued a certificate stating that a qualification has been awarded following training in accordance with the specified requirements, or has confirmed the authenticity of a qualification and the fact that the holder of the qualification has completed all the requisite training requirements, another member state is bound by that certificate or authentication, although, in the event of new factors coming to light which give rise to serious doubts as to the authenticity of the qualification or as to whether it complies with the applicable rules, it is permissible for the latter member state to re-open the matter of verification with the authorities of the member state awarding the relevant qualification: Case-110/1 *Tennah-Durez v Conseil National de l'Ordre des Medecins* [2003] All ER (EC) 850, [2004] 1 CMLR 417, ECJ. As to the specified requirements for education and training see PARA 57 ante.

8 Medical Act 1983 s 22(1)(d).

9 Ibid s 22(1)(e). What knowledge and skill, and what experience, is necessary for practice as a medical practitioner with limited registration is to be determined by the Council in relation to each branch of medicine and to practise therein in the descriptions of employment for the purposes of which persons apply for limited registration: s 23(2). For the purposes of s 22(1)(e), the knowledge and skill, and the experience, which is appropriate in the case of an applicant means the knowledge and skill, or the experience, determined by the Council which appears to the registrar to be appropriate to the particular employment or the descriptions of employment for which the applicant desires to be registered: s 23(3). In the case of any particular application for limited registration, the Council may give to the registrar a direction determining what knowledge and skill, or what experience, determined by the Council for these purposes, is appropriate in the case of the applicant having regard to the particular employment or descriptions of employment for the purposes of which the applicant desires to have, or the Council considers it may grant, limited registration: s 23(4). In the case of any applicant or applicants of any description, the Council may give to the registrar a direction exempting that applicant or those applicants from compliance with s 22(1)(e) as to knowledge and skill, or experience, or both: s 23(5).

10 Ibid s 22(1). 'Limited registration' means registration under s 22 (as amended) limited in accordance with s 22(5) (see the text to notes 11-16 infra) in respect of the period for which and the employment for the purposes of which it has effect: ss 22(2), 55(1). An applicant for limited registration must specify in his application the particular employment or the descriptions of employment for the purposes of which he desires to be registered and must give such other particulars as the Council may require: s 23(1). On registering a person with limited registration, the registrar must issue to him an appropriate registration certificate: see s 33, Sch 3 para 5(2); and PARA 38 ante. As to appeals against a decision not to direct that a person should be registered or registered for a further period, or defining the limits of a person's registration, see PARA 126 post.

11 No person may have limited registration for a period, or for periods which amount in the aggregate to a period, exceeding five years (ibid s 22(3)); and the 'permitted period', in relation to an applicant for limited

registration, means: (1) if he has not previously been registered with limited registration, five years (ss 22(3)(a), 55(1)); or (2) if he has previously been so registered, the amount by which five years exceeds the periods or aggregate of periods for which he has been so registered (ss 22(3)(b), 55(1)).

12 Ibid s 22(5)(a).

13 Ibid s 22(5)(b). Where a direction specifies a particular employment as the employment for the purposes of which a person has limited registration and that employment terminates before the end of the specified period, the limited registration ceases to have effect when that employment terminates: s 22(6).

14 Ie as provided in ibid s 22(6): see note 13 supra.

15 Ie under ibid s 24: see PARA 110 post.

16 Ibid s 22(5).

17 See ibid s 26(2); and PARA 107 text to notes 10-12 ante.

18 Ie as registered under ibid s 19: see PARA 104 ante.

19 Ibid s 22(7)(a).

20 Ibid s 22(7)(b).

21 Ibid s 22(7)(c).

22 Ibid s 22(7).

23 Ibid s 22(8).

## **UPDATE**

### **109 Limited registration of overseas practitioners**

TEXT AND NOTES--1983 Act ss 22, 23 omitted: SI 2006/1914.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/ (3) REGISTRATION, TRAINING AND QUALIFICATION/(v) Registration of Overseas Practitioners/110. Erasure of limited registration.

### **110. Erasure of limited registration.**

The General Medical Council<sup>1</sup> may, on an application containing such particulars as it may require being made to it by a person who is registered with limited registration<sup>2</sup>, direct that his name be erased from the register<sup>3</sup> on his own application on such day as it may specify in the direction; but the Council must disregard the fact that a person's name has been so erased in deciding whether or not to grant him limited registration for a further period<sup>4</sup>.

If, having regard to his performance in a relevant employment<sup>5</sup>, it appears to the Council that a person registered with limited registration does not in fact possess the appropriate knowledge and skill<sup>6</sup>, the Council may, if it thinks fit, direct that his name be erased from the register<sup>7</sup>. However, no person's name may be so erased from the register unless the registrar<sup>8</sup> has served on him a notification of the grounds on which the Council is considering exercising its powers to erase his name<sup>9</sup>, and the Council has afforded him an opportunity of making representations to it in the matter<sup>10</sup>.

1 As to the General Medical Council see PARA 13 et seq ante.

2 For the meaning of 'limited registration' see PARA 109 note 10 ante.

3 For the meaning of 'the register' see PARA 34 note 3 ante.

4 Medical Act 1983 s 24(1).

5 'A relevant employment' means an employment of a description for the purposes of which he is or has been registered with limited registration: *ibid* s 24(3)(a) (amended by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 6(1), (7)).

6 'The appropriate knowledge and skill', in relation to a person registered with limited registration, means the knowledge and skill which was required in his case in pursuance of the Medical Act 1983 s 22(1)(e) (see PARA 109 text to note 9 ante) in connection with the application for such registration by virtue of which he is so registered: s 24(3)(b).

7 *Ibid* s 24(2). As to appeals against such a decision see PARA 126 post.

8 For the meaning of 'the registrar' see PARA 23 note 1 ante.

9 Medical Act 1983 s 24(4)(a). The requirements of Sch 4 para 8 (see PARA 142 note 6 post) apply to the service of such notification: s 24(4).

10 *Ibid* s 24(4)(b).

### **UPDATE**

### **110 Erasure of limited registration**

TEXT AND NOTES--1983 Act s 24 omitted: SI 2006/1914.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/ (3) REGISTRATION, TRAINING AND QUALIFICATION/(v) Registration of Overseas Practitioners/111. Full registration of persons with limited registration.

### **111. Full registration of persons with limited registration.**

A person who is or has been registered with limited registration<sup>1</sup> may, on satisfying the registrar<sup>2</sup> that he is of good character, apply to the General Medical Council<sup>3</sup> to be registered fully, and if the Council thinks fit so to direct, having regard to the knowledge and skill shown and the experience acquired by the applicant, he must be registered as a fully registered<sup>4</sup> medical practitioner<sup>5</sup>. On being so registered, he is entitled to have certain qualifications registered<sup>6</sup>.

1 For the meaning of 'limited registration' see PARA 109 note 10 ante.

2 For the meaning of 'the registrar' see PARA 23 note 1 ante.

3 As to the General Medical Council see PARA 13 et seq ante.

4 For the meaning of 'fully registered' see PARA 3 ante.

5 Medical Act 1983 s 25 (amended by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 6(1), (8)). On registering such a person, the registrar must issue to him a certificate of registration: see the Medical Act 1983 s 33, Sch 3 para 5(2) (as amended); and PARA 38 ante. As to appeals against a decision not to direct that a person be registered see PARA 126 post.

Section 25 (as amended) envisages the General Medical Council making a judgment of each individual applicant's suitability to be granted full registration based on his knowledge, skill and experience; it is not necessary to imply one single minimum standard throughout the registration provisions of the Act, and s 25 (as amended) does not require the Council to apply a similar standard to that required by either s 3 (as substituted) (see PARA 99 ante) or s 19 (as substituted) (see PARA 104 ante), although, in exercising its discretion under s 25 (as amended), the Council must not impose standards of knowledge, skill and experience which are unreasonably high or low: *R v General Medical Council, ex p Virik* [1996] ICR 433, CA.

6 See the Medical Act 1983 s 26(2); and PARA 107 text to notes 10-12 ante.

### **UPDATE**

### **111 Full registration of persons with limited registration**

TEXT AND NOTES--1983 Act ss 25, 26(2) omitted: SI 2006/1914.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/ (3) REGISTRATION, TRAINING AND QUALIFICATION/(v) Registration of Overseas Practitioners/112. Reviews as to registration of overseas practitioners.

**112. Reviews as to registration of overseas practitioners.**

In the case of certain decisions made by the General Medical Council<sup>1</sup> relating to the registration of overseas practitioners, a person may have required the registrar<sup>2</sup> to state in writing the reasons for the decision and may have applied to the Review Board<sup>3</sup> for a review of that decision<sup>4</sup>.

1 As to the General Medical Council see PARA 13 et seq ante.

2 For the meaning of 'the registrar' see PARA 23 note 1 ante.

3 As to the Review Board see PARA 113 post.

4 See the Medical Act 1983 s 29. As from 1 April 2005, s 29 is repealed by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, art 6(1), (11). For transitional provisions see art 16(2), Sch 2 para 3(4)-(6).

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### **113. The Review Board for Overseas Qualified Practitioners.**

The Review Board for Overseas Qualified Practitioners<sup>1</sup> consisted of a chairman and a deputy chairman, and such number of other persons, who may, but need not, have been members of the General Medical Council<sup>2</sup>.

1 The 'Review Board' means the Review Board for Overseas Qualified Practitioners constituted in accordance with the provisions of the Medical Act 1983 s 28 and having the functions conferred on it by s 29 (repealed) (see PARA 112 ante): ss 28(1), 55(1). As from 1 April 2005, s 28 is repealed by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, art 6(1), (11). For transitional provisions see art 16(2), Sch 2 para 3(4)-(6).

2 See the Medical Act 1983 s 28 (repealed: see note 1 supra). As to the General Medical Council see PARA 13 et seq ante.

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## **(vi) Entry, Alteration and Removal of Names and Qualifications**

### **114. Applications for registration.**

Except as otherwise specifically provided<sup>1</sup>, any right to registration of persons<sup>2</sup> or qualifications<sup>3</sup> conferred by the Medical Act 1983 is conditional upon the making of the required application supported by the necessary evidence<sup>4</sup>.

Certain applications for registration<sup>5</sup> must be made to the registrar of one of the branch councils<sup>6</sup>; others<sup>7</sup> must be made to the registrar<sup>8</sup>.

<sup>1</sup> Nothing in the Medical Act 1983 Sch 3 applies to anything done in pursuance of a direction under s 41 (see PARA 149 post) for restoration to the register: s 33, Sch 3 para 1(2).

<sup>2</sup> *Ie* under *ibid* ss 3, 15, 15A (as added): see PARAS 99, 102-103 ante.

<sup>3</sup> *Ie* under *ibid* ss 16, 26: see PARAS 99, 107 ante.

<sup>4</sup> *Ibid* Sch 3 para 1(1) (amended by the Medical Act 1983 (Provisional Registration) Regulations 2000, SI 2000/3041, regs 2, 4(7)(a)). As to the necessary evidence see PARA 115 post. As to the right to registration subject to compliance with the conditions see *R v General Council of Medical Education* (1861) 3 E & E 525 at 533, 535. False or fraudulent applications may amount to an offence under the Perjury Act 1911 s 6: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 718.

<sup>5</sup> *Ie* applications for:

30 (1) full registration of persons under the Medical Act 1983 s 3(1)(a) (see PARA 99 ante); provisional registration of persons under s 15 (see PARA 102 ante); and provisional registration of EEA nationals under s 15A (as added) (see PARA 103 ante) (Sch 3 para 2(1)(a) (amended by the Medical Act 1983 (Provisional Registration) Regulations 2000, SI 2000/3041, regs 2, 4(7)(b); and the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 9(4)(a), 15(1)); and

31 (2) registration of qualifications under the Medical Act 1983 s 16 (see PARA 99 ante) other than applications for registration of primary European qualifications where the applicant was registered under s 3(1)(b) (see PARA 99 text to notes 5, 6 ante) by virtue of those qualifications (Sch 3 para 2(1)(b) (amended by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 9(4)(b))).

<sup>6</sup> Medical Act 1983 Sch 3 para 2(1). As to branch councils see PARA 18 ante.

<sup>7</sup> *Ie* applications for full registration of persons under *ibid* s 3(1)(b) (see PARA 99 text to notes 5, 6 ante) and the qualifications of those persons by virtue of which they were entitled to be registered (Sch 3 para 2(2)(a) (amended by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 9(4)(c))); and applications for the registration of qualifications under the Medical Act 1983 s 26 (see PARA 107 ante) (Sch 3 para 2(2)(c)).

<sup>8</sup> *Ibid* Sch 3 para 2(2). For the meaning of 'the registrar' see PARA 23 note 1 ante.

## **UPDATE**

### **114 Applications for registration**

TEXT AND NOTES--Medical Act 1983 Sch 3 paras 1, 2 amended: SI 2007/3101.





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### **115. Evidence of entitlement to qualifications.**

A person applying for full or provisional registration<sup>1</sup> or for registration of primary United Kingdom or primary European qualifications<sup>2</sup> must produce or send to the appropriate registrar<sup>3</sup> the document conferring or evidencing the qualification<sup>4</sup> by virtue of which the application is made, together with a statement of the applicant's name and address and such other particulars, if any, as may be required for registration<sup>5</sup>. However, any university or other body entitled to grant primary United Kingdom qualifications for these purposes<sup>6</sup> may, from time to time, send to the registrar<sup>7</sup> or the registrar of a branch council lists, certified under the body's seal, of the persons who have been granted qualifications by it stating the qualifications and addresses of the persons included in the list; and a registrar may treat any such list sent to him as sufficient evidence of the entitlement of any person mentioned in it to the qualification which he is stated in it to have been granted<sup>8</sup>.

A registrar may not register any qualification, whether on first registration of a person or by way of addition, unless he is satisfied that the person claiming the qualification is entitled to it<sup>9</sup>. If, however, a registrar determines that he is not so satisfied, the person in question may appeal to the General Medical Council<sup>10</sup>.

1    Ie under the Medical Act 1983 ss 3, 15, 15A (as added): see PARAS 99, 102-103 ante.

2    Ie under *ibid* s 16: see PARA 99 ante. For the meaning of 'primary United Kingdom qualification' see PARA 93 ante. For the meaning of 'primary European qualification' see PARA 98 ante.

3    'The appropriate registrar', in relation to an application for registration, means the registrar to whom, in accordance with *ibid* Sch 3 para 2 (see PARA 114 text to notes 5-8 ante), the application is made: s 33, Sch 3 para 2(3).

4    For the meaning of 'qualification' see PARA 34 note 2 ante.

5    Medical Act 1983 Sch 3 para 3(1) (Sch 3 para 3(1), (2)(b) amended by the Medical Act 1983 (Provisional Registration) Regulations 2000, SI 2000/3041, regs 2, 4(7)(c)). See also note 8 *infra*.

6    Ie the universities and bodies specified in the Medical Act 1983 s 4(3): see PARA 93 ante.

7    For the meaning of 'the registrar' see PARA 23 note 1 ante.

8    Medical Act 1983 Sch 3 para 3(2)(a). Also, on an application for registration under ss 3, 15, 15A (as added) or an application under s 16 for the registration of primary United Kingdom qualifications, a registrar may issue a registration certificate under Sch 3 para 5 (see PARA 38 ante), to a person mentioned in such a list as having been granted a primary United Kingdom qualification without the document mentioned in Sch 3 para 3(1) having been produced or sent to him: Sch 3 para 3(2)(b) (as amended: see note 5 *supra*).

9    *Ibid* Sch 3 para 4. Where an application is made for registration under s 3(1)(b) (see PARA 99 text to notes 5, 6 ante) (whether by a national of an EEA state or a person treated as such a national), the appropriate registrar must take no account of any document issued in accordance with EC Directive 93/16 arts 11, 12 which is received by him more than three months after the date of its issue: Medical Act 1983 Sch 3 para 3(3) (added by the European Primary Medical Qualifications Regulations 1996, SI 1996/1591, reg 7, Sch 2 para 14(1)). For the meaning of 'EC Directive 93/16' see PARA 57 note 9 ante.

Where a member state has issued a certificate stating that a qualification has been awarded following training in accordance with the specified requirements, or has confirmed the authenticity of a qualification and the fact that the holder of the qualification has completed all the requisite training requirements, another member state is bound by that certificate or authentication, although, in the event of new factors coming to light which give

rise to serious doubts as to the authenticity of the qualification or as to whether it complies with the applicable rules, it is permissible for the latter member state to re-open the matter of verification with the authorities of the member state awarding the relevant qualification: Case-110/1 *Tennah-Durez v Conseil National de l'Ordre des Medecins* [2003] All ER (EC) 850, [2004] 1 CMLR 417, ECJ. As to the specified requirements for education and training see PARA 57 ante.

10 Medical Act 1983 Sch 3 para 4.

## **UPDATE**

### **115 Evidence of entitlement to qualifications**

TEXT AND NOTES--Medical Act 1983 Sch 3 para 1 amended, Sch 3 para 4A, 4B added: SI 2007/3101.

TEXT AND NOTES 6-8--Medical Act 1983 Sch 3 para 3(2) amended: SI 2008/1774.

NOTE 9--Directive 93/16 replaced: European Parliament and EC Council Directive 2005/36 on the recognition of professional qualifications.

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### **116. Effect of disqualification or conviction on registration.**

Without prejudice to regulations made with respect to the register<sup>1</sup>, the registrar<sup>2</sup> may, notwithstanding anything in the Medical Act 1983, refuse to register any person under any provision of the Act<sup>3</sup>, who: (1) has, in the British Islands<sup>4</sup>, been convicted of, or cautioned for, a criminal offence or convicted elsewhere of an offence which, if committed in England and Wales, would constitute a criminal offence<sup>5</sup>; or (2) has been the subject of a determination by a body in the United Kingdom<sup>6</sup> responsible under any enactment<sup>7</sup> for the regulation of a health or social care profession to the effect that his fitness to practise as a member of that profession is impaired, or a determination by a regulatory body<sup>8</sup> elsewhere to the same effect<sup>9</sup>. If a person has been registered by virtue of any provision of the Act and it is subsequently shown to the satisfaction of the registrar that he is a person to whom head (1) or head (2) above applies<sup>10</sup>, and he had not informed the registrar of that fact at the time of registration<sup>11</sup>, the registrar may remove that person's name from the register<sup>12</sup>. Any such decision not to register a person<sup>13</sup> or to remove a person's name from the register<sup>14</sup>, is an appealable registration decision<sup>15</sup>.

The General Medical Council<sup>16</sup> may, for the purposes of these provisions, by regulations make provision about the information to be provided to the registrar by a person seeking registration<sup>17</sup>, and the registrar may refuse to register any person who fails to comply with such regulations<sup>18</sup>.

1 The regulations made under the Medical Act 1983 s 31: see PARA 35 ante. For the meaning of 'the register' see PARA 34 note 3 ante.

2 For the meaning of 'the registrar' see PARA 23 note 1 ante.

3 The other than under s 3(1)(b) (see PARA 99 text to notes 5, 6 ante), s 18 (see PARA 100 ante).

4 For the meaning of 'British Islands' see PARA 20 note 10 ante.

5 Medical Act 1983 s 44A(1)(a) (s 44A added by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 13).

6 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

7 'Enactment' includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament, and any provision of, or any instrument made under, Northern Ireland legislation: Medical Act 1983 s 44A(8) (as added: see note 5 supra). As to the Scottish Parliament and Northern Ireland legislation see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

8 For the meaning of 'regulatory body' see PARA 141 note 15 post.

9 Medical Act 1983 s 44A(1)(b) (as added: see note 5 supra). If a person has been registered by virtue of any provision other than s 3(1)(b) (see PARA 99 text to notes 5, 6 ante), s 18 (see PARA 100 ante) at a time when a determination of a kind referred to in s 44A(1)(b) (as added) was in force in respect of him, and he has been so registered for a period of not less than one month throughout which the determination had effect: (1) a fitness to practise panel may direct that his registration be suspended for such period, not exceeding the length of the first mentioned period, as the panel thinks fit, and the period of suspension begins on a date to be specified in the panel's direction (s 44A(4)(a) (as so added)); and (2) the provisions of s 35E(1), (3) (as added) (see PARA 144 post), s 40 (as substituted) (see PARA 188 post), Sch 4 paras 1, 2, 8-10, 12, 13 (as substituted) (see PARAS 152-153, 157-158 post) have effect, with any necessary modifications, in relation to such suspension (s 44A(4)(b) (as so added)). As to fitness to practise panels see PARA 138 et seq post.

10 Ibid s 44A(2)(a) (as added: see note 5 supra).

11 Ibid s 44A(2)(b) (as added: see note 5 supra).

12 Ibid s 44A(2) (as added: see note 5 supra). Where the registrar receives information that a practitioner registered by virtue of any provision of the Medical Act 1983 other than s 3(1)(b) (see PARA 99 text to notes 5, 6 ante), s 18 (see PARA 100 ante) for a period of not less than one month, is subject to a determination by a regulatory body that his fitness to practise is impaired which determination has been in force throughout the period he has been registered, the registrar may refer the matter for consideration by a fitness to practise panel: General Medical Council (Fitness to Practise) (Disqualifying Decisions and Determinations by Regulatory Bodies) Procedure Rules Order of Council 2004, SI 2004/2607, r 3(b). For the meaning of 'practitioner' see PARA 182 note 1 post. As to the consideration of such matters by a fitness to practise panel see PARA 182 post. As to the constitution of fitness to practise panels see PARAS 138-140 post. As to fitness to practise panels as statutory committees see PARA 26 ante. As to the functions of fitness to practise panels see PARA 144 et seq post. As to proceedings relating to fitness to practise and the procedure before fitness to practise panels see PARA 151 et seq post.

13 Medical Act 1983 s 44A(3)(a) (as added: see note 5 supra).

14 Ibid s 44A(3)(b) (as added: see note 5 supra).

15 Ibid s 44A(3) (as added: see note 5 supra). As to appealable registration decisions see PARA 126 post.

16 As to the General Medical Council see PARA 13 et seq ante.

17 Medical Act 1983 s 44A(5) (as added: see note 5 supra). Such regulations do not have effect until approved by order of the Privy Council: s 44A(7) (as so added). At the date at which this volume states the law no such regulations had been made. As to the exercise by the Privy Council of its powers under the Medical Act 1983 see PARA 32 ante. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

18 Ibid s 44A(6) (as added: see note 5 supra).

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### **117. Regulations as to registration fees.**

Subject to the provisions of the Medical Act 1983, the General Medical Council<sup>1</sup> may make regulations with respect to the charging of fees in connection with the making of entries in the register of medical practitioners<sup>2</sup>, and in particular: (1) prescribing a fee to be charged on the entry<sup>3</sup> of a name or qualification in the register<sup>4</sup> or on the restoration of any entry to the register<sup>5</sup>; (2) prescribing a fee to be charged in respect of the retention in the register of the name of a person in any year subsequent to the year beginning with the date on which he was first registered<sup>6</sup>; (3) authorising the registrar<sup>7</sup>, notwithstanding anything in the Act, to refuse to make any entry in, or restore any entry to, the register or a particular list in it until a fee prescribed by such regulations has been paid<sup>8</sup>. The regulations may provide for the charging of different fees in different cases and may provide that fees are not be chargeable in prescribed cases<sup>9</sup>. However, the regulations may not provide for any fee to be chargeable in respect of anything done in pursuance of a direction relating to restoration to the register<sup>10</sup>, and no fee is to be charged in relation to registration as a visiting EEA practitioner<sup>11</sup>.

Where, on an application in that behalf by any person, a direction is given: (a) that he be registered with limited registration<sup>12</sup>, or for his name to be erased from the register of medical practitioners with limited registration<sup>13</sup>, the Council may include a direction that the right to registration or erasure conferred thereby is subject to the payment by him of such fee as may be specified in the direction<sup>14</sup>.

1 As to the General Medical Council see PARA 13 et seq ante.

2 Medical Act 1983 s 32(1). Such regulations do not have effect until approved by order of the Privy Council: s 32(8). Any statutory instrument containing such an order of the Privy Council is not subject to annulment in pursuance of a resolution of either House of Parliament: see s 51(2), (3). As to the regulations that have been made see the Medical Practitioners Registration (Fees) Regulations 1985, approved by the General Medical Council (Registration (Fees) Regulations) Order of Council 1986, SI 1986/149; and PARA 118 post. As to the exercise by the Privy Council of its powers under the Medical Act 1983 see PARA 32 ante. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

3 'Entry' includes an entry by way of alteration of a previous entry: *ibid* s 32(9).

4 For the meaning of 'the register' see PARA 34 note 3 ante.

5 Medical Act 1983 s 32(1)(a).

6 *Ibid* s 32(1)(b). The regulations may authorise the registrar to erase from the register of medical practitioners the name of any person who, after such notices and warnings as may be prescribed, fails to pay a fee prescribed in pursuance of s 32(1)(b): s 32(2)(a). If a person whose name has been erased from the register in accordance with such regulations, at any time pays such sum (if any) as may be prescribed for this purpose and the fee (if any) which, if his name had not been so erased, would be due from him in respect of the current year, his name must be restored to the register: s 32(3).

7 For the meaning of 'the registrar' see PARA 23 note 1 ante.

8 Medical Act 1983 s 32(1)(c).

9 *Ibid* s 32(7).

10 *Ie* under *ibid* s 41 (see PARA 149 post): s 32(4).

11 Ibid s 32(5) (amended by the European Primary Medical Qualifications Regulations 1996, SI 1996/1591, reg 7, Sch 2 para 8). As to the registration of visiting EEA practitioners see PARA 100 ante.

12 Ie under the Medical Act 1983 s 22 (see PARA 109 ante): s 32(6)(a).

13 Ie by virtue of ibid s 24(1) (see PARA 110 text to notes 1-4 ante): s 32(6)(b).

14 Ibid s 32(6).

## **UPDATE**

### **117 Regulations as to registration fees**

NOTE 9--See *R (on the application of British Medical Association) v General Medical Council* [2008] EWHC 2602 (Admin), [2008] All ER (D) 36 (Oct) (decision to abolish concession to doctors aged 65 or over not unlawful).

TEXT AND NOTE 11--Medical Act 1983 s 32(5) further amended: SI 2007/3101, SI 2008/1774.

TEXT AND NOTES 12-14--1983 Act s 32(6) omitted: SI 2006/1914.

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### **118. Registration fees.**

The registrar<sup>1</sup> must not make any entry in the register<sup>2</sup> until the prescribed registration fee, if any, has been paid<sup>3</sup>.

Any fully registered<sup>4</sup> person who is not exempted<sup>5</sup> is liable to pay an annual retention fee in respect of the retention of his name in the register in any year subsequent to the year beginning with the date on which he first obtained full registration<sup>6</sup>. Similarly any provisionally registered<sup>7</sup> person who is not exempted is liable to pay an annual retention fee in respect of the retention of his name in the register in any year subsequent to a period of two years beginning with the date on which he first obtained provisional registration<sup>8</sup>. The registrar must cause a notice to be sent not less than seven days before the due date<sup>9</sup> to each fully or provisionally registered person who is liable to pay an annual retention fee<sup>10</sup>. On receipt of an annual retention fee from any registered person the registrar must issue to that person a certificate confirming the continuation of his registration<sup>11</sup>.

Where a person is liable to pay an annual retention fee and is in arrears of payment of the fee due from him for more than 28 days, the registrar must send him notice<sup>12</sup> warning that if the outstanding amount is not paid within 28 days of the date of the notice his name may be erased from the register.<sup>13</sup> Where a person is liable to pay an annual retention fee or has been granted a discount or a refund<sup>14</sup>, and a notice or notices have been sent to him as required<sup>15</sup>, a period of 28 days has elapsed from the date of the notice<sup>16</sup>, and the outstanding amount has not been received by the General Medical Council<sup>17</sup>, the registrar may erase his name from the register<sup>18</sup>.

Unless the registration committee<sup>19</sup> or the president of the General Medical Council directs otherwise, the registrar must refuse to restore to the principal list<sup>20</sup> the name of any person whose name has been erased from it<sup>21</sup> until that person pays a restoration fee<sup>22</sup> and the retention fee, if any, which, if his name had not been so erased, would be due from him in respect of the current year<sup>23</sup>. The fee payable by a person whose name is to be restored to the register where it has previously been voluntarily erased<sup>24</sup> is the amount of the retention fee, if any, which, if his name had not been so erased, would be due from him in respect of the current year<sup>25</sup>; and the registrar may refuse to restore to the register any such person until that fee has been paid<sup>26</sup>.

Where there is tendered in payment of any fee chargeable under these provisions a cheque or other instrument which is dishonoured on presentation or where a person gives a bank authority to his bank to pay any such fee and such bank authority has not been complied with, whether or not by direction of the person giving the bank authority, then the registrar may, after giving due notice, erase any entry made, varied, restored or retained in the register in reliance on that instrument or bank authority notwithstanding any certificate issued in respect of such entry on the assumption that the fee had been paid<sup>27</sup>.

1 For the meaning of 'the registrar' see PARA 23 note 1 ante.

2 For the meaning of 'the register' see PARA 34 note 3 ante.

3 General Medical Council (Registration (Fees) Regulations) Order of Council 1986, SI 1986/149, reg 4(1). The fee for making an entry in the register is: (1) on provisional registration under the Medical Act 1983 s 15 (see PARA 102 ante), £100; (2) on provisional registration under s 21 (see PARA 108 ante), £100; (3) on full

registration under s 3 (see PARA 99 ante): (a) in the case of a person who is or has at any time been provisionally registered, £170; (b) in the case of any other person, £170, except in the case of a person who is already fully registered, when no fee is payable; (4) on full registration under s 19 (see PARA 104 ante): (a) in the case of a person who is or has at any time been provisionally registered, £170; (b) in the case of any other person, £170; (5) on full registration under s 21A (as added) (see PARA 105 ante), £290; (6) on full registration by virtue of s 25 (see PARA 111 ante), £170; (7) on registration under s 27 (see PARA 106 ante), £170: General Medical Council (Registration (Fees) Regulations) Order of Council 1986, SI 1986/149, reg 4(2) (substituted by SI 2000/2141; and amended by SI 2003/1074). Where a person has made an application for registration under the Medical Act 1983 ss 3, 19, 21, 21A, 25, 27 which has been refused, and has paid a fee under the General Medical Council (Registration (Fees) Regulations) Order of Council 1986, SI 1986/149, reg 4(2)(c)-(g) (see heads (3)-(7) supra; it should be noted that there is no reg 4(2)(g)), the registrar must refund to him the amount of the fee less a scrutiny charge of £100: reg 7(2) (reg 7 added by SI 2004/3409; substituted by SI 2005/399). See also the text to note 27 infra.

Where the registrar is satisfied that a person's gross annual income in the current year or in the forthcoming registration year will be less than £19,700 he must grant to that person a refund or discount of one half of any fee which has been paid or would otherwise be payable by that person under the General Medical Council (Registration (Fees) Regulations) Order of Council 1986, SI 1986/149, reg 4 or 5 (see the text to notes 4-8 infra) in respect of the current year or the forthcoming registration year as appropriate: reg 7(1) (reg 7 added by SI 2004/3409; substituted by SI 2005/399). 'The forthcoming registration year' means, in relation to a person registered with full or limited registration, the period of 12 months commencing on the next anniversary of that person's date of full or limited registration or, if the person has not previously held full or limited registration, on the date of his being granted full or limited registration: General Medical Council (Registration (Fees) Regulations) Order of Council 1986, SI 1986/149, reg 2(1) (definition added by SI 2004/3409). If it appears to the registrar that a registered medical practitioner who has been granted such a refund or a discount: (i) has earned or will earn more than £19,700 in the registration year in respect of which the refund or discount was granted (General Medical Council (Registration (Fees) Regulations) Order of Council 1986, SI 1986/149, reg 7A(1)(a) (reg 7A added by SI 2005/399)); (ii) has made a false declaration of his gross annual income (General Medical Council (Registration (Fees) Regulations) Order of Council 1986, SI 1986/149, reg 7A(1)(b) (as so added)); (iii) has supplied incorrect information in connection with his application for a refund or a discount (reg 7A(1)(c) (as so added)); or (iv) has following a request in writing by the registrar refused or failed to supply evidence of his gross annual income in the registration year in respect of which the refund or discount was granted (reg 7A(1)(d) (as so added)); the registrar must as soon as practicable write to the registered medical practitioner at his registered address: (A) stating the matters which appear to raise a question that the registered medical practitioner has received a discount or refund to which he is not entitled (reg 7A(2)(a) (as so added)); (B) providing him with copies of any documents received by the General Medical Council in support thereof (reg 7A(2)(b) (as so added)); and (C) inviting him to make written representations as to why he is or was entitled to the discount or refund, or pay the balance of the fee owing (reg 7A(2)(c) (as so added)); in either case within the period of 14 days from the date of posting of the letter (reg 7A(2) (as so added)). On receipt of any written representations from the registered medical practitioner or on the expiry of 14 days from the date of posting of his letter, the registrar may send the practitioner notice that if the outstanding amount is not paid within 28 days of the date of the notice his name may be erased from the register: reg 7A(3) (as so added)). For the meaning of 'registered medical practitioner' see PARA 4 ante. There is no refund or discount of any fees due under or by virtue of the General Medical Council (Registration (Fees) Regulations) Order of Council 1986, SI 1986/149, in respect of any registration year commencing before 1 January 2005: General Medical Council (Registration (Fees) (Amendment) Regulations) Order of Council 2004, SI 2004/3409, reg 4.

4 For the meaning of 'fully registered' see PARA 3 ante.

5 Any registered person who has reached the age of 65 years is, on application to the registrar, exempt from the payment of annual retention fees: General Medical Council (Registration (Fees) Regulations) Order of Council 1986, SI 1986/149, reg 8.

6 Ibid reg 5(1) (reg 5(1), (2) amended by SI 1997/1884). Any person who is required to pay an annual retention fee becomes liable to pay it in full on each anniversary of the date on which he was first fully registered, or provisionally registered, except that where he has lodged with the registrar a duly completed and valid bank authority consisting of a variable direct debit, that person may elect to pay the annual retention fee by four equal payments at the beginning of each quarter during the current year. This provision applies to a person first registered on 29 February as if he had been registered on 1 March: General Medical Council (Registration (Fees) Regulations) Order of Council 1986, SI 1986/149, reg 5(3), (4) (reg 5(3) substituted, 5(4) added by SI 2005/399). The annual retention fee is £290: General Medical Council (Registration (Fees) Regulations) Order of Council 1986, SI 1986/149, reg 6. See also notes 3 supra, 27 infra. Where the name of a medical practitioner is erased from the register by virtue of regulations made under the Medical Act 1983 s 31A (as added) (voluntary removal from the register: see PARA 121 post) during the first, second or third quarter of his registration year, the registrar must refund to him 75%, 50% or 25% respectively as the case may be of the annual retention fee for his current registration year: General Medical Council (Registration (Fees) Regulations) Order of Council 1986, SI 1986/149, reg 7(3) (as added and substituted: see note 3 supra).

7 For the meaning of 'provisionally registered' see PARA 102 note 6 ante.



8 General Medical Council (Registration (Fees) Regulations) Order of Council 1986, SI 1986/149, reg 5(2) (as amended: see note 6 supra). See also notes 3, 6 supra, 27 infra.

9 'Due date', in relation to the payment of an annual retention fee by a registered person, is the date on which that fee becomes payable by that person under *ibid* reg 5(3) (see note 6 supra): reg 2(1).

10 *Ibid* reg 10(1). The persons to whom a such notice is required to be sent do not include any person who has completed and returned to the registrar a bank authority to pay to the registrar money due in respect of his annual retention fee and who has not caused the registrar to be informed that such authority has been cancelled: reg 10(2). See also the text to note 27 infra. 'Bank authority' means any form of authority which a person may give to his bank including (but without prejudice to the generality of the foregoing) any letter of authority, banker's order, standing order or variable direct debit: reg 2(1). Notices sent to a person under regs 10(1), (3) (as substituted) (see the text to notes 12-13 infra) or under reg 7A(3) (as added) (see note 3 supra) must be sent by post to his registered address: reg 10(4) (amended by SI 2005/399). As to references to service by post see *PARA* 20 note 22 ante.

11 General Medical Council (Registration (Fees) Regulations) Order of Council 1986, SI 1986/149, reg 11.

12 Or in the case of a person to whom *ibid* reg 10(2) (see note 10 supra) does not apply, further notice: reg 10(3) (substituted by SI 2005/399).

13 General Medical Council (Registration (Fees) Regulations) Order of Council 1986, SI 1986/149, reg 10(3) (as substituted: see note 12 supra). As to the service of such notices see note 10 supra. As to the General Medical Council see *PARA* 13 et seq ante.

14 *Ie* under *ibid* reg 7: see note 3 supra.

15 *Ie* by the provisions of *ibid* regs 7A(3) (as added) (see note 3 supra), 10 (see the text to notes 9-10, 12-13 supra) as appropriate: reg 12(a) (reg 12 substituted by SI 2005/399).

16 General Medical Council (Registration (Fees) Regulations) Order of Council 1986, SI 1986/149, reg 12(b) (as substituted: see note 15 supra).

17 *Ibid* reg 12(c) (as substituted: see note 15 supra).

18 *Ibid* reg 12 (as substituted: see note 15 supra).

19 'The registration committee' means the committee of that name of the General Medical Council constituted by virtue of the Medical Act 1983 s 1(4), Sch 1 para 25 (repealed): General Medical Council (Registration (Fees) Regulations) Order of Council 1986, SI 1986/149, reg 2(1). Note: there is no longer a statutory registration committee of the General Medical Council; as to the statutory committees and the power of the Council to establish committees see *PARAS* 25-26 ante.

20 'The principal list' means the list of that name established in accordance with the Medical Act 1983 ss 2(2)(a), 30(1)(a), Sch 6 para 20(2) (see *PARA* 34 ante): General Medical Council (Registration (Fees) Regulations) Order of Council 1986, SI 1986/149, reg 2(1).

21 *Ie* by virtue of the Medical Act 1983 s 30(5) (see *PARA* 34 text to notes 23-24 ante), or by virtue of the General Medical Council (Registration (Fees) Regulations) Order of Council 1986, SI 1986/149, reg 12 (see the text to notes 14-18 supra), or for non-payment of a retention fee by virtue of reg 16 (see the text to note 27 infra).

22 *Ibid* reg 14(a) (amended by SI 2000/2033; SI 2003/1342). The restoration fee is £290: General Medical Council (Registration (Fees) Regulations) Order of Council 1986, SI 1986/149, reg 15 (substituted by SI 2001/3668).

23 General Medical Council (Registration (Fees) Regulations) Order of Council 1986, SI 1986/149, reg 14(b). 'The current year' means, in relation to a registered person, the period of 12 months commencing on the most recent anniversary of that person's date of full registration or, if the person is provisionally registered, on the anniversary of his date of provisional registration: reg 2(1).

24 *Ie* by virtue of regulations made under the Medical Act 1983 s 31A (as added): see *PARA* 121 post.

25 General Medical Council (Registration (Fees) Regulations) Order of Council 1986, SI 1986/149, reg 15A(1) (reg 15A added by SI 2003/1342).

26 General Medical Council (Registration (Fees) Regulations) Order of Council 1986, SI 1986/149, reg 15A(2) (as added: see note 25 *supra*).

27 *Ibid* reg 16(1). If, when such an entry has been erased (except for non-payment of a retention fee) the person to whom it relates subsequently pays the fee, the entry must be made, varied or restored with effect from the date on which the fee was received: reg 16(2).

## **UPDATE**

### **118 Registration fees**

NOTE 5--Decision to abolish concession to doctors aged 65 or over is not unlawful: *R (on the application of British Medical Association) v General Medical Council* [2008] EWHC 2602 (Admin), [2008] All ER (D) 36 (Oct).

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### **119. Applications for restoration to the register.**

A person whose name has been erased from the register<sup>1</sup> may apply in writing<sup>2</sup> to the registrar<sup>3</sup> for his name to be restored to the register<sup>4</sup>. A restoration application must include the following:

- 111 (1) the applicant's<sup>5</sup> name and former registration number<sup>6</sup>;
- 112 (2) details of the applicant's medical qualifications<sup>7</sup>;
- 113 (3) the address which the applicant wishes to be entered on the register as his registered address<sup>8</sup>;
- 114 (4) the name and address of any person, body or organisation by whom the applicant is employed to provide medical services<sup>9</sup>, and any person, body or organisation with whom the applicant has an arrangement to provide medical services<sup>10</sup>;
- 115 (5) where head (4) above does not apply, the name and address of the person, body or organisation which most recently employed the practitioner to provide medical services or with whom he most recently had an arrangement to do so<sup>11</sup>;
- 116 (6) the date the applicant's employment<sup>12</sup> or arrangement<sup>13</sup> commenced, or most recent employment to provide medical services, or arrangement to do so, terminated<sup>14</sup>;
- 117 (7) a statement by:
  - 45 67. (a) the applicant<sup>15</sup>;
  - 68. (b) any person or an officer of any body or organisation named in accordance with head (4) or head (5) above<sup>16</sup>; and
  - 69. (c) an officer of any regulatory body<sup>17</sup> other than the General Medical Council<sup>18</sup> with which the applicant has been registered within the period of five years ending with the date of the restoration application, or such other period as the registrar may specify<sup>19</sup>,
- 46 118 which states that the person making it is not aware of any proceedings, act or omission on the part of the applicant which, if he were a registered medical practitioner<sup>20</sup>, might render him liable to be referred to the General Medical Council for investigation or consideration of his fitness to practise<sup>21</sup>, or which gives particulars of any proceedings, act or omission on the part of the practitioner<sup>22</sup> which might render him so liable<sup>23</sup>; and
- 119 (8) the relevant fee<sup>24</sup>.

On receipt of a restoration application, the registrar must, as soon as is reasonably practicable: (i) restore the practitioner's name to the register and notify him in writing accordingly<sup>25</sup>; (ii) refer the application to a medical<sup>26</sup> and a lay<sup>27</sup> case examiner<sup>28</sup> for consideration<sup>29</sup>; or (iii) where the application does not comply with heads (1) to (8) above and unless he refers the application to a medical and a lay case examiner<sup>30</sup>, reject the application<sup>31</sup>.

<sup>1</sup> ie pursuant to the Medical Act 1983 s 30(5) (see PARA 34 text to notes 23-24 ante) or regulations made under s 32(2) (see PARAS 117-118 ante). 'The register' means the register of medical practitioners maintained in

accordance with s 2(1) (see PARA 34 ante): General Medical Council (Restoration following Administrative Erasure) Regulations Order of Council 2004, SI 2004/2612, reg 2.

2 For the meaning of 'writing' see PARA 20 note 22 ante.

3 For the meaning of 'the registrar' see PARA 23 note 1 ante.

4 General Medical Council (Restoration following Administrative Erasure) Regulations Order of Council 2004, SI 2004/2612, reg 3(1). Such an application made in accordance with reg 3 is known as a 'restoration application': see reg 2. As to the transitional provisions relating to the determination of outstanding applications for restoration made before the General Medical Council (Restoration following Administrative Erasure) Regulations Order of Council 2004, SI 2004/2612, came into force (ie 1 November 2004) see reg 6.

5 'Applicant' means a person applying for his name to be restored to the register in accordance with ibid reg 3: reg 2.

6 Ibid reg 3(2)(a). As to the registration of medical practitioners see PARA 99 et seq ante.

7 Ibid reg 3(2)(b). For the meaning of 'qualification' see PARA 34 note 2 ante.

8 Ibid reg 3(2)(c).

9 Ibid reg 3(2)(d)(i).

10 Ibid reg 3(2)(d)(ii).

11 Ibid reg 3(2)(e).

12 Ie under ibid reg 3(2)(d)(i) (see the text to note 9 supra): reg 3(2)(f)(i).

13 Ie under ibid reg 3(2)(d)(ii) (see the text to note 10 supra): reg 3(2)(f)(ii).

14 Ibid reg 3(2)(f)(iii).

15 Ibid reg 3(2)(g)(i).

16 Ibid reg 3(2)(g)(ii).

17 For the meaning of 'regulatory body' see PARA 141 note 15 post; definition applied by ibid reg 2.

18 As to the General Medical Council see PARA 13 et seq ante.

19 General Medical Council (Restoration following Administrative Erasure) Regulations Order of Council 2004, SI 2004/2612, reg 3(2)(g)(iii).

20 For the meaning of 'registered medical practitioner' see PARA 4 ante.

21 General Medical Council (Restoration following Administrative Erasure) Regulations Order of Council 2004, SI 2004/2612, reg 3(2)(g)(aa). As to proceedings relating to fitness to practise see PARA 151 et seq post.

22 'Practitioner' means a registered medical practitioner: ibid reg 2.

23 Ibid reg 3(2)(g)(bb).

24 Ie under the General Medical Council (Registration (Fees) Regulations) Order of Council 1986, SI 1986/149, reg 14 (see PARA 118 text to notes 19-23 ante): General Medical Council (Restoration following Administrative Erasure) Regulations Order of Council 2004, SI 2004/2612, reg 3(2)(h).

25 Ibid reg 3(3)(a).

26 'Medical', in relation to any person, means a registered medical practitioner: ibid reg 2.

27 'Lay', in relation to any person, means a person who is neither a registered medical practitioner nor a holder of any qualification registrable under the Medical Act 1983: General Medical Council (Restoration following Administrative Erasure) Regulations Order of Council 2004, SI 2004/2612, reg 2. As to the registration of qualifications see PARAS 99, 102, 107, 109, 111 ante.

28 Ie under ibid reg 3(4). Where:

- 32 (1) a statement under reg 3(2)(g)(i)-(iii) (see the text to notes 15-19 supra) is not included with a restoration application but the application otherwise complies with reg 3(2) (see the text to notes 5-24 supra) (reg 3(4)(a)); or
- 33 (2) the registrar receives information in writing (whether before or after the applicant's name was erased from the register or before or after the restoration application was made and including any information provided in accordance with reg 3(2)) which raises concerns that the applicant's fitness to practise may be impaired (reg 3(4)(b)),

the registrar may refer the restoration application for consideration by a medical and a lay case examiner in accordance with reg 4 (see PARA 120 post) (reg 3(4)). 'Case examiner' means a medical or lay officer of the General Medical Council appointed by the registrar under the General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608 (see PARA 160 post); and 'case examiners' means the medical and lay case examiners to whom an application is referred under the General Medical Council (Restoration following Administrative Erasure) Regulations Order of Council 2004, SI 2004/2612, reg 3(4) and includes any replacement case examiner appointed by the registrar: reg 2.

- 29 le in accordance with ibid reg 4 (see PARA 120 post): reg 3(3)(b).
- 30 le under ibid reg 3(4)(a): see note 28 supra.
- 31 Ibid reg 3(3)(c).

## **UPDATE**

### **119 Applications for restoration to the register**

TEXT AND NOTES--For 'registered medical practitioner' now read 'person registered under the Medical Act 1983, whether or not they hold a licence to practise'; and for 'registration number' now read 'GMC reference number': SI 2004/2612, Schedule (amended by SI 2009/2764).

NOTE 27--Now, 'lay' means a person who is not and never has been provisionally or fully registered, was at no time registered with limited registration and does not hold qualifications which would entitle them to apply for provisional or full registration under the Medical Act 1983: SI 2004/2612, Schedule r 2 (amended by SI 2009/2764).

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## **120. Restoration procedure where fitness to practise issues arise.**

Where the registrar<sup>1</sup> refers a restoration application<sup>2</sup> to the case examiners<sup>3</sup>, he must write to the applicant<sup>4</sup> as soon as is reasonably practicable informing him that his application is to be considered by the case examiners<sup>5</sup>, enclosing a copy of any information received by the registrar<sup>6</sup>, and inviting the applicant to make written representations within the period of 28 days from the date of the letter<sup>7</sup>. The case examiners must consider any such representations received from the applicant<sup>8</sup> and any information received by the registrar<sup>9</sup>, and may unanimously grant the restoration application and restore the applicant's name to the register<sup>10</sup>, reject the restoration application<sup>11</sup>, or refer the matter for consideration by a fitness to practise panel<sup>12</sup>. The case examiners must inform the registrar of their decision<sup>13</sup>.

If the case examiners fail to agree as to the disposal of a restoration application, the registrar must refer the application for determination by the investigation committee<sup>14</sup>, and the committee must determine the application as soon as is reasonably practicable<sup>15</sup>. Upon consideration of a restoration application, the committee may grant the restoration application and restore the applicant's name to the register<sup>16</sup>, reject the restoration application<sup>17</sup>, or refer the matter for consideration by a fitness to practise panel<sup>18</sup>. The committee must inform the registrar of its decision<sup>19</sup>.

Where the case examiners or the committee decide to refer a restoration application for consideration by a fitness to practise panel, the registrar must, as soon as reasonably practicable, write to the applicant notifying him of that decision together with the reasons for it<sup>20</sup> and stating that the application will proceed before a fitness to practise panel unless he notifies the registrar in writing within the period of 28 days from the date of the letter that he wishes to withdraw his application<sup>21</sup>. Where the applicant does not so withdraw his application, a fitness to practise panel must consider the application<sup>22</sup>. If a panel decides to reject a restoration application, then the applicant may not make a further restoration application until the expiry of a period of 12 months from the date of the panel's decision<sup>23</sup> or such other period as the panel may specify<sup>24</sup>.

Where the case examiners, the investigation committee or a fitness to practise panel decide to grant a restoration application, then they must inform the registrar who must, as soon as reasonably practicable, restore the applicant's name to the register and notify him in writing that his name has been restored<sup>25</sup>. Where the case examiners, the investigation committee or a fitness to practise panel decide to reject a restoration application, then they must inform the registrar who must, as soon as reasonably practicable, notify the applicant of the decision to reject the restoration application<sup>26</sup>, the reasons for that decision<sup>27</sup> and the period within which he may not make a further restoration application<sup>28</sup>.

1 For the meaning of 'the registrar' see PARA 23 note 1 ante.

2 For the meaning of 'restoration application' see PARA 119 note 4 ante.

3 I.e. under the General Medical Council (Restoration following Administrative Erasure) Regulations Order of Council 2004, SI 2004/2612, reg 3(4): see PARA 119 note 28 ante. For the meaning of 'case examiners' see PARA 119 note 28 ante.

4 For the meaning of 'applicant' see PARA 119 note 5 ante.

5 General Medical Council (Restoration following Administrative Erasure) Regulations Order of Council 2004, SI 2004/2612, reg 4(1)(a).

6 *Ie* under *ibid* reg 3(4)(b) (see PARA 119 note 28 ante): reg 4(1)(b).

7 *Ibid* reg 4(1)(c). The registrar may carry out any investigations as are in his opinion appropriate to the consideration of the restoration application under reg 4(3) (see the text to notes 8-12 *infra*): reg 4(2).

8 *Ibid* reg 4(3)(a)(i).

9 *Ie* under *ibid* reg 3(4) (see PARA 119 note 28 ante) or as a result of any investigations carried out under reg 4(2) (see note 7 *supra*): reg 4(3)(a)(ii).

10 *Ibid* reg 4(3)(b)(i).

11 *Ibid* reg 4(3)(b)(ii).

12 *Ibid* reg 4(3)(b)(iii). 'Fitness to practise panel' means such a panel constituted under rules made under the Medical Act 1983 s 1(4), Sch 1 para 19E (as added) (see PARA 26 text to note 11 ante): see the General Medical Council (Restoration following Administrative Erasure) Regulations Order of Council 2004, SI 2004/2612, reg 2. As to the constitution of fitness to practise panels see PARAS 138-140 post. As to fitness to practise panels as statutory committees see PARA 26 ante. As to the functions of fitness to practise panels see PARA 144 et seq post. As to proceedings relating to fitness to practise and the procedure before fitness to practise panels see PARA 151 et seq post.

13 *Ibid* reg 4(6).

14 As to the constitution of the investigation committee see PARAS 138-140 post. As to the investigation committee as a statutory committee see PARA 26 ante. As to the functions of the investigation committee see PARAS 141-142 post.

15 General Medical Council (Restoration following Administrative Erasure) Regulations Order of Council 2004, SI 2004/2612, reg 4(4).

16 *Ibid* reg 4(5)(a).

17 *Ibid* reg 4(5)(b).

18 *Ibid* reg 4(5)(c).

19 *Ibid* reg 4(6).

20 *Ibid* reg 4(7)(a).

21 *Ibid* reg 4(7)(b).

22 *Ie* in accordance with the General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 24 (see PARA 181 text to notes 14-34 post): General Medical Council (Restoration following Administrative Erasure) Regulations Order of Council 2004, SI 2004/2612, reg 4(8).

23 *Ibid* reg 4(9)(a).

24 *Ibid* reg 4(9)(b).

25 *Ibid* reg 4(10)(a).

26 *Ibid* reg 4(10)(b)(i).

27 *Ibid* reg 4(10)(b)(ii).

28 *Ie* the applicable period under *ibid* reg 4(9)(a), (b) (see the text to notes 23, 24 *supra*): reg 4(10)(b)(iii).

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### **121. Regulations providing for voluntary removal from the register.**

The General Medical Council<sup>1</sup> may make regulations: (1) providing for the erasure by the registrar<sup>2</sup> from the register of medical practitioners<sup>3</sup> of the name of any person who applies, in the manner prescribed by the regulations, for his name to be erased from the register<sup>4</sup>; (2) providing for the refusal by the registrar of such applications in prescribed cases and circumstances<sup>5</sup>; (3) making provision, including provision requiring the approval of the Council or of one of the statutory committees<sup>6</sup>, for the restoration to the register of the name of any person whose name has been so erased<sup>7</sup>. Such regulations do not have effect until approved by order of the Privy Council<sup>8</sup>.

1 As to the General Medical Council see PARA 13 et seq ante.

2 For the meaning of 'the registrar' see PARA 23 note 1 ante.

3 As to the register of medical practitioners see PARA 34 ante.

4 Medical Act 1983 s 31A(1)(a) (s 31A added the Medical (Professional Performance) Act 1995 s 2). As to the regulations that have been made see the General Medical Council (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations Order of Council 2004, SI 2004/2609; and PARA 122 et seq post.

5 Medical Act 1983 s 31A(1)(b) (as added: see note 4 supra). As to the regulations that have been made see note 4 supra.

6 For the meaning of 'the statutory committees' see PARA 26 note 2 ante.

7 Medical Act 1983 s 31A(1)(c) (as added: see note 4 supra). Regulations under s 31A(1)(c) (as added) must provide that, in such circumstances as may be prescribed in those regulations, a person's name is not to be restored to the register unless: (1) the General Medical Council or a committee of the Council so directs after making such investigation into his fitness to practise as it thinks fit; (2) the practitioner's licence to practise is restored in accordance with the regulations; or (3) both head (1) and head (2) supra are met: s 31A(1A)(a)-(c), (1B) (s 31A as so added; s 31A(1A), (1B) added by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 12(3)). For the meaning of 'licence to practise' see PARA 130 note 3 post. As to the regulations that have been made see note 4 supra.

8 Medical Act 1983 s 31A(2) (as added: see note 4 supra). As to the exercise by the Privy Council of its powers under the Medical Act 1983 see PARA 32 ante. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.



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## **122. Applications for voluntary erasure.**

A practitioner<sup>1</sup> may apply in writing<sup>2</sup> to the registrar<sup>3</sup> for his name to be erased from the register<sup>4</sup>. An erasure application<sup>5</sup> must include the following:

- 120 (1) the practitioner's<sup>6</sup> name and registration number<sup>6</sup>;
- 121 (2) the practitioner's registered address or, if post is unlikely to reach him there, an address to which the registrar is able to send to the practitioner written communications relating to the application<sup>7</sup>;
- 122 (3) the name and address of any person, body or organisation by whom the practitioner is employed to provide medical services<sup>8</sup>, and any person, body or organisation with whom the practitioner has an arrangement to provide medical services<sup>9</sup>;
- 123 (4) where head (3) above does not apply and save where the practitioner provides a statement under head (6) below, the name and address of the person, body or organisation which most recently employed the practitioner to provide medical services or with whom he most recently had an arrangement to do so<sup>10</sup>;
- 124 (5) a statement by:
  - 47 70. (a) the practitioner<sup>11</sup>;
  - 71. (b) save where the practitioner provides a statement under head (6) below, any person or an officer of any body or organisation named in accordance with head (3) or head (4) above<sup>12</sup>; and
  - 72. (c) an officer of any regulatory body<sup>13</sup> other than the General Medical Council<sup>14</sup> with which the practitioner has been registered within the period of five years ending with the date of the erasure application<sup>15</sup>,
- 48 125 which states that the person making it is not aware of any proceedings, act or omission on the part of the practitioner which might render him liable to be referred to the Council for investigation or consideration of his fitness to practise<sup>16</sup>, or gives particulars of any proceedings, act or omission on the part of the practitioner which might render him so liable<sup>17</sup>; and
- 126 (6) where the practitioner has not been employed or had an arrangement to provide medical services at any time during the period of five years ending with the date of the erasure application, a statement confirming that this is the case<sup>18</sup>.

On receipt of an erasure application, the registrar must, as soon as is reasonably practicable: (i) erase the practitioner's name from the register<sup>19</sup>; (ii) refer the application to a medical<sup>20</sup> and a lay<sup>21</sup> case examiner<sup>22</sup>; (iii) refer the application to a fitness to practise panel<sup>23</sup> for determination<sup>24</sup>; or (iv) where the application does not comply with heads (1) to (6) above, reject the application<sup>25</sup>. The registrar must notify the applicant as soon as is reasonably practicable whether his application has been granted and his name has been erased from the register<sup>26</sup>, or has not been granted<sup>27</sup>, together with the reasons for that decision<sup>28</sup>.

1 'Practitioner' means a registered medical practitioner: General Medical Council (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations Order of Council 2004, SI 2004/2609, reg 2. For the meaning of 'registered medical practitioner' see PARA 4 ante.

2 For the meaning of 'writing' see PARA 20 note 22 ante.

3 For the meaning of 'the registrar' see PARA 23 note 1 ante.

4 General Medical Council (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations Order of Council 2004, SI 2004/2609, reg 3(1). As to the transitional arrangements relating to determination of outstanding applications for voluntary erasure made before the General Medical Council (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations Order of Council 2004, SI 2004/2609, came into force (ie 1 November 2004) see reg 7(1)-(4). 'The register' means the register of medical practitioners maintained in accordance with the Medical Act 1983 s 2(1) (see PARA 34 ante): General Medical Council (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations Order of Council 2004, SI 2004/2609, reg 2.

5 'Erasure application' means an application for voluntary erasure made in accordance with ibid reg 3: reg 2.

6 Ibid reg 3(2)(a). As to the registration of medical practitioners see PARA 99 et seq ante.

7 Ibid reg 3(2)(b).

8 Ibid reg 3(2)(c)(i).

9 Ibid reg 3(2)(c)(ii).

10 Ibid reg 3(2)(d).

11 Ibid reg 3(2)(e)(i).

12 Ibid reg 3(2)(e)(ii).

13 For the meaning of 'regulatory body' see PARA 141 note 15 post; definition applied by ibid reg 2.

14 As to the General Medical Council see PARA 13 et seq ante.

15 General Medical Council (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations Order of Council 2004, SI 2004/2609, reg 3(2)(e)(iii).

16 Ibid reg 3(2)(e)(aa). As to proceedings relating to fitness to practise see PARA 151 et seq post.

17 Ibid reg 3(2)(e)(bb).

18 Ibid reg 3(2)(f).

19 Ibid reg 3(3)(a).

20 'Medical', in relation to any person, means a registered medical practitioner: ibid reg 2.

21 'Lay', in relation to any person, means a person who is neither a registered medical practitioner nor a holder of any qualification registrable under the Medical Act 1983: General Medical Council (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations Order of Council 2004, SI 2004/2609, reg 2. As to the registration of qualifications see PARAS 99, 102, 107, 109, 111 ante.

22 Ie under ibid reg 3(4) for determination in accordance with reg 3(5)-(7) (see PARA 123 post): reg 3(3)(b). 'Case examiner' means a medical or lay officer of the General Medical Council appointed by the registrar under the General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608 (see PARA 160 post); and 'case examiners' means the medical and lay case examiners to whom an application is referred under the General Medical Council (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations Order of Council 2004, SI 2004/2609, reg 3(4) (see PARA 123 post), reg 4(4) (see PARA 124 post), reg 7(2) (see note 4 supra) and includes any replacement case examiner appointed by the registrar: reg 2.

23 Ie under ibid reg 3(8): see PARA 123 note 11 post. 'Fitness to practise panel' means a fitness to practise panel constituted under rules made under the Medical Act 1983 s 1(4), Sch 1 para 19E (as added) (see PARA 26 ante): General Medical Council (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations Order of Council 2004, SI 2004/2609, reg 2. As to the constitution of fitness to practise panels see PARAS 138-140 post. As to fitness to practise panels as statutory committees see PARA 26 ante. As to the functions of

fitness to practise panels see PARA 144 et seq post. As to the procedure before fitness to practise panels see PARA 151 et seq post.

24 Ibid reg 3(3)(c).

25 Ibid reg 3(3)(d).

26 Ibid reg 3(9)(a).

27 Ibid reg 3(9)(b).

28 Ibid reg 3(9).

## **UPDATE**

### **122 Applications for voluntary erasure**

NOTES 1, 20--'Practitioner' and 'medical' now mean a person registered under the 1983 Act, whether or not they hold a licence to practise: SI 2004/2609 reg 2 (amended by SI 2009/2763).

NOTE 4--SI 2004/2609 reg 7 revoked: SI 2009/2763.

TEXT AND NOTE 6--Reference to registration number is now reference to GMC reference number: SI 2004/2609 reg 3(2)(a) (amended by SI 2009/2763).

NOTE 21--'Lay' now means a person who is not and never has been provisionally or fully registered, was at no time registered with limited registration, and does not hold qualifications which would entitle them to apply for provisional or full registration under the 1983 Act: SI 2004/2609 reg 2 (amended by SI 2009/2763).

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### **123. Consideration of applications for voluntary erasure.**

The registrar<sup>1</sup> must refer an erasure application<sup>2</sup> to be determined by a medical<sup>3</sup> and a lay<sup>4</sup> case examiner<sup>5</sup> where: (1) he receives information, including any information provided in accordance with the application, that the practitioner<sup>6</sup> is subject to any proceedings or has committed any act or omission that might render him liable to be referred to the General Medical Council<sup>7</sup> for investigation or consideration of his fitness to practise<sup>8</sup>; (2) an allegation against the practitioner is being investigated in order to decide whether it should be referred to a fitness to practise panel<sup>9</sup>; or (3) an allegation against the practitioner has been referred to a fitness to practise panel<sup>10</sup> but the hearing before the panel has not yet commenced<sup>11</sup>. Upon consideration of an erasure application, the case examiners may unanimously grant the application, and notify the registrar who must erase the practitioner's name from the register accordingly<sup>12</sup>, or reject the application<sup>13</sup>.

If the case examiners fail to agree as to the disposal of an erasure application, the registrar must refer the application for determination by the investigation committee<sup>14</sup>, and the committee must determine the application as soon as is reasonably practicable<sup>15</sup>. Upon consideration of an erasure application, the committee may grant the application, and notify the registrar who must erase the practitioner's name from the register accordingly<sup>16</sup>, or reject the application<sup>17</sup>.

1 For the meaning of 'the registrar' see PARA 23 note 1 ante.

2 For the meaning of 'erasure application' see PARA 122 note 5 ante.

3 For the meaning of 'medical' see PARA 122 note 20 ante.

4 For the meaning of 'lay' see PARA 122 note 21 ante.

5 For the meaning of 'case examiner' see PARA 122 note 22 ante.

6 For the meaning of 'practitioner' see PARA 122 note 1 ante.

7 As to the General Medical Council see PARA 13 et seq ante.

8 General Medical Council (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations Order of Council 2004, SI 2004/2609, reg 3(4)(a). As to proceedings relating to fitness to practise see PARA 151 et seq post.

9 Ie under the General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608 (see PARA 160 et seq post): General Medical Council (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations Order of Council 2004, SI 2004/2609, reg 3(4)(b). For the meaning of 'fitness to practise panel' see PARA 122 note 23 ante.

10 Ie under the General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608.

11 General Medical Council (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations Order of Council 2004, SI 2004/2609, reg 3(4)(c). Where, on the date the registrar receives an erasure application, an allegation against the practitioner has been referred to a fitness to practise panel under the General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, and the hearing before the panel has commenced, the registrar must refer the application for determination by the panel, and the application must be determined by the panel accordingly: General Medical Council (Voluntary Erasure and

Restoration following Voluntary Erasure) Regulations Order of Council 2004, SI 2004/2609, reg 3(8). As to the procedure before fitness to practise panels see PARA 178 et seq post.

12 Ibid reg 3(5)(a). For the meaning of 'the register' see PARA 122 note 4 ante.

13 Ibid reg 3(5)(b).

14 As to the constitution of the investigation committee see PARAS 138-140 post. As to the investigation committee as a statutory committee see PARA 26 ante. As to the functions of the investigation committee see PARAS 141-142 post.

15 General Medical Council (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations Order of Council 2004, SI 2004/2609, reg 3(6).

16 Ibid reg 3(7)(a).

17 Ibid reg 3(7)(b).

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#### **124. Restoration to the register following voluntary erasure.**

A person whose name has been erased from the register<sup>1</sup> pursuant to an application for voluntary erasure<sup>2</sup> may apply in writing<sup>3</sup> to the registrar<sup>4</sup> for his name to be restored to the register<sup>5</sup>. A restoration application must include the following:

- 127 (1) the applicant's<sup>6</sup> name and former registration number<sup>7</sup>;
- 128 (2) details of the applicant's medical qualifications<sup>8</sup>;
- 129 (3) the address which the applicant wishes to be entered on the register as his registered address<sup>9</sup>;
- 130 (4) the name and address of any person, body or organisation by whom the applicant is employed to provide medical services<sup>10</sup>, and any person, body or organisation with whom the applicant has an arrangement to provide medical services<sup>11</sup>;
- 131 (5) where head (4) above does not apply, the name and address of the person, body or organisation which most recently employed the practitioner to provide medical services or with whom he most recently had an arrangement to do so<sup>12</sup>;
- 132 (6) the date the applicant's employment<sup>13</sup> or arrangement<sup>14</sup> commenced, or most recent employment to provide medical services, or arrangement to do so, terminated<sup>15</sup>;
- 133 (7) a statement by:
  - 49 73. (a) the applicant<sup>16</sup>;
  - 74. (b) any person or an officer of any body or organisation named in accordance with head (4) or head (5) above<sup>17</sup>; and
  - 75. (c) an officer of any regulatory body<sup>18</sup> other than the General Medical Council<sup>19</sup> with which the applicant has been registered within the period of five years ending with the date of the restoration application, or such other period as the registrar may specify<sup>20</sup>,
- 50 134 which states that the person making it is not aware of any proceedings, act or omission on the part of the applicant which, if he were a registered medical practitioner<sup>21</sup>, might render him liable to be referred to the General Medical Council for investigation or consideration of his fitness to practise<sup>22</sup>, or gives particulars of any proceedings, act or omission on the part of the practitioner which might render him so liable<sup>23</sup>; and
- 135 (8) the relevant fee<sup>24</sup>.

On receipt of a restoration application, the registrar must, as soon as is reasonably practicable: (i) restore the practitioner's name to the register and notify him in writing accordingly<sup>25</sup>; (ii) refer the application to a medical<sup>26</sup> and a lay<sup>27</sup> case examiner<sup>28</sup> for consideration<sup>29</sup>; or (iii) where the application does not comply with heads (1) to (8) above and unless he refers the application to a medical and a lay case examiner, reject the application<sup>30</sup>.

<sup>1</sup> For the meaning of 'the register' see PARA 122 note 4 ante.

2     Ie under the General Medical Council (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations Order of Council 2004, SI 2004/2609, or any equivalent regulations previously in force (see the General Medical Council (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations Order of Council 2003, SI 2003/1341). As to applications for voluntary erasure see PARA 122 ante.

3     For the meaning of 'writing' see PARA 20 note 22 ante.

4     For the meaning of 'the registrar' see PARA 23 note 1 ante.

5     General Medical Council (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations Order of Council 2004, SI 2004/2609, reg 4(1). Such an application is known as a 'restoration application': see reg 2. As to transitional arrangements relating to the determination of outstanding applications for restoration following voluntary erasure made before the General Medical Council (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations Order of Council 2004, SI 2004/2609, came into force (ie 1 November 2004) see reg 7(5)-(9).

6     'Applicant' means a person applying for his name to be restored to the register in accordance with *ibid* reg 4: reg 2.

7     *Ibid* reg 4(2)(a). As to the registration of medical practitioners see PARA 99 et seq ante.

8     *Ibid* reg 4(2)(b). For the meaning of 'qualification' see PARA 34 note 2 ante.

9     *Ibid* reg 4(2)(c).

10    *Ibid* reg 4(2)(d)(i).

11    *Ibid* reg 4(2)(d)(ii).

12    *Ibid* reg 4(2)(e).

13    Ie under *ibid* reg 4(2)(d)(i) (see the text to note 10 supra): reg 4(2)(f)(i).

14    Ie under *ibid* reg 4(2)(d)(ii) (see the text to note 11 supra): reg 4(2)(f)(ii).

15    *Ibid* reg 4(2)(f)(iii).

16    *Ibid* reg 4(2)(g)(i).

17    *Ibid* reg 4(2)(g)(ii).

18    For the meaning of 'regulatory body' see PARA 141 note 15 post; definition applied by *ibid* reg 2.

19    As to the General Medical Council see PARA 13 et seq ante.

20    General Medical Council (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations Order of Council 2004, SI 2004/2609, reg 4(2)(g)(iii).

21    For the meaning of 'registered medical practitioner' see PARA 4 ante.

22    General Medical Council (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations Order of Council 2004, SI 2004/2609, reg 4(2)(g)(aa). As to proceedings relating to fitness to practise see PARA 151 et seq post.

23    *Ibid* reg 4(2)(g)(bb).

24    Ie under the General Medical Council (Registration (Fees) Regulations) Order of Council 1986, SI 1986/149, reg 15A (as added) (see PARA 118 text to notes 24-26 ante): General Medical Council (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations Order of Council 2004, SI 2004/2609, reg 4(2)(h).

25    *Ibid* reg 4(3)(a).

26    For the meaning of 'medical' see PARA 122 note 20 ante.

27    For the meaning of 'lay' see PARA 122 note 21 ante.

28     le under the General Medical Council (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations Order of Council 2004, SI 2004/2609, reg 4(4). Where: (1) a statement under reg 4(2)(g)(i), (ii) or (iii) (see the text to notes 16-20 supra) is not included with a restoration application but the application otherwise complies with reg 4(2) (see heads (1)-(8) in the text) (reg 4(4)(a)); or (2) the registrar receives information in writing, whether before or after the applicant's name was erased from the register or before or after the restoration application was made and including any information provided in accordance with reg 4(2) (see heads (1)-(8) in the text), which raises concerns that the applicant's fitness to practise may be impaired (reg 4(4)(b)), the registrar may refer the restoration application for consideration by a medical and a lay case examiner in accordance with reg 5 (see PARA 125 post) (reg 4(4)). For the meaning of 'case examiner' see PARA 122 note 22 ante.

29     le in accordance with *ibid* reg 5 (see PARA 125 post): reg 4(3)(b).

30     *Ibid* reg 4(3)(c).

## **UPDATE**

### **124 Restoration to the register following voluntary erasure**

NOTE 5--SI 2004/2609 reg 7 revoked: SI 2009/2763.

TEXT AND NOTE 7--Reference to registration number is now reference to GMC reference number: SI 2004/2609 reg 4(2)(a) (amended by SI 2009/2763).

NOTE 24--SI 2004/2609 reg 4(2)(h) revoked: SI 2009/2763.



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### **125. Restoration procedure where fitness to practise issues arise.**

Where the registrar<sup>1</sup> refers a restoration application to the case examiners<sup>2</sup>, he must write to the applicant<sup>3</sup> as soon as is reasonably practicable: (1) informing the applicant that his application is to be considered by the case examiners<sup>4</sup>; (2) enclosing a copy of any information received by him<sup>5</sup>; and (3) inviting the applicant to make written<sup>6</sup> representations within the period of 28 days from the date of the letter<sup>7</sup>. The case examiners must consider any such representations received from the applicant<sup>8</sup> and any such information received by the registrar or information resulting from any investigations carried out by him<sup>9</sup>, and may unanimously grant the restoration application and restore the applicant's name to the register<sup>10</sup>, reject the restoration application<sup>11</sup>, or refer the matter for consideration by a fitness to practise panel<sup>12</sup>. The case examiners must inform the registrar of their decision<sup>13</sup>.

If the case examiners fail to agree as to the disposal of a restoration application, the registrar must refer the application for determination by the investigation committee<sup>14</sup>, and the committee must determine the application as soon as is reasonably practicable<sup>15</sup>. Upon consideration of a restoration application, the committee may grant the restoration application and restore the applicant's name to the register<sup>16</sup>, reject the restoration application<sup>17</sup>, or refer the matter for consideration by a fitness to practise panel<sup>18</sup>. The committee must inform the registrar of its decision<sup>19</sup>.

Where the case examiners or the committee decide to refer a restoration application for consideration by a fitness to practise panel, the registrar must, as soon as reasonably practicable, write to the applicant notifying him of that decision together with the reasons for it<sup>20</sup> and stating that the application will proceed before a panel unless he notifies the registrar in writing within the period of 28 days from the date of the letter that he wishes to withdraw his application<sup>21</sup>.

If a fitness to practise panel decides to reject a restoration application, then the applicant may not make a further restoration application until the expiry of a period of 12 months from the date of the panel's decision<sup>22</sup> or such other period as the panel may specify<sup>23</sup>.

Where the case examiners, the committee or a fitness to practise panel decide to grant a restoration application, then they must inform the registrar who must, as soon as reasonably practicable, restore the applicant's name to the register<sup>24</sup> and notify him in writing that his name has been restored<sup>25</sup>. Where the case examiners, the committee or a fitness to practise panel decide to reject a restoration application, then they must inform the registrar who must, as soon as reasonably practicable, notify the applicant of the decision to reject the restoration application<sup>26</sup>, the reasons for that decision<sup>27</sup>, and the applicable period relating to his making a further restoration application<sup>28</sup>.

1 For the meaning of 'the registrar' see PARA 23 note 1 ante.

2 I.e. under the General Medical Council (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations Order of Council 2004, SI 2004/2609, reg 4(4): see PARA 124 note 28 ante. For the meaning of 'restoration application' see PARA 124 note 5 ante. For the meaning of 'case examiners' see PARA 122 note 22 ante.

3 For the meaning of 'applicant' see PARA 124 note 6 ante.

4 General Medical Council (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations Order of Council 2004, SI 2004/2609, reg 5(1)(a). The registrar may carry out any investigations as are in his opinion appropriate to the consideration of the restoration application by the case examiners: reg 5(2).

5 *Ie* under *ibid* reg 4(4)(b) (see PARA 124 note 28 ante): reg 5(1)(b).

6 For the meaning of 'written' see PARA 20 note 22 ante.

7 General Medical Council (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations Order of Council 2004, SI 2004/2609, reg 5(1)(c).

8 *Ibid* reg 5(3)(a)(i).

9 *Ibid* reg 5(3)(a)(ii). See also note 4 *supra*.

10 *Ibid* reg 5(3)(b)(i).

11 *Ibid* reg 5(3)(b)(ii).

12 *Ibid* reg 5(3)(b)(iii). As to the constitution of fitness to practise panels see PARAS 138-140 post. As to fitness to practise panels as statutory committees see PARA 26 ante. As to the functions of fitness to practise panels see PARA 144 et seq post. As to proceedings relating to fitness to practise and the procedure before fitness to practise panels see PARA 151 et seq post.

13 *Ibid* reg 5(6). See also the text to notes 24-28 *infra*.

14 As to the constitution of the investigation committee see PARAS 138-140 post. As to the investigation committee as a statutory committee see PARA 26 ante. As to the functions of the investigation committee see PARAS 141-142 post.

15 General Medical Council (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations Order of Council 2004, SI 2004/2609, reg 5(4).

16 *Ibid* reg 5(5)(a).

17 *Ibid* reg 5(5)(b).

18 *Ibid* reg 5(5)(c).

19 *Ibid* reg 5(6). See also the text to notes 24-28 *infra*.

20 *Ibid* reg 5(7)(a).

21 *Ibid* reg 5(7)(b). Where the applicant does not so withdraw his application, a fitness to practise panel must consider the application in accordance with the General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 24 (see PARA 181 text to notes 14-34 post): General Medical Council (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations Order of Council 2004, SI 2004/2609, reg 5(8).

22 *Ibid* reg 5(9)(a).

23 *Ibid* reg 5(9)(b).

24 For the meaning of 'the register' see PARA 122 note 4 ante.

25 General Medical Council (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations Order of Council 2004, SI 2004/2609, reg 5(10)(a).

26 *Ibid* reg 5(10)(b)(i).

27 *Ibid* reg 5(10)(b)(ii).

28 *Ie* under *ibid* reg 5(9)(a), (b) (see the text to notes 22, 23 *supra*): reg 5(10)(b)(iii).

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## **(vii) Registration Appeals**

### **126. Appealable registration decisions.**

The following decisions are appealable registration decisions<sup>1</sup>:

- 136 (1) a decision on an appropriate application<sup>2</sup> not to register the applicant as a fully registered medical practitioner<sup>3</sup>;
- 137 (2) a decision on such an application not to register the applicant provisionally<sup>4</sup>;
- 138 (3) a decision on such an application not to register the applicant provisionally under the provisions relating to the provisional registration of EEA nationals<sup>5</sup>;
- 139 (4) a decision on such an application not to register a primary qualification<sup>6</sup>;
- 140 (5) a decision that a person may not, or may no longer, be registered as a visiting EEA practitioner<sup>7</sup>;
- 141 (6) a decision not to direct that a person be registered by virtue of overseas qualifications<sup>8</sup>;
- 142 (7) a decision not to direct that a person be registered provisionally for the purposes of employment<sup>9</sup>;
- 143 (8) a decision not to direct that a person be registered as a fully registered medical practitioner under the provisions relating to full registration for eligible specialists and qualified general practitioners<sup>10</sup>;
- 144 (9) a decision under the provisions relating to the limited registration of persons by virtue of overseas qualifications<sup>11</sup>:
- 51
  - 76. (a) not to direct that a person be registered, or registered for a further period, as a medical practitioner with limited registration<sup>12</sup>; or
  - 77. (b) defining the limits of a person's registration<sup>13</sup>;
- 52
  - 145 (10) a decision giving a direction for erasure of limited registration<sup>14</sup>;
  - 146 (11) a decision not to direct that a person with limited registration be registered as a fully registered medical practitioner<sup>15</sup>;
  - 147 (12) a decision not to register an overseas qualification<sup>16</sup>;
  - 148 (13) a decision under the provisions relating to the temporary full registration for visiting overseas specialists<sup>17</sup>:
- 53
  - 78. (a) not to direct that a person be registered temporarily as a fully registered medical practitioner<sup>18</sup>; or
  - 79. (b) to direct that such registration be for a period of less than 12 months<sup>19</sup>;
- 54
  - 149 (14) a decision under the provisions relating to the effect of disqualification in another member state on registration in the United Kingdom<sup>20</sup>:
- 55
  - 80. (a) not to register a person<sup>21</sup>; or
  - 81. (b) to remove a person's name from the register<sup>22</sup>;
- 56
  - 150 (15) a decision under the provisions relating to the effect of disqualification or conviction on registration<sup>23</sup>:
- 57

82. (a) not to register a person<sup>24</sup>; or  
 83. (b) to remove a person's name from the register<sup>25</sup>.  
 58

However, a decision is not an appealable registration decision if it is a decision to refuse registration to a person, or to erase a person's name from the register, by reason only that the person failed to: (i) pay the prescribed fee for registration<sup>26</sup>; (ii) make an application as required under the Medical Act 1983<sup>27</sup>; or (iii) produce a certificate as to experience<sup>28</sup>.

1 Medical Act 1983 s 34B, Sch 3A para 2(1) (s 34B, Sch 3A added by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 8(1), (2)).

2 le one made under the Medical Act 1983 s 33, Sch 3: see PARAS 114-115 ante.

3 le under ibid s 3 (see PARA 99 ante): Sch 3A para 2(1)(a) (as added: see note 1 supra). For the meaning of 'fully registered' see PARA 3 ante.

4 le under ibid s 15 (see PARA 102 ante): Sch 3A para 2(1)(b) (as added: see note 1 supra).

5 le under ibid s 15A (as added) (see PARA 103 ante): Sch 3A para 2(1)(c) (as added: see note 1 supra).

6 le under ibid s 16(1) (see PARA 99 ante): Sch 3A para 2(1)(d) (as added: see note 1 supra). For the meaning of 'qualification' see PARA 34 note 2 ante.

7 le under ibid s 18 (see PARA 100 ante): Sch 3A para 2(1)(e) (as added: see note 1 supra).

8 le under ibid s 19(1) (see PARA 104 ante): Sch 3A para 2(1)(f) (as added: see note 1 supra).

9 le under ibid s 21(2) (see PARA 108 ante): Sch 3A para 2(1)(g) (as added: see note 1 supra).

10 le under ibid s 21A(1) (as added) (see PARA 105 ante): Sch 3A para 2(1)(h) (as added: see note 1 supra).

11 le under ibid s 22: see PARA 109 ante.

12 Ibid Sch 3A para 2(1)(i)(i) (as added: see note 1 supra).

13 Ibid Sch 3A para 2(1)(i)(ii) (as added: see note 1 supra).

14 le under ibid s 24(2) (see PARA 110 ante): Sch 3A para 2(1)(j) (as added: see note 1 supra).

15 le under ibid s 25 (see PARA 111 ante): Sch 3A para 2(1)(k) (as added: see note 1 supra).

16 le under ibid s 26(1), (2) (see PARA 107 ante): Sch 3A para 2(1)(l) (as added: see note 1 supra).

17 le under ibid s 27: see PARA 106 ante.

18 Ibid Sch 3A para 2(1)(m)(i) (as added: see note 1 supra).

19 Ibid Sch 3A para 2(1)(m)(ii) (as added: see note 1 supra).

20 le ibid s 44: see PARA 101 ante. For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

21 le under ibid s 44(1), (7) (see PARAS 100-101 ante): Sch 3A para 2(1)(n)(i) (as added: see note 1 supra).

22 le under ibid s 44(3) (see PARA 101 text to notes 5, 6 ante): Sch 3A para 2(1)(n)(ii) (as added: see note 1 supra).

23 le ibid s 44A (as added): see PARA 116 ante.

24 le under ibid s 44A(1) (as added) (see PARA 116 ante): Sch 3A para 2(1)(o)(i) (as added: see note 1 supra).

25 le under ibid s 44A(2) (as added) (see PARA 116 ante): Sch 3A para 2(1)(o)(ii) (as added: see note 1 supra).

26 Ibid Sch 3A para 2(2)(a) (as added: see note 1 supra). As to fees for registration see PARAS 117-118 ante.

27 Ibid Sch 3A para 2(2)(b) (as added: see note 1 supra).

28 Ie a certificate obtained under ibid s 10 (see PARA 96 ante): Sch 3A para 2(2)(c) (as added: see note 1 supra).

## **UPDATE**

### **126 Appealable registration decisions**

TEXT AND NOTES 1-6--Medical Act 1983 Sch 3A para 2 amended: SI 2006/1914, SI 2007/3101.

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## **127. Notice of appealable registration decisions.**

Where an appealable registration decision<sup>1</sup> is made, the person making the decision<sup>2</sup> must give the person concerned<sup>3</sup> notice of: (1) the decision<sup>4</sup>; (2) the reasons for the decision<sup>5</sup>; and (3) the person's right to appeal<sup>6</sup>.

Failure to notify an applicant of a decision made in respect of certain applications for registration<sup>7</sup> within the requisite period<sup>8</sup> is treated as a decision from which the applicant may appeal under these provisions<sup>9</sup>.

1 As to appealable registration decisions see PARA 126 ante.

2 'Person making the decision' means: (1) in relation to a decision on an application made under the Medical Act 1983 Sch 3 para 2 (see PARA 114 text to notes 5-8 ante), the appropriate registrar as defined in Sch 3 para 2(3); (2) in relation to a decision under ss 18, 44, 44A (as added) (see PARAS 100-101, 116 ante) the registrar; and (3) in any other case, the General Medical Council: s 34B, Sch 3A para 1 (s 34B, Sch 3A added by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 8(1), (2)). As to the General Medical Council see PARA 13 et seq ante.

3 Medical Act 1983 Sch 3A para 3(1)(a) (as added: see note 2 supra).

4 'Person concerned' means the person in respect of whom an appealable registration decision is made or, as the case may be, an applicant to whom ibid Sch 3A para 3(2) (as added) (see the text to notes 7-9 infra) applies: Sch 3A para 1 (as added: see note 2 supra).

5 Ibid Sch 3A para 3(1)(b) (as added: see note 2 supra).

6 Ibid Sch 3A para 3(1)(c) (as added: see note 2 supra). As to such appeals see PARA 128 post.

Any notice required to be given under Sch 3A paras 3, 4(9) (as added) (see PARA 128 post) to the person concerned may be given by delivering it to him; by leaving it at his proper address; by sending it by a registered post service; or by sending it by a postal service which provides for the delivery of the notice by post to be recorded: Sch 3A para 6(1)(a)-(d) (as added: see note 2 supra). For the purposes of these provisions and those of the Interpretation Act 1978 s 7 (see PARA 20 note 22 ante) in its application to the Medical Act 1983 Sch 3A para 6 (as added), the proper address of the person concerned is the address which is shown in the register as his address, or which would have been so shown if he were registered; or if the specified conditions are satisfied, his last known address: Sch 3A para 6(2) (as so added). The specified conditions are that: (1) the last known address of the person concerned differs from the address shown in the register, or which would have been so shown if he were registered; and (2) it appears to the body or person giving the notice that a letter sent to the person concerned at his last known address is more likely to reach him: Sch 3A para 6(3)(a), (b) (as so added). For these purposes, the giving of a notice effected by sending it by post is deemed to have been effected at the time when the letter containing it would be delivered in the ordinary course of post, and so much of the Interpretation Act 1978 s 7 as relates to the time when service is deemed to have been effected does not apply to a notice sent by post: Medical Act 1983 Sch 3A para 6(4) (as so added). For the meaning of 'the register' see PARA 34 note 3 ante.

7 Ie under ibid ss 3, 19, 21A (as added), 22: see PARAS 99, 104-105, 109 ante.

8 For the meaning of 'the requisite period' see PARA 38 note 7 ante; definition applied by ibid Sch 3A para 1 (as added: see note 2 supra).

9 Ie under ibid Sch 3A para 4 (as added) (see PARA 128 post): Sch 3A para 3(2) (as added: see note 2 supra).

## **UPDATE**

### **127 Notice of appealable registration decisions**

TEXT AND NOTES 1-6--Medical Act 1983 Sch 3A paras 1-3 amended: SI 2007/3101.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/ (3) REGISTRATION, TRAINING AND QUALIFICATION/(vii) Registration Appeals/128. Appeals from appealable registration decisions.

## **128. Appeals from appealable registration decisions.**

A person in respect of whom an appealable registration decision<sup>1</sup> has been made may appeal against the decision to a registration appeals panel<sup>2</sup>. An appeal must be made by giving notice of appeal to the registrar<sup>3</sup> before the end of the period of 28 days beginning with the date on which notice of the decision was given<sup>4</sup> to the person concerned<sup>5</sup>.

Where a decision to erase or remove a medical practitioner from the register<sup>6</sup> is an appealable registration decision, the decision must not be carried into effect until the time for bringing any appeal against the decision has expired without an appeal being brought<sup>7</sup>, or, where an appeal is brought, until the date on which the appeal is finally disposed of or abandoned or fails by reason of its non-prosecution<sup>8</sup>.

In disposing of an appeal, a registration appeals panel<sup>9</sup> may determine to: (1) dismiss the appeal<sup>10</sup>; (2) allow the appeal and quash the decision appealed against<sup>11</sup>; (3) substitute for the decision appealed against any other decision which could have been made by the person making the decision<sup>12</sup>; (4) remit the case to the person making the decision to dispose of in accordance with the directions of the panel<sup>13</sup>. A panel may make such order as to costs as it thinks fit<sup>14</sup>. A panel must, as soon as reasonably practicable, give the person concerned and the person making the decision notice of the panel's determination on an appeal and of the reasons for that determination<sup>15</sup>; and if that determination is not a determination to allow the appeal, it must give the person concerned notice of his right of appeal<sup>16</sup>.

1 As to appealable registration decisions see PARA 126 ante.

2 Medical Act 1983 s 34B, Sch 3A para 4(1) (s 34B, Sch 3A added by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 8(1), (2)). Any rules made under the Medical Act 1983 Sch 3B para 3 (see PARA 135 post) apply in relation to such an appeal as they apply in relation to an appeal under s 29F (prospectively added) (see PARA 134 post): Sch 3A para 4(6) (as so added). As to the constitution of registration appeals panels see PARAS 138-140 post. As to registration appeals panels as statutory committees see PARA 26 ante.

3 Ibid Sch 3A para 4(2) (as added: see note 2 supra). Where any notice required by Sch 3A para 3(1) (as added) (see PARA 127 ante) to be given to the person concerned is given by sending it to him by post, and the registrar is satisfied, on the application of that person, that he did not receive the notice within the period of 14 days beginning with the day on which the person making the decision gave the decision to which the notice relates, the registrar may, if he thinks fit, by authorisation in writing extend the time for giving notice of appeal: Sch 3A para 7 (as so added). For the meaning of 'the registrar' see PARA 23 note 1 ante.

4 I.e. under ibid Sch 3A para 3(1) (as added): see PARA 127 ante. In the case of an appeal by virtue of Sch 3A para 3(2) (as added) (see PARA 127 ante), notice of appeal must be given before the end of the period of 28 days following the end of the requisite period: Sch 3A para 4(4) (as added: see note 2 supra).

5 Ibid Sch 3A para 4(3) (as added: see note 2 supra). This provision is subject to any extension of time under Sch 3A para 7 (as added) (see note 3 supra): Sch 3A para 4(3) (as so added). For the meaning of 'person concerned' see PARA 127 note 4 ante.

6 For the meaning of 'the register' see PARA 34 note 3 ante.

7 Medical Act 1983 Sch 3A para 4(5)(a) (as added: see note 2 supra).

8 Ibid Sch 3A para 4(5)(b) (as added: see note 2 supra).



9 The provisions of *ibid* Sch 4 paras 2, 7 (see *PARAS 153-154 post*) apply in relation to proceedings before a registration appeals panel as they apply to proceedings before a fitness to practise panel: Sch 3A para 4(7) (as added: see note 2 *supra*).

10 *Ibid* Sch 3A para 4(8)(a) (as added: see note 2 *supra*).

11 *Ibid* Sch 3A para 4(8)(b) (as added: see note 2 *supra*).

12 *Ibid* Sch 3A para 4(8)(c) (as added: see note 2 *supra*).

13 *Ibid* Sch 3A para 4(8)(d) (as added: see note 2 *supra*). For the meaning of 'person making the decision' see *PARA 127 note 2 ante*.

14 *Ibid* Sch 3A para 4(8) (as added: see note 2 *supra*). As to costs generally see *CIVIL PROCEDURE vol 12 (2009) PARA 1729 et seq*.

15 *Ibid* Sch 3A para 4(9)(a) (as added: see note 2 *supra*). As to the service of notices see *PARA 127 note 6 ante*.

16 *Ibid* Sch 3A para 4(9)(b) (as added: see note 2 *supra*). As to appeals against determinations of a registration appeals panel see *PARA 129 post*.

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## 129. Appeals from registration appeals panels.

Where a registration appeals panel determines an appeal<sup>1</sup> and the panel's determination is any determination other than a determination to allow the appeal and quash the decision appealed against<sup>2</sup>, the person concerned<sup>3</sup> may, before the end of the period of 28 days beginning with the date on which notice of the determination was given to him<sup>4</sup>, appeal against the determination to the county court<sup>5</sup>. On such an appeal, the court may: (1) dismiss the appeal<sup>6</sup>; (2) allow the appeal and quash the determination appealed against<sup>7</sup>; (3) substitute for the determination appealed against any other determination which could have been made by the registration appeals panel<sup>8</sup>; (4) remit the case to the registrar<sup>9</sup> for him to refer it to a registration appeals panel to dispose of the case in accordance with the directions of the court<sup>10</sup>. The court may make such order as to costs as it thinks fit<sup>11</sup>.

1 Medical Act 1983 s 34B, Sch 3A para 5(1)(a) (s 34B, Sch 3A added by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 8(1), (2)). As to the determination of appeals by registration appeals panels see PARA 128 ante.

2 I.e. a determination under the Medical Act 1983 Sch 3A para 4(8)(b) (as added) (see PARA 128 ante): Sch 3A para 5(1)(b) (as added: see note 1 supra).

3 For the meaning of 'person concerned' see PARA 127 note 4 ante.

4 I.e. under the Medical Act 1983 Sch 3A para 4(9) (as added): see PARA 128 ante.

5 Ibid Sch 3A para 5(1), (2) (as added: see note 1 supra). As to county courts see COURTS.

6 Ibid Sch 3A para 5(4)(a) (as added: see note 1 supra).

7 Ibid Sch 3A para 5(4)(b) (as added: see note 1 supra).

8 Ibid Sch 3A para 5(4)(c) (as added: see note 1 supra).

9 For the meaning of 'the registrar' see PARA 23 note 1 ante.

10 Medical Act 1983 Sch 3A para 5(4)(d) (as added: see note 1 supra).

11 Ibid Sch 3A para 5(4) (as added: see note 1 supra). As to costs generally see CIVIL PROCEDURE vol 12 (2009) PARA 1729 et seq.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/ (3) REGISTRATION, TRAINING AND QUALIFICATION/(viii) Licence to Practise and Revalidation/130. Regulations and guidance.

## **(viii) Licence to Practise and Revalidation**

### **130. Regulations and guidance.**

As from a day to be appointed the following provisions have effect<sup>1</sup>. The General Medical Council<sup>2</sup> must make regulations with respect to licences to practise<sup>3</sup>. Such regulations must include provision for or in connection with each of the following matters<sup>4</sup>: (1) grant of a licence to practise<sup>5</sup>; (2) refusal of a licence to practise<sup>6</sup>; (3) withdrawal of a licence to practise<sup>7</sup>; and (4) revalidation<sup>8</sup> of a medical practitioner of a prescribed description as a condition of his continuing to hold a licence to practise<sup>9</sup>. Such regulations may make different provision for different purposes, cases or circumstances<sup>10</sup>, and may provide for the charging of a fee to a medical practitioner in respect of the cost of his revalidation<sup>11</sup>, or the consideration of any application made by him for restoration of a licence to practise<sup>12</sup>. Before making such regulations, the Council must consult those bodies of persons representing medical practitioners, or medical practitioners of any description, as appear to it requisite to be consulted<sup>13</sup>.

The Council may publish guidance for medical practitioners relating to the information and documents to be provided, and any other requirements to be satisfied for the purposes of revalidation<sup>14</sup>, or for securing restoration of a licence to practise<sup>15</sup>. In preparing any such guidance in relation to revalidation, the Council must take into account such similarities as there may be between any information or documents to be provided, or any other requirements to be satisfied for the purposes of revalidation<sup>16</sup>, and for the purposes of any scheme for the appraisal of medical practitioners which applies within the health service<sup>17</sup>.

1 The Medical Act 1983 Pt IIIA (ss 29A-29J) is added by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 10. At the date at which this volume states the law, only the Medical Act 1983 s 29G(1)(a), (2), (3) (see the text to notes 14, 16-17 *infra*), Sch 3B para 3(1)-(3), (5)-(8) (see PARA 135 *post*) (as added) were in force; the remaining provisions are to come into force as from a day to be appointed: see the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, art 1(2), (3). At the date at which this volume states the law no such day had been appointed.

2 As to the General Medical Council see PARA 13 *et seq ante*.

3 Medical Act 1983 s 29A(2) (prospectively added: see note 1 *supra*). Regulations under s 29A (prospectively added) do not have effect until approved by order of the Privy Council: s 29J(4) (prospectively added: see note 1 *supra*). The first regulations made under s 29A (prospectively added) must provide, except in prescribed cases or circumstances, that persons who on the date on which any provision of those regulations comes into force are registered under the Medical Act 1983 with full or limited registration, must be granted a licence to practise: Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, art 16(2), Sch 2 para 38. At the date at which this volume states the law no such regulations had been made. As to full registration see PARA 99 *et seq ante*. For the meaning of 'limited registration' see PARA 109 note 10 *ante*. As to the penalty for pretending to hold a licence to practise see PARA 193 *post*. As to the exercise by the Privy Council of its powers under the Medical Act 1983 see PARA 32 *ante*. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

Any reference to a 'licence to practise' is a reference to a licence granted under and in accordance with Pt IIIA (prospectively added) to a medical practitioner by a licensing authority: s 29A(1) (prospectively added: see note 1 *supra*); s 55(1) (definition added by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, art 15(6) (c)). 'Licensing authority' means: (1) the registrar; (2) a registration decisions panel; (3) such other committee of the General Medical Council as may be prescribed; or (4) such other officer of the General Medical Council as may be prescribed: s 29A(5) (prospectively added: see note 1 *supra*). 'Prescribed' means prescribed by regulations made by the General Medical Council under s 29A(2) (prospectively added): s 29A(5) (prospectively added: see note 1 *supra*). For the meaning of 'the registrar' see PARA 23 note 1 *ante*. As to the constitution of

registration decisions panels see PARAS 138-140 post. As to registration decisions panels as statutory committees see PARA 26 ante.

4 Ibid s 29A(3) (prospectively added: see note 1 supra).

5 Ibid s 29A(4)(a) (prospectively added: see note 1 supra).

6 Ibid s 29A(4)(b) (prospectively added: see note 1 supra).

7 Ibid s 29A(4)(c) (prospectively added: see note 1 supra).

8 'Revalidation' means evaluation of a medical practitioner's fitness to practise: ibid s 29A(5) (prospectively added: see note 1 supra); s 55(1).

9 Ibid s 29A(4)(d) (prospectively added: see note 1 supra).

10 Ibid s 29J(3) (prospectively added: see note 1 supra).

11 Ibid s 29J(1)(a) (prospectively added: see note 1 supra). Any sum payable by a medical practitioner under s 29J(1) (prospectively added) may be recovered by the General Medical Council summarily as a civil debt: see s 29J(2) (prospectively added: see note 1 supra). As to the summary recovery of civil debts see MAGISTRATES vol 29(2) (Reissue) PARA 826.

12 Ibid s 29J(1)(b) (prospectively added: see note 1 supra). See also note 11 supra.

13 Ibid s 29J(5) (prospectively added: see note 1 supra).

14 Ibid s 29G(1)(a).

15 Ibid s 29G(1)(b) (prospectively added: see note 1 supra).

16 Ibid s 29G(2)(a).

17 Ibid s 29G(2)(b). 'The health service' means the health service established in pursuance of the National Health Service Act 1946: Medical Act 1983 s 29G(3). As to the health service see HEALTH SERVICES vol 54 (2008) PARA 1 et seq.

## UPDATE

### 130 Regulations and guidance

NOTE 1--Appointed day for Medical Act 1983 ss 29A(1)-(3), (4)(a)-(c), (5), 29G(1)(b), 29J(1)(b), (2), (3)-(5), 55(1) (in so far as it adds the definition of 'licence to practise') is 8 September 2009: London Gazette, 21 August 2009.

NOTES 3, 10--The regulations made by the General Medical Council in exercise of the power conferred by Medical Act 1983 ss 29A, 29E(1), 29J(3) are set out in General Medical Council (Licence to Practise) Regulations Order of Council 2009, SI 2009/2739.

NOTE 3--1983 Act s 29A(5) amended: SI 2006/1914.

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### **131. Grant, refusal, withdrawal and restoration of licence.**

As from a day to be appointed the following provisions have effect<sup>1</sup>. Regulations made by the General Medical Council<sup>2</sup> must provide for a licence to practise<sup>3</sup> to be granted to a medical practitioner: (1) on first registration under the Medical Act 1983 as a medical practitioner with either full registration or limited registration<sup>4</sup>; (2) on being provisionally registered<sup>5</sup>; and (3) in such other cases or circumstances as may be prescribed<sup>6</sup>. Such regulations must also provide for the withdrawal of a licence to practise from a medical practitioner: (a) where the practitioner has failed to comply with prescribed requirements<sup>7</sup>; (b) where the licence to practise was fraudulently procured or otherwise incorrectly granted<sup>8</sup>; (c) where the medical practitioner requests that the licence to practise be withdrawn<sup>9</sup>; and (d) in such other cases or circumstances as may be prescribed<sup>10</sup>. Such regulations must also make provision as to the procedure to be followed in connection with the grant, the refusal, or the withdrawal of a licence to practise by a licensing authority<sup>11</sup>, and for and in connection with authorising or requiring a licensing authority, in such cases or circumstances as may be prescribed, to restore a licence to practise to a medical practitioner whose licence to practise has been withdrawn<sup>12</sup>.

If a licensing authority decides: (i) to refuse to grant a licence to a medical practitioner<sup>13</sup>; (ii) to withdraw a licence to practise from a medical practitioner<sup>14</sup>; or (iii) to restore a licence to practise to a medical practitioner<sup>15</sup>, the registrar<sup>16</sup> must give the practitioner notice<sup>17</sup> of the decision<sup>18</sup>, the reasons given for the decision by the licensing authority concerned<sup>19</sup>, and the practitioner's right of appeal<sup>20</sup>.

1 The Medical Act 1983 Pt IIIA (ss 29A-29J) is added by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 10. At the date at which this volume states the law, only the Medical Act 1983 s 29G(1)(a), (2), (3) (see PARA 130 text to notes 14, 16-17 ante), Sch 3B para 3(1)-(3), (5)-(8) (see PARA 135 post) (as added) were in force; the remaining provisions are to come into force as from a day to be appointed: see the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, art 1(2), (3). At the date at which this volume states the law no such day had been appointed.

2 Ie under the Medical Act 1983 s 29A (prospectively added): see PARA 130 ante.

3 For the meaning of 'licence to practise' see PARA 130 note 3 ante.

4 Medical Act 1983 s 29B(1)(a) (prospectively added: see note 1 supra). As to full registration see PARA 99 et seq ante. For the meaning of 'limited registration' see PARA 109 note 10 ante.

5 Ibid s 29B(1)(b) (prospectively added: see note 1 supra). For the meaning of 'provisionally registered' see PARA 102 note 6 ante.

6 Ibid s 29B(1)(c) (prospectively added: see note 1 supra). For the meaning of 'prescribed' see PARA 130 note 3 ante.

7 Ibid s 29B(2)(a) (prospectively added: see note 1 supra). A decision to withdraw a licence to practise from a medical practitioner may not be carried into effect until the time for bringing any appeal against the decision has expired without an appeal being brought, or, where an appeal is brought, until the date on which the appeal is finally disposed of or abandoned or fails by reason of its non-prosecution: s 29F(3) (prospectively added: see note 1 supra).

8 Ibid s 29B(2)(b) (prospectively added: see note 1 supra). See also note 7 supra.

9 Ibid s 29B(2)(c) (prospectively added: see note 1 supra). See also note 7 supra.

- 10 Ibid s 29B(2)(d) (prospectively added: see note 1 supra). See also note 7 supra.
- 11 Ibid s 29B(3) (prospectively added: see note 1 supra). For the meaning of 'licensing authority' see PARA 130 note 3 ante.
- 12 Ibid s 29D(1) (prospectively added: see note 1 supra). Such regulations must make provision as to the procedure to be followed in connection with the restoration, or the refusal of the restoration, of a licence to practise by a licensing authority: s 29D(2) (prospectively added: see note 1 supra).
- 13 See ibid s 29B(4)(a) (prospectively added: see note 1 supra).
- 14 See ibid s 29B(4)(b) (prospectively added: see note 1 supra).
- 15 See ibid s 29D(3) (prospectively added: see note 1 supra).
- 16 For the meaning of 'the registrar' see PARA 23 note 1 ante.
- 17 Medical Act 1983 ss 29B(4), 29D(3) (prospectively added: see note 1 supra). Any notice required to be given to a medical practitioner under ss 29B, 29D, Sch 3B paras 6, 7 (prospectively added) (see PARA 136 post) may be so given by delivering it to him, by leaving it at his proper address, by sending it by a registered post service, or by sending it by a postal service which provides for the delivery of the notice by post to be recorded: s 29H(1), (2) (prospectively added: see note 1 supra). For the purposes of s 29H (prospectively added) and of the Interpretation Act 1978 s 7 (see PARA 20 note 22 ante) in its application to the Medical Act 1983 s 29H (prospectively added), a medical practitioner's proper address is his address in the register, or, if certain conditions are satisfied, his last known address: s 29H(3) (prospectively added: see note 1 supra). The conditions are that the practitioner's last known address differs from his address in the register, and it appears to the body or person giving the notice that a letter sent to the practitioner at his last known address is more likely to reach him: s 29H(4) (prospectively added: see note 1 supra). The giving of a notice effected by sending it by post is deemed to have been effected at the time when the letter containing it would be delivered in the ordinary course of post, and so much of the Interpretation Act 1978 s 7 as relates to the time when service is deemed to have been effected does not apply to a notice sent by post: Medical Act 1983 s 29H(5) (prospectively added: see note 1 supra). For the meaning of 'the register' see PARA 34 note 3 ante.
- 18 Ibid ss 29B(5)(a), 29D(3)(a) (both prospectively added: see note 1 supra).
- 19 Ibid ss 29B(5)(b), 29D(3)(b) (both prospectively added: see note 1 supra).
- 20 Ie under ibid s 29F (prospectively added) (see PARA 134 post): ss 29B(5)(c), 29D(3)(c) (both prospectively added: see note 1 supra).

## **UPDATE**

### **131 Grant, refusal, withdrawal and restoration of licence**

NOTE 1--Appointed day for Medical Act 1983 ss 29B(1)-(3), 29D(1), (2) is 8 September 2009 and appointed day for ss 29B(4), (5), 29D(3), 29H is 16 November 2009: London Gazette, 21 August 2009.

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### **132. Referral to the investigation committee.**

As from a day to be appointed the following provisions have effect<sup>1</sup>. Regulations made by the General Medical Council<sup>2</sup> must provide that where, in the course of revalidation<sup>3</sup>, it appears to a licensing authority<sup>4</sup> that the fitness to practise of the medical practitioner concerned may be impaired, the authority may refer the matter to the investigation committee<sup>5</sup>. If a matter is so referred to the investigation committee, the licensing authority may take no further action until the matter has been considered by that committee<sup>6</sup>, or if it is referred by the committee to a fitness to practise panel<sup>7</sup>, by such a panel and has been referred back to the authority<sup>8</sup>.

1 The Medical Act 1983 Pt IIIA (ss 29A-29J) is added by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 10. At the date at which this volume states the law, only the Medical Act 1983 s 29G(1)(a), (2), (3) (see PARA 130 text to notes 14, 16-17 ante), Sch 3B para 3(1)-(3), (5)-(8) (see PARA 135 post) (as added) were in force; the remaining provisions are to come into force as from a day to be appointed: see the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, art 1(2), (3). At the date at which this volume states the law no such day had been appointed.

2 Ie under the Medical Act 1983 s 29A (prospectively added): see PARA 130 ante. As to the General Medical Council see PARA 13 et seq ante.

3 For the meaning of 'revalidation' see PARA 130 note 8 ante.

4 For the meaning of 'licensing authority' see PARA 130 note 3 ante.

5 Medical Act 1983 s 29C(1) (prospectively added: see note 1 supra). As to the constitution of the investigation committee see PARAS 138-140 post. As to the investigation committee as a statutory committee see PARA 26 ante. As to the functions of the investigation committee see PARAS 141-142 post.

6 Ibid s 29C(2)(a) (prospectively added: see note 1 supra).

7 As to the constitution of fitness to practise panels see PARAS 138-140 post. As to fitness to practise panels as statutory committees see PARA 26 ante. As to the functions of fitness to practise panels see PARA 144 et seq post. As to proceedings relating to fitness to practise and the procedure before fitness to practise panels see PARA 151 et seq post.

8 Medical Act 1983 s 29C(2)(b) (prospectively added: see note 1 supra).

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### **133. Evidence.**

As from a day to be appointed the following provisions have effect<sup>1</sup>. Regulations made by the General Medical Council<sup>2</sup> may make provision for a licensing authority<sup>3</sup>:

- 151 (1) to refuse to grant a licence to practise<sup>4</sup> to a medical practitioner<sup>5</sup>;
- 152 (2) to withdraw a licence to practise from a medical practitioner<sup>6</sup>; or
- 153 (3) to refuse to restore a licence to practise to a medical practitioner<sup>7</sup>,

in any case where the medical practitioner does not provide the licensing authority with such evidence or information as the authority may reasonably request for any of the following purposes<sup>8</sup>, namely: (a) determining whether to grant a licence to practise to the practitioner<sup>9</sup>; (b) revalidation of the practitioner<sup>10</sup>; (c) determining whether to withdraw a licence to practise from the practitioner<sup>11</sup>; and (d) determining whether to restore a licence to practise to the practitioner<sup>12</sup>.

For the purpose of carrying out any of its functions<sup>13</sup> in relation to a medical practitioner, a licensing authority may require any medical practitioner, other than that practitioner<sup>14</sup>, or any other person<sup>15</sup>, who in the opinion of the authority is able to supply information or produce any document which appears relevant to the discharge of any such function, to supply such information or produce such a document<sup>16</sup>. Similarly, for the purpose of reviewing procedures relating to revalidation<sup>17</sup>, or the grant, withdrawal or restoration of a licence to practise<sup>18</sup>, a licensing authority may require any medical practitioner or other person to supply information or produce any document<sup>19</sup>. However, these provisions do not require or permit any disclosure of information which is prohibited by or under any other enactment<sup>20</sup>; and they do not apply in relation to the supplying of information or the production of a document which a person could not be compelled to supply or produce in civil proceedings before the relevant court<sup>21</sup>.

1 The Medical Act 1983 Pt IIIA (ss 29A-29J) is added by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 10. At the date at which this volume states the law, only the Medical Act 1983 s 29G(1)(a), (2), (3) (see PARA 130 text to notes 14, 16-17 ante), Sch 3B para 3(1)-(3), (5)-(8) (see PARA 135 post) (as added) were in force; the remaining provisions are to come into force as from a day to be appointed: see the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, art 1(2), (3). At the date at which this volume states the law no such day had been appointed.

2 Ie under the Medical Act 1983 s 29A (prospectively added): see PARA 130 ante. As to the General Medical Council see PARA 13 et seq ante.

3 For the meaning of 'licensing authority' see PARA 130 note 3 ante.

4 For the meaning of 'licence to practise' see PARA 130 note 3 ante.

5 Medical Act 1983 s 29E(1)(a) (prospectively added: see note 1 supra). As to regulations concerning the grant of licences to practise see PARA 131 ante.

6 Ibid s 29E(1)(b) (prospectively added: see note 1 supra). As to regulations concerning the withdrawal of licences to practise see PARA 131 ante.

7 Ibid s 29E(1)(c) (prospectively added: see note 1 supra). As to regulations concerning the restoration of licences to practise see PARA 131 ante.

8 Ibid s 29E(1) (prospectively added: see note 1 supra).



9 Ibid s 29E(2)(a) (prospectively added: see note 1 supra).

10 Ibid s 29E(2)(b) (prospectively added: see note 1 supra). For the meaning of 'revalidation' see PARA 130 note 8 ante.

11 Ibid s 29E(2)(c) (prospectively added: see note 1 supra).

12 Ibid s 29E(2)(d) (prospectively added: see note 1 supra).

13 Ie under ibid ss 29A-29D (prospectively added): see PARAS 130-132 ante.

14 Ibid s 29E(3)(a) (prospectively added: see note 1 supra).

15 Ibid s 29E(3)(b) (prospectively added: see note 1 supra).

16 Ibid s 29E(3) (prospectively added: see note 1 supra).

17 Ibid s 29E(4)(a) (prospectively added: see note 1 supra).

18 Ibid s 29E(4)(b) (prospectively added: see note 1 supra).

19 Ibid s 29E(4) (prospectively added: see note 1 supra).

20 See ibid s 29E(5) (prospectively added: see note 1 supra). However, where information is held in a form in which the prohibition operates because the information is capable of identifying an individual, a licensing authority may, in exercising its functions under s 29E(3), (4) (prospectively added), require that the information be put into a form which is not capable of identifying that individual: s 29E(6) (prospectively added: see note 1 supra). In determining for the purposes of s 29E(5) (prospectively added) whether a disclosure is not prohibited, by reason of being a disclosure of personal data which is exempt from non-disclosure by virtue of the Data Protection Act 1998 s 35(1) (see CONFIDENCE AND DATA PROTECTION vol 8(1) (2003 Reissue) PARA 554), it must be assumed that the disclosure is required by or under the Medical Act 1983 s 29E (prospectively added): see s 29E(7) (prospectively added: see note 1 supra). 'Enactment' includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament, and any provision of, or any instrument made under, Northern Ireland legislation: s 29E(9) (prospectively added: see note 1 supra). As to the Scottish Parliament and Northern Ireland legislation see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

21 Ibid s 29E(8) (prospectively added: see note 1 supra). For the meaning of 'relevant court' see PARA 188 note 14 post; definition applied by s 29E(8) (prospectively added: see note 1 supra). As to the production of documents in civil proceedings see CIVIL PROCEDURE vol 11 (2009) PARAS 538-583.

## UPDATE

### 133 Evidence

NOTE 1--Appointed day for Medical Act 1983 s 29E(1), (2)(a), (c), (d) is 8 September 2009 and appointed day for s 29E(3), (4)(b), (5)-(9) is 16 November 2009: London Gazette, 21 August 2009.

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### 134. Appeals.

As from a day to be appointed the following provisions have effect<sup>1</sup>. If a licensing authority<sup>2</sup> decides: (1) to refuse to grant a licence to practise<sup>3</sup> to a medical practitioner<sup>4</sup>; (2) to withdraw a licence to practise from a medical practitioner<sup>5</sup>; or (3) to refuse to restore a licence to practise to a medical practitioner<sup>6</sup>, the practitioner may appeal to a registration appeals panel<sup>7</sup>.

A medical practitioner who wishes to appeal to a registration appeals panel against a decision of a licensing authority must give written<sup>8</sup> notice of appeal to the registrar<sup>9</sup>, such notice to be given within the period of 28 days beginning with the day on which the practitioner is given notice of the decision of the licensing authority<sup>10</sup>.

Where a matter arises in the course of proceedings relating to a medical practitioner before a registration appeals panel<sup>11</sup>, which ought, in the opinion of the panel, to be investigated by the investigation committee<sup>12</sup>, the panel may adjourn the proceedings<sup>13</sup> and give a direction to the registrar to refer the matter to that committee<sup>14</sup>.

1 The Medical Act 1983 Pt IIIA (ss 29A-29J) and Sch 3B are added by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 10, 11. At the date at which this volume states the law, only the Medical Act 1983 s 29G(1)(a), (2), (3) (see PARA 130 text to notes 14, 16-17 ante), Sch 3B para 3(1)-(3), (5)-(8) (see PARA 135 post) (as added) were in force; the remaining provisions are to come into force as from a day to be appointed: see the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, art 1(2), (3). At the date at which this volume states the law no such day had been appointed.

2 For the meaning of 'licensing authority' see PARA 130 note 3 ante.

3 For the meaning of 'licence to practise' see PARA 130 note 3 ante.

4 Medical Act 1983 s 29F(1)(a) (prospectively added: see note 1 supra). As to regulations concerning the grant of licences to practise see PARA 131 ante.

5 Ibid s 29F(1)(b) (prospectively added: see note 1 supra). A decision to withdraw a licence to practise from a medical practitioner may not be carried into effect until the time for bringing any appeal against the decision has expired without an appeal being brought, or, where an appeal is brought, until the date on which the appeal is finally disposed of or abandoned or fails by reason of its non-prosecution: s 29F(3) (prospectively added: see note 1 supra). As to regulations concerning the withdrawal of licences to practise see PARA 131 ante.

6 Ibid s 29F(1)(c) (prospectively added: see note 1 supra). As to regulations concerning the restoration of licences to practise see PARA 131 ante.

7 Ibid s 29F(1) (prospectively added: see note 1 supra). As to the constitution of registration appeals panels see PARAS 138-140 post. As to registration appeals panels as statutory committees see PARA 26 ante.

8 For the meaning of 'written' see PARA 20 note 22 ante.

9 Medical Act 1983 s 29F(2), Sch 3B para 1(1) (both prospectively added: see note 1 supra). For the meaning of 'the registrar' see PARA 23 note 1 ante.

10 Ibid Sch 3B para 1(2) (prospectively added: see note 1 supra). Where any notice required by ss 29B, 29D (prospectively added) (see PARA 131 ante) to be given to a medical practitioner by the registrar is given by sending it to him by post, and the registrar is satisfied, on the application of the practitioner, that the practitioner did not receive the notice within the period of 14 days beginning with the day on which the licensing authority gave the decision to which the notice relates, the registrar may, if he thinks fit, by authorisation in writing extend the time for giving notice of appeal: Sch 3B paras 1(3), 2 (prospectively added: see note 1 supra).

11 Ibid Sch 3B para 4(1)(a) (prospectively added: see note 1 supra).

12 Ibid Sch 3B para 4(1)(b) (prospectively added: see note 1 supra). As to the constitution of the investigation committee see PARAS 138-140 post. As to the investigation committee as a statutory committee see PARA 26 ante. As to the functions of the investigation committee see PARAS 141-142 post.

13 Ibid Sch 3B para 4(2)(a) (prospectively added: see note 1 supra).

14 Ibid Sch 3B para 4(2)(b) (prospectively added: see note 1 supra).

## **UPDATE**

### **134 Appeals**

NOTE 1--Appointed day for Medical Act 1983 s 29F, Sch 3B paras 1, 2 is 16 November 2009: London Gazette, 21 August 2009.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/ (3) REGISTRATION, TRAINING AND QUALIFICATION/(viii) Licence to Practise and Revalidation/135. Rules as to procedure and evidence on appeals.

### **135. Rules as to procedure and evidence on appeals.**

The General Medical Council<sup>1</sup> must make rules as to the procedure to be followed<sup>2</sup>, and the rules of evidence which are to apply<sup>3</sup> in proceedings before a registration appeals panel<sup>4</sup>. Such rules must include provision: (1) securing that notice of the time and place of any hearing is given, at such time and in such manner as may be specified in the rules, to the medical practitioner to whom the proceedings relate<sup>5</sup>; (2) securing that any party<sup>6</sup> to proceedings before a registration appeals panel must, if he so requires, be entitled to be heard by the panel<sup>7</sup>; (3) enabling any party to the proceedings to be represented by counsel or solicitor, or, if the rules so provide and the party so elects, by a person of such other description as may be specified in the rules<sup>8</sup>; and (4) requiring proceedings to be held in public if the medical practitioner to whom the proceedings relate so requests, unless and to the extent that the rules provide otherwise<sup>9</sup>. Before making such rules the Council must consult such bodies of persons representing medical practitioners, or medical practitioners of any description, as appear to it requisite to be consulted<sup>10</sup>. Such rules do not come into force until approved by order of the Privy Council<sup>11</sup>, which may approve the rules as submitted to it<sup>12</sup>, or subject to such modifications as appear to it to be requisite<sup>13</sup>.

1 As to the General Medical Council see PARA 13 et seq ante.

2 Medical Act 1983 Sch 3B para 3(1)(a) (Sch 3B para 3 added by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 11). The provisions of the Medical Act 1983 Sch 4 paras 2, 7 (as substituted) (see PARAS 153-154 post) apply in relation to proceedings before a registration appeals panel as they apply in relation to proceedings before a fitness to practise panel: Sch 3B para 3(4) (not yet in force). Sch 3B para 3(4) comes into force as from a day to be appointed: see the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, art 1(2), (3). At the date at which this volume states the law no such day had been appointed.

3 Medical Act 1983 Sch 3B para 3(1)(b) (as added: see note 2 supra).

4 Ibid Sch 3B para 3(1) (as added: see note 2 supra). As to the rules which have been made see the General Medical Council (Registration Appeals Panels Procedure) Rules 2005, SI 2005/400. As to appeals against decisions of a licensing authority see PARA 134 ante; and as to registration appeals see PARAS 126-129 ante. As to the constitution of registration appeals panels see PARAS 138-140 post. As to registration appeals panels as statutory committees see PARA 26 ante.

5 Medical Act 1983 Sch 3B para 3(2)(a) (as added: see note 2 supra).

6 'Party', in relation to any proceedings, means the medical practitioner to whom the proceedings relate, or the solicitor to the General Medical Council: *ibid* Sch 3B para 3(3) (as added: see note 2 supra).

7 Ibid Sch 3B para 3(2)(b) (as added: see note 2 supra).

8 Ibid Sch 3B para 3(2)(c) (as added: see note 2 supra).

9 Ibid Sch 3B para 3(2)(d) (as added: see note 2 supra).

10 Ibid Sch 3B para 3(8) (as added: see note 2 supra).

11 Ibid Sch 3B para 3(5) (as added: see note 2 supra). As to the exercise by the Privy Council of its powers under the Medical Act 1983 see PARA 32 ante. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

12 Ibid Sch 3B para 3(6)(a) (as added: see note 2 supra).

13 Ibid Sch 3B para 3(6)(b) (as added: see note 2 supra). Where the Privy Council proposes to approve rules subject to modifications, it must notify the General Medical Council of the modifications it proposes to make, and consider any observations which the Council may make on the modifications: Sch 3B para 3(7) (as added: see note 2 supra).

## **UPDATE**

### **135 Rules as to procedure and evidence on appeals**

NOTE 2--Appointed day for Medical Act 1983 Sch 3B para 3(4) is 16 November 2009: London Gazette, 21 August 2009.

NOTE 4--SI 2005/400 amended: SI 2009/2752.

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### 136. Disposal of appeals.

As from a day to be appointed the following provisions have effect<sup>1</sup>. In disposing of an appeal<sup>2</sup> by a medical practitioner against a decision of a licensing authority<sup>3</sup>, the determinations that may be made by a registration appeals panel<sup>4</sup> are: (1) if the appeal is against a decision to refuse to grant a licence to practise<sup>5</sup>, that a licence to practise should, or, as the case may be, should not, be granted to the practitioner<sup>6</sup>; (2) if the appeal is against a decision to withdraw a licence to practise, that a licence to practise should, or, as the case may be, should not, be withdrawn from the practitioner<sup>7</sup>; or (3) if the appeal is against a decision to refuse to restore a licence to practise, that a licence to practise should, or, as the case may be, should not, be restored to the practitioner<sup>8</sup>. A panel may make such orders as to costs as it thinks fit<sup>9</sup>.

Where a registration appeals panel determines: (a) that a licence to practise should be granted to the medical practitioner<sup>10</sup>; (b) that a licence to practise should not be withdrawn from the medical practitioner<sup>11</sup>; or (c) that a licence to practise should be restored to the medical practitioner<sup>12</sup>, the panel must give notice to the registrar<sup>13</sup> informing him of the determination and directing him accordingly to grant the licence<sup>14</sup>, not to withdraw the licence<sup>15</sup>, or to restore the licence<sup>16</sup>, and the registrar must give notice of the determination to the medical practitioner<sup>17</sup>.

Where a registration appeals panel determines: (i) that a licence to practise should not be granted to the medical practitioner<sup>18</sup>; (ii) that a licence to practise should be withdrawn from the medical practitioner<sup>19</sup>; or (iii) that a licence to practise should not be restored to the medical practitioner<sup>20</sup>, the panel must give notice to the registrar informing him of the determination<sup>21</sup>, and if the determination is that a licence to practise should be withdrawn from the medical practitioner, directing him to withdraw the licence<sup>22</sup>. The registrar must give the medical practitioner notice of the determination<sup>23</sup>, and of his right to appeal against the determination<sup>24</sup>.

1 The Medical Act 1983 Pt IIIA (ss 29A-29J) and Sch 3B are added by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 10, 11. At the date at which this volume states the law, only the Medical Act 1983 s 29G(1)(a), (2), (3) (see PARA 130 text to notes 14, 16-17 ante), Sch 3B para 3(1)-(3), (5)-(8) (see PARA 135 ante) (as added) were in force; the remaining provisions are to come into force as from a day to be appointed: see the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, art 1(2), (3). At the date at which this volume states the law no such day had been appointed.

2 *Ie* under the Medical Act 1983 s 29F (prospectively added): see PARA 134 ante.

3 For the meaning of 'licensing authority' see PARA 130 note 3 ante.

4 As to the constitution of registration appeals panels see PARAS 138-140 post. As to registration appeals panels as statutory committees see PARA 26 ante.

5 For the meaning of 'licence to practise' see PARA 130 note 3 ante. As to regulations concerning the grant of licences to practise see PARA 131 ante.

6 Medical Act 1983 s 29F(2), Sch 3B para 5(a) (prospectively added: see note 1 supra).

7 *Ibid* Sch 3B para 5(b) (prospectively added: see note 1 supra). As to regulations concerning the withdrawal of licences to practise see PARA 131 ante.

8 *Ibid* Sch 3B para 5(c) (prospectively added: see note 1 supra). As to regulations concerning the restoration of licences to practise see PARA 131 ante.

9 Ibid Sch 3B para 5 (prospectively added: see note 1 supra). As to costs generally see CIVIL PROCEDURE vol 12 (2009) PARA 1729 et seq.

10 Ibid Sch 3B para 6(1)(a) (prospectively added: see note 1 supra).

11 Ibid Sch 3B para 6(1)(b) (prospectively added: see note 1 supra).

12 Ibid Sch 3B para 6(1)(c) (prospectively added: see note 1 supra).

13 For the meaning of 'the registrar' see PARA 23 note 1 ante.

14 Medical Act 1983 Sch 3B para 6(2)(a) (prospectively added: see note 1 supra).

15 Ibid Sch 3B para 6(2)(b) (prospectively added: see note 1 supra).

16 Ibid Sch 3B para 6(2)(c) (prospectively added: see note 1 supra).

17 Ibid Sch 3B para 6(3) (prospectively added: see note 1 supra). As to the service of such notice see s 29H, Sch 3B para 6(4) (both prospectively added); and PARA 131 note 17 ante. Schedule 3B para 6(4) (prospectively added) provides that s 29H (prospectively added) is to apply in relation to any notice under Sch 3B para 6(2) (prospectively added), but it is submitted that the reference should be a reference to Sch 3B para 6(3) (prospectively added).

18 Ibid Sch 3B para 7(1)(a) (prospectively added: see note 1 supra).

19 Ibid Sch 3B para 7(1)(b) (prospectively added: see note 1 supra).

20 Ibid Sch 3B para 7(1)(c) (prospectively added: see note 1 supra).

21 Ibid Sch 3B para 7(2)(a) (prospectively added: see note 1 supra).

22 Ibid Sch 3B para 7(2)(b) (prospectively added: see note 1 supra). Any direction under Sch 3B para 7(2)(b) (prospectively added) has effect subject to s 29F(3) (prospectively added) (no implementation pending appeal: see PARA 134 note 5 ante): Sch 3B para 7(4) (prospectively added: see note 1 supra).

23 Ibid Sch 3B para 7(3)(a) (prospectively added: see note 1 supra). As to the service of such notice see s 29H, Sch 3B para 7(5) (both prospectively added); and PARA 131 note 17 ante. Schedule 3B para 7(5) (prospectively added) provides that s 29H (prospectively added) is to apply in relation to any notice under Sch 3B para 7(2) (prospectively added), but it is submitted that the reference should be a reference to Sch 3B para 7(5) (prospectively added).

24 Ie under ibid Sch 3B para 8 (prospectively added) (see PARA 137 post): Sch 3B para 7(3)(b) (prospectively added: see note 1 supra).

## **UPDATE**

### **136 Disposal of appeals**

NOTE 1--Appointed day for Medical Act 1983 s 29F, Sch 3B paras 5-7 is 16 November 2009: London Gazette, 21 August 2009.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/ (3) REGISTRATION, TRAINING AND QUALIFICATION/(viii) Licence to Practise and Revalidation/137. Appeals against determinations of registration appeals panels.

### **137. Appeals against determinations of registration appeals panels.**

As from a day to be appointed the following provisions have effect<sup>1</sup>. Where, on an appeal<sup>2</sup> by a medical practitioner, a registration appeals panel<sup>3</sup> makes a determination<sup>4</sup> that a licence to practise<sup>5</sup> should not be granted to the medical practitioner, should be withdrawn from him, or should not be restored to him, the practitioner may appeal against the determination<sup>6</sup>. Any such appeal must be made within the period of 28 days beginning with the day on which the practitioner is given notice<sup>7</sup> of the panel's determination<sup>8</sup>, and must be made to a county court<sup>9</sup>. On any such appeal, the county court may: (1) dismiss the appeal<sup>10</sup>; (2) allow the appeal and quash the decision appealed against<sup>11</sup>; or (3) remit the case to the registrar<sup>12</sup> for him to refer it to a registration appeals panel to dispose of in accordance with the directions of the court<sup>13</sup>. The court may make such orders as to costs as it thinks fit<sup>14</sup>.

1 The Medical Act 1983 Pt IIIA (ss 29A-29J) and Sch 3B are added by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 10, 11. At the date at which this volume states the law, only the Medical Act 1983 s 29G(1)(a), (2), (3) (see PARA 130 text to notes 14, 16-17 ante), Sch 3B para 3(1)-(3), (5)-(8) (see PARA 135 ante) (as added) were in force; the remaining provisions are to come into force as from a day to be appointed: see the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, art 1(2), (3). At the date at which this volume states the law no such day had been appointed.

2 Ie under the Medical Act 1983 s 29F (prospectively added): see PARA 134 ante.

3 As to the constitution of registration appeals panels see PARAS 138-140 post. As to registration appeals panels as statutory committees see PARA 26 ante.

4 Ie a determination falling within the Medical Act 1983 Sch 3B para 7(1) (prospectively added): see PARA 136 text to notes 18-20 ante. As to regulations concerning the grant, withdrawal and restoration of licences to practise see PARA 131 ante.

5 For the meaning of 'licence to practise' see PARA 130 note 3 ante.

6 Medical Act 1983 Sch 3B para 8(1) (prospectively added: see note 1 supra).

7 Ie under ibid Sch 3B para 7 (prospectively added): see PARA 136 text to notes 23, 24 ante.

8 Ibid Sch 3B para 8(2) (prospectively added: see note 1 supra).

9 Ibid Sch 3B para 8(3) (prospectively added: see note 1 supra). As to county courts see COURTS.

10 Ibid Sch 3B para 8(5)(a) (prospectively added: see note 1 supra).

11 Ibid Sch 3B para 8(5)(b) (prospectively added: see note 1 supra).

12 For the meaning of 'the registrar' see PARA 23 note 1 ante.

13 Medical Act 1983 Sch 3B para 8(5)(c) (prospectively added: see note 1 supra).

14 Ibid Sch 3B para 8(5) (prospectively added: see note 1 supra). As to costs generally see CIVIL PROCEDURE vol 12 (2009) PARA 1729 et seq.

## **UPDATE**

### **137 Appeals against determinations of registration appeals panels**



NOTE 1--Appointed day for Medical Act 1983 Sch 3B para 8 is 16 November 2009:  
London Gazette, 21 August 2009.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(4) FITNESS TO PRACTISE/(i) Panels and the Investigation Committee/A. CONSTITUTION/138. Lists of panellists.

## **(4) FITNESS TO PRACTISE**

### **(i) Panels and the Investigation Committee**

#### **A. CONSTITUTION**

##### **138. Lists of panellists.**

The General Medical Council<sup>1</sup> must appoint and maintain: (1) a list of medical<sup>2</sup> and lay<sup>3</sup> appropriate persons<sup>4</sup> eligible to act as panellists<sup>5</sup> on a panel (that is, an interim orders panel, a registration appeals panel or a fitness to practise panel)<sup>6</sup>; and (2) a list of medical and lay appropriate persons eligible to act as panellists on the investigation committee or a registration decisions panel<sup>7</sup>. A member of the Council<sup>8</sup> may act as a panellist on the investigation committee or a registration decisions panel but must not act as a panellist on an interim orders panel, a registration appeals panel or a fitness to practise panel and, accordingly, may not be appointed to the list at head (1) above<sup>9</sup>. A person must not at any one time be included in both the lists<sup>10</sup>.

The Council must remove from such lists the name of any person: (a) whose term of appointment has come to an end, unless his appointment to the relevant list has been renewed<sup>11</sup>; (b) who resigns from the relevant list by giving notice in writing<sup>12</sup> to that effect to the Council<sup>13</sup>; or (c) who in the opinion of the Council has ceased to be an appropriate person<sup>14</sup>.

1 As to the General Medical Council see PARA 13 et seq ante.

2 'Medical' in relation to any person, means a registered medical practitioner: General Medical Council (Constitution of Panels and Investigation Committee) Rules Order of Council 2004, SI 2004/2611, Schedule r 2. For the meaning of 'registered medical practitioner' see PARA 4 ante.

3 'Lay' in relation to any person, means a person who is neither a registered medical practitioner nor a holder of any qualification registerable under the Medical Act 1983: General Medical Council (Constitution of Panels and Investigation Committee) Rules Order of Council 2004, SI 2004/2611, Schedule r 2. As to the registration of qualifications see PARAS 99, 102, 107, 109, 111 ante.

4 'Appropriate person' means a person of good character who is fit to sit as a panellist (see note 5 infra): ibid Schedule r 2.

5 'Panellist' means a person sitting on a panel or the investigation committee: ibid Schedule r 2.

6 Ibid Schedule r 3(1)(a)(i). 'Panel' means an interim orders panel, a registration appeals panel or a fitness to practise panel: Schedule r 2. As to interim orders panels, registration appeals panels and fitness to practise panels as statutory committees see PARA 26 ante. As to interim orders and the procedure in relation to them see PARAS 148, 186 et seq post. As to appeals to registration appeals panels see PARAS 40, 126-129, 134 et seq ante. As to the functions of fitness to practise panels see PARA 144 et seq post. As to proceedings relating to fitness to practise and the procedure before fitness to practise panels see PARA 151 et seq post.

7 Ibid Schedule r 3(1)(a)(ii). As to the investigation committee and registration decisions panels as statutory committees see PARA 26 ante. As to the functions of the investigation committee see PARAS 141-142 post. As to the constitution of registration decisions panels see PARAS 139-140 post.

8 As to the membership of the General Medical Council see PARAS 14-17 ante.

9 General Medical Council (Constitution of Panels and Investigation Committee) Rules Order of Council 2004, SI 2004/2611, Schedule r 3(2).

10 Ibid Schedule r 3(3).

11 Ibid Schedule r 3(1)(b)(i).

12 For the meaning of 'writing' see PARA 20 note 22 ante.

13 General Medical Council (Constitution of Panels and Investigation Committee) Rules Order of Council 2004, SI 2004/2611, Schedule r 3(1)(b)(ii).

14 Ibid Schedule r 3(1)(b)(iii).

## **UPDATE**

### **138-189 Fitness to practise**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to have power to adjudicate in fitness to practice cases in relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: see s 98(2) (not yet in force). As to the OHPA generally, see further PARA 189A.

### **138 Lists of panellists**

TEXT AND NOTES--For 'registration decisions panel' now read 'registration panel': SI 2004/2611, Schedule (amended: SI 2009/2751).

NOTE 3--'Lay' now means a person who is not and never has been provisionally or fully registered, was at no time registered with limited registration and does not hold qualifications which would entitle them to apply for provisional or full registration under the Medical Act 1983: SI 2004/2611, Schedule r 2 amended: SI 2009/2751.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(4) FITNESS TO PRACTISE/(i) Panels and the Investigation Committee/A. CONSTITUTION/139. Constitution of panels and the investigation committee.

### **139. Constitution of panels and the investigation committee.**

Subject to provisions relating to the unavailability of the chairman and to quorum<sup>1</sup>:

- 154 (1) membership of a panel (that is, an interim orders panel, a registration appeals panel or a fitness to practise panel)<sup>2</sup> must comprise medical<sup>3</sup> and lay<sup>4</sup> panellists<sup>5</sup> whose names are included on the appropriate list maintained by the General Medical Council<sup>6</sup>, selected by the registrar<sup>7</sup>, and must include at least one person whose name is included in the list maintained by the Council<sup>8</sup> of panellists eligible to act as chairman of a panel<sup>9</sup>; and
- 155 (2) membership of the investigation committee<sup>10</sup> or a registration decisions panel<sup>11</sup> must comprise medical and lay panellists whose names are included on the appropriate list maintained by the Council<sup>12</sup>, selected by the registrar<sup>13</sup>, and must include at least one person whose name is included in the list maintained by the Council<sup>14</sup> of panellists eligible to act as chairman of the committee or such a panel<sup>15</sup>.

No panellist may act as a panellist on a panel or the investigation committee or a registration decisions panel for the substantive hearing of a case that he has previously considered or adjudicated upon in any other capacity<sup>16</sup>. However, this does not prevent a panellist sitting on proceedings before a fitness to practise panel<sup>17</sup> from sitting on subsequent proceedings before such a panel for the purposes of considering the same case at a review hearing or in relation to a restoration application<sup>18</sup>. The quorum of a panel, a registration decisions panel or the investigation committee is three panellists<sup>19</sup>, who must include a chairman<sup>20</sup>, a medical panellist<sup>21</sup>, and a lay panellist<sup>22</sup>. The validity of any proceedings of a panel, a registration decisions panel or the committee is not affected by any defect in the appointment of a panellist<sup>23</sup>.

1    Ie the General Medical Council (Constitution of Panels and Investigation Committee) Rules Order of Council 2004, SI 2004/2611, Schedule rr 5(3), 6: see the text to note 19 infra; and PARA 140 text to note 12 post.

2    For the meaning of 'panel' see PARA 138 note 6 ante.

3    For the meaning of 'medical' see PARA 138 note 2 ante.

4    For the meaning of 'lay' see PARA 138 note 3 ante.

5    For the meaning of 'panellist' see PARA 138 note 5 ante.

6    Ie under the General Medical Council (Constitution of Panels and Investigation Committee) Rules Order of Council 2004, SI 2004/2611, Schedule r 3(1)(a)(i): see PARA 138 text to notes 1-6 ante. As to the General Medical Council see PARA 13 et seq ante.

7    Ie in accordance with ibid Schedule r 4(3), (4): see the text to notes 16-18 infra. For the meaning of 'the registrar' see PARA 23 note 1 ante.

8    Ie under ibid Schedule r 5(1)(a)(i): see PARA 140 text to notes 1-4 post.

9    Ibid Schedule r 4(1).

10   As to the investigation committee as a statutory committee see PARA 26 ante. As to the functions of the investigation committee see PARAS 141-142 post.

- 11 As to registration decisions panels as statutory committees see PARA 26 ante.
- 12 Ie under the General Medical Council (Constitution of Panels and Investigation Committee) Rules Order of Council 2004, SI 2004/2611, Schedule r 3(1)(a)(ii): see PARA 138 text to note 7 ante.
- 13 Ie in accordance with ibid Schedule r 4(3), (4): see the text to notes 16-18 infra.
- 14 Ie under ibid Schedule r 5(1)(a)(ii): see PARA 140 text to notes 5-7 post.
- 15 Ibid Schedule r 4(2).
- 16 Ibid Schedule r 4(3).
- 17 As to the functions of fitness to practise panels see PARA 144 et seq post. As to proceedings relating to fitness to practise and the procedure before fitness to practise panels see PARA 151 et seq post.
- 18 General Medical Council (Constitution of Panels and Investigation Committee) Rules Order of Council 2004, SI 2004/2611, Schedule r 4(4). As to review hearings see PARA 180 post. As to restoration applications see PARAS 149, 181 post.
- 19 Ibid Schedule r 6 (Schedule rr 6, 7 amended by SI 2005/402).
- 21 Ie selected under the General Medical Council (Constitution of Panels and Investigation Committee) Rules Order of Council 2004, SI 2004/2611, Schedule r 5 (see PARA 140 post): Schedule r 6(a).
- 22 Ibid Schedule r 6(b).
- 23 Ibid Schedule r 6(c).
- 24 Ibid Schedule r 7 (as amended: see note 19 supra).

## **UPDATE**

### **138-189 Fitness to practise**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to have power to adjudicate in fitness to practice cases in relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: see s 98(2) (not yet in force). As to the OHPA generally, see further PARA 189A.

### **139 Constitution of panels and the investigation committee**

TEXT AND NOTES--For 'registration decisions panel' now read 'registration panel': SI 2004/2611, Schedule (amended: SI 2009/2751).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(4) FITNESS TO PRACTISE/(i) Panels and the Investigation Committee/A. CONSTITUTION/140. Chairman.

#### **140. Chairman.**

The General Medical Council<sup>1</sup> must appoint and maintain: (1) from the appropriate list<sup>2</sup>, a list of panellists<sup>3</sup> eligible to act as chairman of a panel (that is, an interim orders panel, a registration appeals panel or a fitness to practise panel)<sup>4</sup>; and (2) from the appropriate list<sup>5</sup>, a list of panellists eligible to act as chairman of the investigation committee<sup>6</sup> or a registration decisions panel<sup>7</sup>. The registrar<sup>8</sup> must select a person to act as chairman in respect of proceedings before a panel<sup>9</sup> or the committee or a registration decisions panel<sup>10</sup> from the relevant list<sup>11</sup>. If the chairman selected is unavailable for the whole or part of any proceedings, then the chairman or the registrar may appoint another panellist present at the commencement of the proceedings to act as chairman for the whole or part of the hearing, as appropriate<sup>12</sup>.

1 As to the General Medical Council see PARA 13 et seq ante.

2 Ie the list maintained under the General Medical Council (Constitution of Panels and Investigation Committee) Rules Order of Council 2004, SI 2004/2611, Schedule r 3(1)(a)(i): see PARA 138 text to notes 1-6 ante.

3 For the meaning of 'panellist' see PARA 138 note 5 ante.

4 General Medical Council (Constitution of Panels and Investigation Committee) Rules Order of Council 2004, SI 2004/2611, Schedule r 5(1)(a)(i). The Council must remove from such list the names of any person removed from the list maintained under Schedule r 3(1)(a)(i) (see PARA 138 text to notes 1-6 ante): Schedule r 5(1)(b). For the meaning of 'panel' see PARA 138 note 6 ante.

5 Ie the list maintained under ibid Schedule r 3(1)(a)(ii): see PARA 138 text to note 7 ante.

6 As to the investigation committee as a statutory committee see PARA 26 ante. As to the functions of the investigation committee see PARAS 141-142 post.

7 General Medical Council (Constitution of Panels and Investigation Committee) Rules Order of Council 2004, SI 2004/2611, Schedule r 5(1)(a)(ii). The Council must remove from such list the names of any person removed from the list maintained under Schedule r 3(1)(a)(ii) (see PARA 138 text to note 7 ante): Schedule r 5(1)(b). As to registration decisions panels as statutory committees see PARA 26 ante.

8 For the meaning of 'the registrar' see PARA 23 note 1 ante.

9 General Medical Council (Constitution of Panels and Investigation Committee) Rules Order of Council 2004, SI 2004/2611, Schedule r 5(2)(a).

10 Ibid Schedule r 5(2)(b).

11 Ie in respect of proceedings before a panel, the list maintained under ibid Schedule r 5(1)(a)(i) (see the text to notes 1-4 supra); and in respect of proceedings before the committee or a registration decisions panel, the list maintained under Schedule r 5(1)(a)(ii) (see the text to notes 5-7 supra): Schedule r 5(2).

12 Ibid Schedule r 5(3).

### **UPDATE**

#### **138-189 Fitness to practise**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be

appointed the OHPA is to have power to adjudicate in fitness to practice cases in relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: see s 98(2) (not yet in force). As to the OHPA generally, see further PARA 189A.

#### **140 Chairman**

TEXT AND NOTES--For 'registration decisions panel' now read 'registration panel': SI 2004/2611, Schedule (amended: SI 2009/2751).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(4) FITNESS TO PRACTISE/(i) Panels and the Investigation Committee/B. FUNCTIONS/141. Functions of the investigation committee.

## **B. FUNCTIONS**

### **141. Functions of the investigation committee.**

Where an allegation is made to the General Medical Council<sup>1</sup> against a fully registered person<sup>2</sup>, a person who is provisionally registered<sup>3</sup>, or a person who is registered with limited registration<sup>4</sup>, that his fitness to practise is impaired<sup>5</sup>, then the investigation committee<sup>6</sup> must investigate the allegation and decide whether it should be considered by a fitness to practise panel<sup>7</sup>.

A person's fitness to practise is regarded as 'impaired' by reason only of:

- 156 (1) misconduct<sup>8</sup>;
- 157 (2) deficient professional performance<sup>9</sup>;
- 158 (3) a conviction or caution in the British Islands<sup>10</sup> for a criminal offence, or a conviction elsewhere for an offence which, if committed in England and Wales, would constitute a criminal offence<sup>11</sup>;
- 159 (4) adverse physical or mental health<sup>12</sup>; or
- 160 (5) a determination by a body in the United Kingdom<sup>13</sup> responsible under any enactment<sup>14</sup> for the regulation of a health or social care profession to the effect that his fitness to practise as a member of that profession is impaired, or a determination by a regulatory body elsewhere to the same effect<sup>15</sup>.

These provisions are not prevented from applying because the allegation is based on a matter alleged to have occurred outside the United Kingdom<sup>16</sup>, or at a time when the person was not registered<sup>17</sup>. They also apply in a case where it comes to the attention of the Council that a person's fitness to practise is called into question as impaired<sup>18</sup>, but no allegation to that effect has been made to the Council against that person<sup>19</sup>.

1 As to the General Medical Council see PARA 13 et seq ante.

2 Medical Act 1983 s 35C(1)(a) (ss 35C, 35CC added by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 13). For the meaning of 'fully registered person' see PARA 3 ante.

3 Medical Act 1983 s 35C(1)(b) (as added: see note 2 supra). For the meaning of 'provisionally registered' see PARA 102 note 6 ante.

4 Ibid s 35C(1)(c) (as added: see note 2 supra). For the meaning of 'limited registration' see PARA 109 note 10 ante.

5 Ibid s 35C(1) (as added: see note 2 supra). 'Impaired', in relation to a person's fitness to practise, has the meaning given in s 35C(2) (as added) (see the text to notes 8-15 infra): s 55(1) (definition added by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 15(6)(c)).

6 As to the constitution of the investigation committee see PARAS 138-140 ante. As to the investigation committee as a statutory committee see PARA 26 ante.

7 Medical Act 1983 s 35C(4) (as added: see note 2 supra). As to determinations of the investigation committee see PARA 142 post. As to the exercise of the functions of the investigation committee by the registrar or any other officer of the Council see PARA 142 text to notes 16-19 post. For the meaning of 'the registrar' see PARA 23 note 1 ante. As to the constitution of fitness to practise panels see PARAS 138-140 ante. As to fitness to practise panels as statutory committees see PARA 26 ante. As to the functions of fitness to practise panels see



PARA 144 et seq post. As to proceedings relating to fitness to practise and the procedure before fitness to practise panels see PARA 151 et seq post.

8 Ibid s 35C(2)(a) (as added: see note 2 supra). As to what constitutes misconduct see PARA 143 post.

9 Ibid s 35C(2)(b) (as added: see note 2 supra). As to what constitutes deficient professional performance see *Krippendorf v General Medical Council* [2001] 1 WLR 1054, 59 BMLR 81, PC; *Sadler v General Medical Council* [2003] UKPC 59, [2003] 1 WLR 2259. In general in such cases the standard of proof is the ordinary civil standard of proof. In exceptional cases a heightened civil standard might be appropriate: *Sadler v General Medical Council* supra. As to the civil standard of proof see CIVIL PROCEDURE vol 11 (2009) PARA 775.

10 For the meaning of 'British Islands' see PARA 20 note 10 ante.

11 Medical Act 1983 s 35C(2)(c) (as added: see note 2 supra). The purpose of giving a disciplinary committee powers over a professional man who has been convicted of crime is not to punish him a second time for the same offence but to protect the public who may come to him as patients and to maintain the high standards and good reputation of an honourable profession: *Ziderman v General Dental Council* [1976] 2 All ER 334, [1976] 1 WLR 330, PC. Even where there has been an acquittal by a criminal court there is no bar to the bringing of disciplinary proceedings in respect of the same charge: *R (on the application of Redgrave) v Metropolitan Police Comr* [2003] EWCA Civ 04, [2003] 1 WLR 1136. See also *R (on the application of Phillips) v General Medical Council* [2004] EWHC 1858 (Admin), [2004] All ER (D) 49 (Jul).

12 Medical Act 1983 s 35C(2)(d) (as added: see note 2 supra).

13 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

14 'Enactment' includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament, and any provision of, or any instrument made under, Northern Ireland legislation: Medical Act 1983 s 35C(9) (as added: see note 2 supra). As to the Scottish Parliament and Northern Ireland legislation see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

15 Ibid s 35C(2)(e) (as added: see note 2 supra). 'Regulatory body' means a regulatory body which has the function of authorising persons to practise as a member of a health or social care profession: s 35C(9) (as so added).

16 Ibid s 35C(3)(a) (as added: see note 2 supra).

17 Ibid s 35C(3)(b) (as added: see note 2 supra).

18 Ie by one or more of the matters mentioned in ibid s 35C(2) (see the text to notes 8-15 supra): s 35CC(3) (a) (as added: see note 2 supra).

19 Ibid s 35CC(3)(b) (as added: see note 2 supra). In such a case, s 35C (as added) applies as if an allegation to that effect had been made to the Council against that person: s 35CC(3) (as so added).

## UPDATE

### 138-189 Fitness to practise

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to have power to adjudicate in fitness to practice cases in relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: see s 98(2) (not yet in force). As to the OHPA generally, see further PARA 189A.

### 141 Functions of the investigation committee

TEXT AND NOTES 1-4--1983 Act s 35C(1)(a), (b) substituted for s 35C(1)(a)-(c): SI 2006/1914.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(4) FITNESS TO PRACTISE/(i) Panels and the Investigation Committee/B. FUNCTIONS/142. Determinations of the investigation committee.

## **142. Determinations of the investigation committee.**

If the investigation committee<sup>1</sup> decides that an allegation<sup>2</sup> ought to be considered by a fitness to practise panel<sup>3</sup>, it must give a direction to that effect to the registrar<sup>4</sup>, and the registrar must refer the allegation to such a panel<sup>5</sup> and serve a notification of the committee's decision on the person who is the subject of the allegation and the person making the allegation, if any<sup>6</sup>.

If the investigation committee decides that the allegation ought not to be considered by a fitness to practise panel, it may give a warning to the person who is the subject of the allegation regarding his future conduct or performance<sup>7</sup>. If the investigation committee decides that the allegation ought not to be considered by a fitness to practise panel, but that no such warning should be given, it must give a direction to that effect to the registrar<sup>8</sup>; and the registrar must serve a notification of the committee's decision on the person who is the subject of the allegation and the person making the allegation, if any<sup>9</sup>.

If the investigation committee is of the opinion that an interim orders panel<sup>10</sup> or a fitness to practise panel should consider making an order for interim suspension or interim conditional registration<sup>11</sup> in relation to the person who is the subject of the allegation, it must give a direction to that effect to the registrar<sup>12</sup>; and the registrar must refer the matter to an interim orders panel or a fitness to practise panel for the panel to decide whether to make such an order<sup>13</sup>, and serve notification of the decision on the person who is the subject of the allegation and the person making the allegation, if any<sup>14</sup>.

Rules<sup>15</sup> may make provision for the registrar<sup>16</sup>, or any other officer of the General Medical Council<sup>17</sup>, to exercise the functions of the investigation committee<sup>18</sup>, whether generally or in relation to such classes of case as may be specified in the rules<sup>19</sup>.

1 As to the constitution of the investigation committee see PARAS 138-140 ante. As to the investigation committee as a statutory committee see PARA 26 ante.

2 As to the investigation of allegations by the investigation committee see PARA 141 ante.

3 As to the constitution of fitness to practise panels see PARAS 138-140 ante. As to fitness to practise panels as statutory committees see PARA 26 ante. As to the functions of fitness to practise panels see PARA 144 et seq post. As to proceedings relating to fitness to practise and the procedure before fitness to practise panels see PARA 151 et seq post.

4 Medical Act 1983 s 35C(5)(a) (ss 35C, 35CC added by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 13). For the meaning of 'the registrar' see PARA 23 note 1 ante.

5 Medical Act 1983 s 35C(5)(b) (as added: see note 4 supra).

6 Ibid s 35C(5)(c) (as added: see note 4 supra). As to cases relating to fitness to practise where no allegation has been made see PARA 141 text to notes 18, 19 ante.

Any notice required to be served on a person may be so served by delivering it to him, by leaving it at his proper address, by sending it by a registered post service, or by sending it by a postal service which provides for the delivery of the notice by post to be recorded: s 43, Sch 4 para 8(1), (2) (s 43, Sch 4 para 8 substituted by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 13, 14). For the purpose of the Medical Act 1983 Sch 4 para 8 and of the Interpretation Act 1978 s 7 (see PARA 20 note 22 ante) in its application thereto, a person's proper address is his address in the register, or if the specified conditions are satisfied, his last known address: Medical Act 1983 Sch 4 para 8(3) (as so substituted). The specified conditions are that the person's last known address differs from his address in the register, and it appears to the registrar that a letter sent to the person at his last known address is more likely to reach him: Sch 4 para 8(4) (as so substituted). The serving of a notice effected by sending it by post is deemed to have been effected at the time when the letter

containing it would be delivered in the ordinary course of post (Sch 4 para 8(5)(a) (as so substituted)); and so much of the Interpretation Act 1978 s 7 as relates to the time when service is deemed to have been effected does not apply to a notice sent by post (Medical Act 1983 Sch 4 para 5(b) (as so substituted)). For the meaning of 'the register' see PARA 34 note 3 ante.

7 Ibid s 35C(6) (as added: see note 4 supra). It is good practice that reasons be given for a decision not to refer a decision to the disciplinary committee: *R (on the application of Tudor) v General Medical Council* [2004] All ER (D) 258 (Oct).

8 Medical Act 1983 s 35C(7)(a) (as added: see note 4 supra).

9 Ibid s 35C(7)(b) (as added: see note 4 supra). See also note 7 supra. As to the service of such notification see note 6 supra.

10 As to the constitution of interim orders panels see PARAS 138-140 ante. As to interim orders panels as statutory committees see PARA 26 ante. As to interim orders and the procedure in relation to them see PARAS 148, 186 et seq post.

11 Ie under the Medical Act 1983 s 41A (as added and substituted): see PARA 148 post.

12 Ibid s 35C(8)(a) (as added: see note 4 supra).

13 Ibid s 35C(8)(b) (as added: see note 4 supra).

14 Ibid s 35C(8)(c) (as added: see note 4 supra). As to the service of such notification see note 6 supra.

15 Ie under ibid Sch 4 para 1 (as substituted): see PARA 152 post.

16 Ibid s 35CC(1)(a) (as added: see note 4 supra).

17 Ibid s 35CC(1)(b) (as added: see note 4 supra). As to officers of the General Medical Council see PARA 22 ante. As to the General Medical Council generally see PARA 13 et seq ante.

18 Ie under ibid s 35C (as added): see supra and PARA 141 ante.

19 Ibid s 35CC(1) (as added: see note 4 supra). Where rules provide for the registrar to exercise the functions of the investigation committee under s 35C(5), (7), (8), those provisions apply in relation to him as if the reference in each to the giving to him of a direction were omitted: s 35CC(2) (as so added). As to the rules that have been made see the General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608; and PARA 160 et seq post.

## **UPDATE**

### **138-189 Fitness to practise**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to have power to adjudicate in fitness to practice cases in relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: see s 98(2) (not yet in force). As to the OHPA generally, see further PARA 189A.

### **142 Determinations of the investigation committee**

NOTE 6--Medical Act 1983 Sch 4 para 8(1) amended: SI 2007/3101.

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### 143. What constitutes misconduct.

Misconduct is not statutorily defined<sup>1</sup>. However, misconduct is not simply misconduct in the carrying out of medical work but may include other misconduct provided there is a link with the profession of medicine<sup>2</sup>. In every case relating to misconduct the disciplinary committee must first decide whether the facts alleged are proved and then whether, in relation to those facts, the practitioner is guilty of misconduct<sup>3</sup>. The committee must decide what is the appropriate standard to which each practitioner must adhere, and this is not a special standard greater than is ordinarily to be expected but the ordinary standard of the profession<sup>4</sup>. Negligence, of itself, does not necessarily comprise misconduct<sup>5</sup>. When considering whether a practitioner should be found guilty and, in that event, what action it is to take, the committee is entitled to and must consider his previous conduct as a practitioner<sup>6</sup>. Nevertheless, a practitioner is not to be punished by a majority of his profession for nonconformity<sup>7</sup>. It is for the General Medical Council<sup>8</sup> as prosecutor to prove the case against the practitioner. In cases where the charges against the practitioner would also found serious criminal charges, the standard of proof is the criminal standard, beyond a reasonable doubt<sup>9</sup>. However, where the charges could not be the subject of serious or any criminal charges at all, that standard is not appropriate, and what is important is that the charge and the conduct of the proceedings should be fair to the practitioner in question in all respects<sup>10</sup>. Evidence that is relevant and material to the case should be disclosed by the Council to the practitioner and a failure to do so can constitute a procedural irregularity rendering the disciplinary committee's decision unsafe<sup>11</sup>.

The courts have consistently stressed that professional disciplinary bodies are the most appropriate for deciding what constitutes misconduct in relation to their professions and they are slow, on appeal, to interfere in the exercise by a disciplinary body of its powers<sup>12</sup>.

1 The expression previously used in the Medical Act 1983 was 'serious professional misconduct': see s 36(1) (b) (repealed). The cases cited below relate to that expression (or its predecessor 'infamous conduct in a professional respect') but it is submitted that the same principles will apply to 'misconduct'.

2 *Roylance v General Medical Council No 2* [2000] 1 AC 311, 47 BMLR 63, PC. See also *Crabbie v General Medical Council* [2002] UKPC 45, [2002] 1 WLR 3104, 71 BMLR 9.

3 *Sloan v General Medical Council* [1970] 2 All ER 686, [1970] 1 WLR 1130n, PC. See also *Roylance v General Medical Council No 2* [2000] 1 AC 311, 47 BMLR 63, PC. Mitigation arising from the circumstances in which the practitioner found himself may be relevant to the level of culpability; once serious professional misconduct is proved, personal mitigation will be relevant to possible penalty. These are distinct issues, to be determined separately, on the basis of evidence relevant to them: *R (on the application of Campbell v General Medical Council* [2005] EWCA Civ 250, [2005] All ER (D) 193 (Mar).

4 See *Hughes v Architects' Registration Council of the United Kingdom* [1957] 2 QB 550, [1957] 2 All ER 436, DC. It is not correct for the committee to regard a falling below the standards of practice set out in the General Medical Council's guidance to medical practitioners as itself sufficient to amount to serious professional misconduct: *Nandi v General Medical Council* [2004] EWHC 2317 (Admin).

5 *Preiss v General Dental Council* [2001] UKPC 36, [2001] 1 WLR 1926, [2001] IRLR 696; *Rao v General Medical Council* [2002] UKPC 65.

6 *Allinson v General Council of Medical Education and Registration* [1894] 1 QB 750 at 760, CA, per Lord Esher MR.

7 *Felix v General Dental Council* [1960] AC 704, [1960] 2 All ER 391, PC.

8 As to the General Medical Council see PARA 13 et seq ante.

9 *McAllister v General Medical Council* [1993] AC 388, [1993] 1 All ER 982, PC. See also *Roylance v General Medical Council No 2* [2000] 1 AC 311, 47 BMLR 63, PC. As to the criminal standard of proof see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1372.

10 *McAllister v General Medical Council* [1993] AC 388, [1993] 1 All ER 982, PC (where the court noted that the appropriate rules as to the conduct of the proceedings allowed the use by the disciplinary committee of evidence which would not be admissible in criminal proceedings and nowhere stated the standard of proof applicable). As to the rules relating to evidence in proceedings before the investigation committee and panels see PARA 173 post. See also *Sadler v General Medical Council* [2003] UKPC 59, [2003] 1 WLR 2259. A charge of dishonesty should be unambiguously formulated and adequately particularised: see *Salha v General Medical Council* [2004] UKPC 80, [2004] ECDR 12.

11 *Rajan v General Medical Council* [2000] Lloyd's Rep Med 153, PC.

12 See *Evans v General Medical Council* (19 November 1984, unreported), PC; *Ghosh v General Medical Council* [2001] UKPC 29, [2001] 1 WLR 1915; *Hossain v General Medical Council* [2001] UKPC 40, 65 BMLR 1. As to appeals see PARA 188 post.

## UPDATE

### 138-189 Fitness to practise

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to have power to adjudicate in fitness to practice cases in relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: see s 98(2) (not yet in force). As to the OHPA generally, see further PARA 189A.

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#### **144. Functions of fitness to practise panels.**

Where an allegation against a person is referred<sup>1</sup> to a fitness to practise panel<sup>2</sup>, and the panel finds that the person's fitness to practise is impaired<sup>3</sup>, it may, if it thinks fit: (1) except in a health case<sup>4</sup>, direct that the person's name be erased from the register<sup>5</sup>; (2) direct that his registration in the register be suspended<sup>6</sup> during such period not exceeding 12 months as may be specified in the direction<sup>7</sup>; or (3) direct that his registration be conditional on his compliance, during such period not exceeding three years as may be specified in the direction, with such requirements so specified as the panel thinks fit to impose for the protection of members of the public or in his interests<sup>8</sup>. Where the panel finds that the person's fitness to practise is not impaired, it may nevertheless give him a warning regarding his future conduct or performance<sup>9</sup>.

Where a fitness to practise panel has given a direction that a person's registration be suspended<sup>10</sup>, it may, if it thinks fit: (a) direct that the current period of suspension be extended for such further period from the time when it would otherwise expire as may be specified in the direction<sup>11</sup>; (b) except in a health case, direct that the person's name be erased from the register<sup>12</sup>; or (c) direct that the person's registration, as from the expiry of the current period of suspension, be conditional on his compliance, during such period not exceeding three years as may be specified in the direction, with such requirements so specified as the panel thinks fit to impose for the protection of members of the public or in his interests<sup>13</sup>.

Where direction that a person's registration be subject to conditions has been given<sup>14</sup> and that person is judged by a fitness to practise panel to have failed to comply with any requirement imposed on him as such a condition<sup>15</sup>, the panel may, if it thinks fit: (i) except in a health case, direct that the person's name be erased from the register<sup>16</sup>; or (ii) direct that the person's registration in the register be suspended during such period not exceeding 12 months as may be specified in the direction<sup>17</sup>.

Where a direction that a person's registration be subject to conditions has been given<sup>18</sup>, a fitness to practise panel may, if it thinks fit: (A) except in a health case, direct that the person's name be erased from the register<sup>19</sup>; (B) direct that the person's registration in the register be suspended during such period not exceeding 12 months as may be specified in the direction<sup>20</sup>; (C) direct that the current period of conditional registration be extended for such further period from the time when it would otherwise expire as may be specified in the direction<sup>21</sup>; or (D) revoke the direction, or revoke or vary any of the conditions imposed by the direction, for the remainder of the current period of conditional registration<sup>22</sup>.

Where a fitness to practise panel gives a direction that a person's name be erased from the register<sup>23</sup>, gives a direction for suspension<sup>24</sup>, gives a direction for conditional registration<sup>25</sup>, or varies any of the conditions imposed by a direction for conditional registration<sup>26</sup>, the registrar<sup>27</sup> must forthwith serve on the person concerned notification of the direction or variation and of his right to appeal against it<sup>28</sup>.

1    le under the Medical Act 1983 s 35C (as added): see PARAS 141-142 ante.

2    Ibid s 35D(1) (ss 35D, 35E added by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 13). As to the constitution of fitness to practise panels see PARAS 138-140 ante. As to fitness to practise panels as statutory committees see PARA 26 ante. As to proceedings relating to fitness to practise and the procedure before fitness to practise panels see PARA 151 et seq post. A statutory committee of a professional body specially incorporated by statute and exercising the self-regulatory power and duty of the medical profession to monitor and maintain standards of professional conduct is not part of the judicial system of the state and does

not fall within the definition of a 'court' laid down in the Contempt of Court Act 1981 s 19 (see CONTEMPT OF COURT vol 9(1) (Reissue) PARA 410): *General Medical Council v British Broadcasting Corporation* [1998] 3 All ER 426, [1998] 1 WLR 1573, CA.

3 For the meaning of 'impaired' see PARA 141 ante.

4 'Health case' means any case in which a fitness to practise panel has determined that: (1) a person's fitness to practise is impaired by reason of a matter falling within the Medical Act 1983 s 35C(2)(d) (as added) (adverse physical or mental health: see PARA 141 text to note 12 ante); but (2) the person's fitness to practise is not impaired by any matter falling within any other provision of s 35C(2) (as added) (see PARA 141 ante): s 35E(4)(a), (b) (as added: see note 2 supra). For cases relating to the health of the practitioner under the previous disciplinary regime which may continue to be relevant see: *Crabbie v General Medical Council* [2002] UKPC 45, [2002] 1 WLR 3104, 71 BMLR 9; *Sreenath v General Medical Council* [2002] UKPC 56, [2002] All ER (D) 356 (Oct); *R (on the application of Toth) v General Medical Council No 2* [2003] EWHC 1675 (Admin), [2003] All ER (D) 382 (Jun).

5 Medical Act 1983 s 35D(2)(a) (as added: see note 2 supra). As to the time when such a direction takes effect see PARA 157 post. As to appeals against such directions see PARA 188 post. For the meaning of 'the register' see PARA 34 note 3 ante.

In matters of professional discipline the relevant committee is not concerned exclusively, or even primarily, with the punishment of the practitioner concerned; the essential issue is the need to maintain public confidence in the integrity of the profession, and the reputation of the profession is more important than the fortunes of any individual member; thus considerations which would normally weigh in mitigation of punishment have less effect than in other jurisdictions and it can never be an objection to an order for erasure or suspension that the practitioner may subsequently be unable to re-establish his practice: see *Bolton v Law Society* [1994] 2 All ER 486, [1994] 1 WLR 512; *Gupta v General Medical Council* [2001] UKPC 61, [2002] 1 WLR 1691; *Gosai v General Medical Council* [2003] UKPC 31, 75 BMLR 52. If a committee is considering erasure, it must satisfy itself that the offence of which the professional man has been convicted is of so grave a character as to show that he was unfitted to continue to practise as a member of the profession: *Ziderman v General Dental Council* [1976] 2 All ER 334, [1976] 1 WLR 330, PC. Concern for public confidence in the profession and its procedures for dealing with doctors who lapse from professional standards should not be carried to the extent of feeling it necessary to sacrifice the career of an otherwise competent and useful doctor who presents no danger to the public: *Bijl v General Medical Council* [2001] UKPC 42, 65 BMLR 10. See also *Hossain v General Medical Council* [2001] UKPC 40, 65 BMLR 1; but cf *Wentzel v General Medical Council* [2004] EWHC 381 (Admin), [2004] All ER (D) 80 (Mar).

6 'Suspended' means that the registration does not have effect: see the Medical Act 1983 s 35D(2)(b) (as added: see note 2 supra).

7 Ibid s 35D(2)(b) (as added: see note 2 supra). While a person's registration in the register is suspended he is treated as not being registered in the register notwithstanding that his name still appears in it, but ss 35C, 35CC (both as added) (see PARAS 141-142 ante) and ss 35D, 35E (both as added) continue to apply to him: s 35E(3) (as so added). As to the time when such a direction takes effect see PARA 157 post. As to appeals against such directions see PARA 188 post. As to indefinite suspension in health cases see PARA 145 post.

8 Ibid s 35D(2)(c) (as added: see note 2 supra). As to the time when such a direction takes effect see PARA 157 post. As to appeals against such directions see PARA 188 post. As to the effect of the three year time limit see *Singh v General Medical Council* 59 BMLR 106, PC. Conditions imposed need not be limited to the field in which the practitioner is found to be deficient: *Qureshi v General Medical Council* [2003] UKPC 56. Conditions may be justified even if they result in the practitioner being unable to carry on general practice: *Finegan v General Medical Council* [1987] 1 WLR 121, PC (prohibition on prescribing controlled drugs or prescription only medicines). See also *Whitefield v General Medical Council* [2002] UKPC 62, [2003] IRLR 39, 72 BMLR 7 (absolute ban on the consumption of alcohol not unreasonable and did not constitute an interference with the right to respect for private life under the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 8 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS)). As to the drawing of conditions see *Council for the Regulation of Health Care Professionals v General Medical Council* [2005] EWHC 579 (Admin), [2005] All ER (D) 169 (Apr).

9 Medical Act 1983 s 35D(3) (as added: see note 2 supra).

10 Ie under ibid s 35D(2) (as added) (see the text to notes 3-8 supra), s 35D(10), (12) (as added) (see the text to notes 16-22 infra) or under rules made by virtue of Sch 4 para 5A(3) (as added) (see PARA 183 post): s 35D(4) (as added: see note 2 supra).

11 Ibid s 35D(5)(a) (as added: see note 2 supra). However, subject to s 35D(6) (as added) (health cases: see PARA 145 post), the panel must not extend any period of suspension for more than 12 months at a time: s 35D(5) (as so added). See also note 7 supra. As to the procedure in such a case see PARA 180 post. As to the time when such a direction takes effect see PARA 157 post. As to appeals against such directions see PARA 188 post. As to indefinite suspension in health cases see PARA 145 post. Subsequent periods of suspension can only

be justified for the purpose of monitoring the practitioner, not as a means of imposing a more severe penalty on him: *Taylor v General Medical Council* [1990] 2 AC 539, [1990] 2 All ER 263, PC.

12 Medical Act 1983 s 35D(5)(b) (as added: see note 2 supra). As to the procedure in such a case see PARA 180 post. As to the time when such a direction takes effect see PARA 157 post. As to appeals against such directions see PARA 188 post.

13 Ibid s 35D(5)(c) (as added: see note 2 supra). See also note 8 supra. As to the procedure in such a case see PARA 180 post. As to the time when such a direction takes effect see PARA 157 post. As to appeals against such directions see PARA 188 post.

14 Ie under ibid s 35D(2), (5), (8), (12) (as added), rules made by virtue of Sch 4 para 5A(3) (as substituted) (see PARA 183 post), or s 41A (as added and substituted) (see PARA 148 post): s 35D(9)(a) (as added: see note 2 supra).

15 Ibid s 35D(9)(b) (as added: see note 2 supra).

16 Ibid s 35D(10)(a) (as added: see note 2 supra). As to the procedure in such a case see PARA 180 post. As to appeals against such directions see PARA 188 post.

17 Ibid s 35D(10)(b) (as added: see note 2 supra). See also note 7 supra. As to the procedure in such a case see PARA 180 post. As to appeals against such directions see PARA 188 post. As to indefinite suspension in health cases see PARA 145 post.

18 Ie under ibid s 35D(2), (5), (8) (as added) (see the text to notes 3-8, 11-15 supra), or rules made by virtue of Sch 4 para 5A(3) (as substituted) (see PARA 183 post): s 35D(11) (as added: see note 2 supra).

19 Ibid s 35D(12)(a) (as added: see note 2 supra). As to the procedure in such a case see PARA 180 post. As to appeals against such directions see PARA 188 post.

20 Ibid s 35D(12)(b) (as added: see note 2 supra). See also note 7 supra. As to the procedure in such a case see PARA 180 post. As to appeals against such directions see PARA 188 post. As to indefinite suspension in health cases see PARA 145 post.

21 Ibid s 35D(12)(c) (as added: see note 2 supra). The panel must not, however, extend any period of conditional registration for more than three years at a time: s 35D(12) (as so added). As to the procedure in such a case see PARA 180 post. As to appeals against such directions see PARA 188 post.

22 Ibid s 35D(12)(d) (as added: see note 2 supra). As to the procedure in such a case see PARA 180 post. As to when such a variation takes effect see PARA 157 post. As to appeals against directions for variation see PARA 188 post.

23 Ibid s 35E(1)(a) (as added: see note 2 supra).

24 Ibid s 35E(1)(b) (as added: see note 2 supra). References to a direction for suspension include a reference to a direction extending a period of suspension: s 35E(2)(a) (as so added).

25 Ibid s 35E(1)(c) (as added: see note 2 supra). References to a direction for conditional registration include a reference to a direction extending a period of conditional registration: s 35E(2)(b) (as so added).

26 Ibid s 35E(1)(d) (as added: see note 2 supra). See also note 25 supra.

27 For the meaning of 'the registrar' see PARA 23 note 1 ante.

28 Ie under the Medical Act 1983 s 40 (as substituted) (see PARA 188 post): s 35E(1) (as added: see note 2 supra). As to the service of such notification see PARA 142 note 6 ante. Where any such notice is served on a person by the registrar by sending it by post, and the registrar is satisfied, on an application of that person, that the person did not receive the notice within 14 days beginning with the day of the giving of the decision to which the notification relates, the registrar may, if he thinks fit, by authorisation in writing extend the time within which an appeal under s 40 (as substituted) may be brought against the decision: s 43, Sch 4 para 9 (both as substituted by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 13, 14).

## UPDATE

### 138-189 Fitness to practise



There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to have power to adjudicate in fitness to practice cases in relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: see s 98(2) (not yet in force). As to the OHPA generally, see further PARA 189A.

#### **144 Functions of fitness to practise panels**

NOTE 5--In considering the maintenance of public confidence in the profession, the existence of a public interest in not ending the career of a competent doctor is relevant: *Giele v General Medical Council* [2005] EWHC 2143 (Admin), [2005] 4 All ER 1242, [2006] 1 WLR 942. See also *Watson v General Medical Council* [2006] EWHC 18 (Admin), (2006) 91 BMLR 162 (panel gave a reasoned decision); *Yeong v General Medical Council* [2009] EWHC 1923 (Admin), [2010] 1 WLR 548, (2009) 110 BMLR 125 (doctor in relationship with patient and failed to preserve confidence of doctor/patient relationship; suspension justified to uphold public confidence in medical profession).

NOTE 6--See *Mohammed v General Medical Council* [2007] EWHC 2728 (Admin), [2007] All ER (D) 317 (Nov).

NOTES 7, 8--Conditions imposed pursuant to the Medical Act 1983 s 35D(2)(c) should not be so severe as to amount in effect to a suspension within the meaning of s 35D(2)(b): *Udom v General Medical Council* [2009] EWHC 3242 (Admin), (2010) 112 BMLR 47.

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#### **145. Indefinite suspension in health cases.**

In a health case<sup>1</sup>, a fitness to practise panel<sup>2</sup> may give a direction in relation to a person whose registration has been suspended<sup>3</sup> extending his period of suspension indefinitely where the period of suspension will, on the date on which the direction takes effect, have lasted for at least two years<sup>4</sup>, and the direction is made not more than two months before the date on which the period of suspension would otherwise expire<sup>5</sup>. Where a panel has given such a direction for a person's period of suspension to be extended indefinitely, a fitness to practise panel must review the direction if: (1) the person requests them to do so<sup>6</sup>; (2) at least two years have elapsed since the date on which the direction took effect<sup>7</sup>; and (3) if the direction has previously been reviewed under these provisions, at least two years have elapsed since the date of the previous review<sup>8</sup>. On such a review the panel may: (a) confirm the direction<sup>9</sup>; (b) direct that the suspension be terminated<sup>10</sup>; or (c) direct that the person's registration be conditional on his compliance, during such period not exceeding three years as may be specified in the direction, with such requirements so specified as the panel thinks fit to impose for the protection of members of the public or in his interests<sup>11</sup>.

1 For the meaning of 'health case' see PARA 144 note 4 ante.

2 As to the constitution of fitness to practise panels see PARAS 138-140 ante. As to fitness to practise panels as statutory committees see PARA 26 ante. As to proceedings relating to fitness to practise and the procedure before fitness to practise panels see PARA 151 et seq post.

3 Ie under the Medical Act 1983 s 35D (as added): see PARA 144 ante. For the meaning of 'suspended' see PARA 144 note 6 ante. As to the registration of medical practitioners see PARA 99 et seq ante.

4 Ibid s 35D(6)(a) (s 35D added by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 13).

5 Medical Act 1983 s 35D(6)(b) (as added: see note 4 supra). As to the procedure in such a case see PARA 180 post. As to the requirement that the registrar give the person concerned notice of any direction or variation and of his right to appeal see PARA 144 text to notes 23-28 ante. As to appeals against such directions see PARA 188 post.

6 Ibid s 35D(7)(a) (as added: see note 4 supra).

7 Ibid s 35D(7)(b) (as added: see note 4 supra).

8 Ibid s 35D(7)(c) (as added: see note 4 supra).

9 Ibid s 35D(8)(a) (as added: see note 4 supra). As to the procedure in such a case see PARA 180 post. As to the time when such a confirmation takes effect see PARA 157 post. As to appeals against such directions see PARA 188 post.

10 Ibid s 35D(8)(b) (as added: see note 4 supra). As to the procedure in such a case see PARA 180 post.

11 Ibid s 35D(8)(c) (as added: see note 4 supra). As to the procedure in such a case see PARA 180 post. As to the time when such a direction takes effect see PARA 157 post. As to appeals against such directions see PARA 188 post.

#### **UPDATE**

#### **138-189 Fitness to practise**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to have power to adjudicate in fitness to practice cases in relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: see s 98(2) (not yet in force). As to the OHPA generally, see further PARA 189A.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(4) FITNESS TO PRACTISE/(i) Panels and the Investigation Committee/B. FUNCTIONS/146. Immediate suspension and conditional registration.

#### **146. Immediate suspension and conditional registration.**

On giving a direction for erasure or a direction for suspension<sup>1</sup> in respect of any person, a fitness to practise panel<sup>2</sup>, if satisfied that to do so is necessary for the protection of members of the public or is otherwise in the public interest, or is in the best interests of that person, may order that his registration in the register<sup>3</sup> be suspended forthwith<sup>4</sup>. Similarly, on giving a direction for conditional registration<sup>5</sup> in respect of any person, a fitness to practise panel, if satisfied that to do so is necessary for the protection of members of the public or is otherwise in the public interest, or is in the best interests of that person, may order that his registration be made conditional forthwith<sup>6</sup>. Where, on the giving of a direction, such an order for immediate suspension or conditional registration is made<sup>7</sup> in respect of a person, his registration in the register is suspended<sup>8</sup> or made conditional, as the case may be, from the time when the order is made until the time when the direction takes effect<sup>9</sup> or an appeal against it<sup>10</sup> is, otherwise than by the dismissal of the appeal, determined<sup>11</sup>.

Where a panel make such an order for immediate suspension or conditional registration, the registrar<sup>12</sup> must forthwith serve a notification of the order on the person to whom it applies<sup>13</sup>. The relevant court<sup>14</sup> may terminate any such suspension of a person's registration in the register or conditional registration, and the decision of the court on any application under this provision is final<sup>15</sup>.

1     le under the Medical Act 1983 s 35D(2), (10), (12) (as added) (see PARA 144 ante), or under rules made by virtue of Sch 4 para 5A(3) (as substituted) (see PARA 183 post).

2     As to the constitution of fitness to practise panels see PARAS 138-140 ante. As to fitness to practise panels as statutory committees see PARA 26 ante. As to the functions of fitness to practise panels see PARA 144 et seq ante. As to proceedings relating to fitness to practise and the procedure before fitness to practise panels see PARA 151 et seq post.

3     For the meaning of 'the register' see PARA 34 note 3 ante. As to the registration of medical practitioners generally see PARA 99 et seq ante.

4     Medical Act 1983 s 38(1) (s 38 substituted by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 13). While a person's registration in the register is so suspended, he is treated as not being registered in the register notwithstanding that his name still appears in it, but notwithstanding this the Medical Act 1983 ss 35C-35E (as added) (see PARAS 141-145 ante) continue to apply to such a person: see s 38(6), (7) (as so substituted). Where an order for immediate suspension is being contemplated, the panel must give the practitioner notice of this and an opportunity to make representations in respect thereof: *Gupta v General Medical Council* [2001] EWHC 631 (Admin), (2001) Times, 16 October, DC.

5     le under the Medical Act 1983 s 35D(2) (as added) (see PARA 144 ante) or under rules made by virtue of Sch 4 para 5A(3) (as substituted) (see PARA 183 post).

6     Ibid s 38(2) (as substituted: see note 4 supra). See *Carruthers v General Medical Council* [2003] UKPC 42, 75 BMLR 59.

7     If, when an order for immediate suspension or conditional registration is made, the person to whom it applies is neither present nor represented at the proceedings, the Medical Act 1983 s 38(3) (as substituted) has effect as if, for the reference to the time when the order is made, there were substituted a reference to the time of service of a notification of the order as determined for the purposes of Sch 4 para 8 (as substituted) (see PARA 142 note 6 ante): s 38(5) (as substituted: see note 4 supra).

8 'Suspended' means that the registration does not have effect: see *ibid* s 38(3) (as substituted: see note 4 *supra*).

9 *le* in accordance with *ibid* Sch 4 para 10 (as substituted) or rules made by virtue of Sch 4 para 5A(3) (as substituted) (see PARA 183 *post*): s 38(3)(a) (as substituted: see note 4 *supra*). See also *supra*.

10 *le* under *ibid* s 40 (as substituted) or Sch 4 para 5A(4) (as substituted) (see PARA 185 *post*).

11 *Ibid* s 38(3)(b) (as substituted: see note 4 *supra*). See also note 7 *supra*.

12 For the meaning of 'the registrar' see PARA 23 note 1 *ante*.

13 Medical Act 1983 s 38(4) (as substituted: see note 4 *supra*). As to the service of such notification see PARA 142 note 6 *ante*.

14 For the meaning of 'the relevant court' see PARA 188 note 14 *post*; definition applied by *ibid* s 38(9) (as substituted: see note 4 *supra*).

15 *Ibid* s 38(8) (as substituted: see note 4 *supra*).

## **UPDATE**

### **138-189 Fitness to practise**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to have power to adjudicate in fitness to practice cases in relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: see s 98(2) (not yet in force). As to the OHPA generally, see further PARA 189A.

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#### **147. Transfer of cases by fitness to practise panels.**

Where, in the course of any proceedings before a fitness to practise panel<sup>1</sup>, the panel is of the opinion that a matter arises which ought to be investigated by the investigation committee<sup>2</sup> or considered by another fitness to practise panel, that panel may give a direction to that effect to the registrar<sup>3</sup> and that matter must be referred by the registrar to that committee, or another panel<sup>4</sup>. However, nothing in this provision prevents that fitness to practise panel from considering that matter itself, whether or not it has reached a decision in the proceedings<sup>5</sup>.

1 As to the functions of fitness to practise panels see PARAS 144-146 ante. As to the constitution of fitness to practise panels see PARAS 138-140 ante. As to fitness to practise panels as statutory committees see PARA 26 ante. As to proceedings relating to fitness to practise and the procedure before fitness to practise panels see PARA 151 et seq post.

2 As to the constitution of the investigation committee see PARAS 138-140 ante. As to the investigation committee as a statutory committee see PARA 26 ante. As to the functions of the investigation committee see PARAS 141-142 ante.

3 Medical Act 1983 s 43, Sch 4 para 3A(1)(a) (s 43, Sch 4 substituted by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 13, 14). For the meaning of 'the registrar' see PARA 23 note 1 ante.

4 Medical Act 1983 Sch 4 para 3A(1)(b) (as substituted: see note 3 supra).

5 Ibid Sch 4 para 3A(2) (as substituted: see note 3 supra).

### **UPDATE**

#### **138-189 Fitness to practise**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to have power to adjudicate in fitness to practice cases in relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: see s 98(2) (not yet in force). As to the OHPA generally, see further PARA 189A.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(4) FITNESS TO PRACTISE/(i) Panels and the Investigation Committee/B. FUNCTIONS/148. Interim orders.

#### **148. Interim orders.**

Where an interim orders panel<sup>1</sup> or a fitness to practise panel<sup>2</sup> is satisfied<sup>3</sup> that it is necessary for the protection of members of the public or is otherwise in the public interest, or is in the interests of a fully registered person<sup>4</sup>, for the registration of that person to be suspended or to be made subject to conditions, the panel may make an order: (1) that his registration in the register<sup>5</sup> be suspended<sup>6</sup> during such period, not exceeding 18 months, as may be specified in the order<sup>7</sup>; or (2) that his registration be conditional on his compliance, during such period not exceeding 18 months as may be specified in the order, with such requirements so specified as the panel thinks fit to impose<sup>8</sup>. No such order, nor any order varying any condition or replacing one order with another<sup>9</sup>, may be made by any panel in respect of any person unless he has been afforded an opportunity of appearing before the panel and being heard on the question of whether such an order should be made in his case<sup>10</sup>.

Where a panel has made an interim suspension order or an order for interim conditional registration, an interim orders panel or a fitness to practise panel must review it within the period of six months beginning on the date on which the order was made, and thereafter, for so long as the order continues in force, further review it<sup>11</sup> before the end of the period of six months beginning on the date of the decision of the immediately preceding review<sup>12</sup>, or, if after the end of the period of three months beginning on the date of the decision of the immediately preceding review the person concerned requests an earlier review, as soon as practicable after that request<sup>13</sup>. A panel may also review such an order where new evidence relevant to the order has become available after the making of the order<sup>14</sup>.

Where an interim suspension order or an order for interim conditional registration has been made in relation to any person<sup>15</sup>, an interim orders panel or a fitness to practise panel may, subject to the person's right to appear before the panel<sup>16</sup>: (a) revoke the order or revoke any condition imposed by the order<sup>17</sup>; (b) vary any condition imposed by the order<sup>18</sup>; (c) if satisfied that to do so is necessary for the protection of members of the public or is otherwise in the public interest, or is in the interests of the person concerned, replace an order for interim conditional registration with an interim suspension order having effect for the remainder of the term of the former<sup>19</sup>; or (d) if satisfied that to do so is necessary for the protection of members of the public, or is otherwise in the public interest, or is in the interests of the person concerned, replace an interim suspension order with an order for interim conditional registration having effect for the remainder of the term of the former<sup>20</sup>.

The General Medical Council<sup>21</sup> may apply to the relevant court<sup>22</sup> for an order made by an interim orders panel or a fitness to practise panel under the provisions described above to be extended, and may apply again for further extensions<sup>23</sup>. On such an application the relevant court may extend, or further extend, the period for which the order has effect for up to 12 months<sup>24</sup>.

Where an order has effect under any of the provisions described above, the relevant court may on application: (i) in the case of an interim suspension order, terminate the suspension<sup>25</sup>; (ii) in the case of an order for interim conditional registration, revoke or vary any condition imposed by the order<sup>26</sup>; (iii) in either case, substitute for the period specified in the order, or in the order extending it, some other period which could have been specified in the order when it was made or in the order extending it<sup>27</sup>. The decision of the relevant court under any such application is final<sup>28</sup>.

If an order is made under any provision described above, the registrar<sup>29</sup> must without delay serve a notification of the order on the person to whose registration it relates<sup>30</sup>.

1 As to the constitution of interim orders panels see PARAS 138-140 ante. As to interim orders panels as statutory committees see PARA 26 ante. As to the procedure in relation to interim orders see PARA 186 et seq post.

2 As to the constitution of fitness to practise panels see PARAS 138-140 ante. As to fitness to practise panels as statutory committees see PARA 26 ante. As to the functions of fitness to practise panels see PARA 144 et seq ante. As to proceedings relating to fitness to practise and the procedure before fitness to practise panels see PARA 151 et seq post.

3 A hearing before a panel under these provisions engages the right to a fair trial within a reasonable time as guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 8 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 134 et seq): *Madan v General Medical Council (No 2)* [2001] EWHC 577 (Admin), [2001] Lloyd's Rep Med 539. In making any decision, consideration must be given to the impact of the proposed order on the practitioner concerned: *Madan v General Medical Council (No 2)* supra.

4 The Medical Act 1983 s 41A (as added and substituted) applies to a provisionally registered person and to a person registered with limited registration whether or not the circumstances are such that he falls within the meaning in the Act of the expression 'fully registered person': s 41A(13) (s 41A added by the Medical Act 1983 (Amendment) Order 2000, SI 2000/1803, arts 2, 10; and substituted by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 13). For the meaning of 'fully registered person' see PARA 3 ante; for the meaning of 'provisionally registered' see PARA 102 note 6 ante; and for the meaning of 'limited registration' see PARA 109 note 10 ante.

5 For the meaning of 'the register' see PARA 34 note 3 ante. As to registration generally see PARA 99 et seq ante.

6 'Suspended' means that it does not have effect: see the Medical Act 1983 s 41A(1)(a) (as added and substituted: see note 4 supra).

7 Ibid s 41A(1)(a) (as added and substituted: see note 4 supra). Such an order is known as an 'interim suspension order': s 41A(1)(a) (as so added and substituted). See also note 24 infra. While a person's registration in the register is suspended by virtue of an interim suspension order, he is treated as not being registered in the register notwithstanding that his name still appears in the register: s 41A(11) (as so added and substituted). However, notwithstanding s 41A(11) (as added and substituted), ss 35C-35E (as added) (see PARAS 141-145 ante) continue to apply to a person whose registration in the register is suspended: s 41A(12) (as so added and substituted).

8 Ibid s 41A(1)(b) (as added and substituted: see note 4 supra). Such an order is known as an 'order for interim conditional registration': s 41A(1)(b) (as so added and substituted). See also note 24 infra.

9 I.e. orders made under ibid s 41A(3)(b)-(d) (as added and substituted): see the text to notes 18-20 infra.

10 Ibid s 41A(4) (as added and substituted: see note 4 supra). For this purpose, a person may be represented before the panel by counsel or a solicitor, or, if rules made under Sch 4 para 1 (see PARA 152 post) so provide and he so elects, by a person of such other description as may be specified in the rules: s 41A(4) (as so added and substituted).

11 Ibid s 41A(2)(a) (as added and substituted: see note 4 supra). See also note 24 infra. The review process must involve a comprehensive consideration of the initial order in the light of the circumstances at the time of the review: *Madan v General Medical Council (No 2)* [2001] EWHC 577 (Admin), [2001] Lloyd's Rep Med 539.

12 Medical Act 1983 s 41A(2)(a)(i) (as added and substituted: see note 4 supra).

13 Ibid s 41A(2)(a)(ii) (as added and substituted: see note 4 supra).

14 Ibid s 41A(2)(b) (as added and substituted: see note 4 supra).

15 I.e. under any provision of ibid s 41A (as added and substituted) including s 41A(3) (as added and substituted): see the text to notes 16-20 infra.

16 See ibid s 41A(4) (as added and substituted); and the text to notes 9, 10 supra.

17 Ibid s 41A(3)(a) (as added and substituted: see note 4 supra).



- 18 Ibid s 41A(3)(b) (as added and substituted: see note 4 supra).
- 19 Ibid s 41A(3)(c) (as added and substituted: see note 4 supra).
- 20 Ibid s 41A(3)(d) (as added and substituted: see note 4 supra).
- 21 As to the General Medical Council see PARA 13 et seq ante.
- 22 For the meaning of 'the relevant court' see PARA 188 note 14 post; definition applied by the Medical Act 1983 s 41A(14) (as added and substituted: see note 4 supra).
- 23 Ibid s 41A(6) (as added and substituted: see note 4 supra). In considering such an application, the court is not exercising a supervisory jurisdiction and is not reviewing the original decision to make the interim suspension order but is considering the question whether in all the circumstances of the case it is in the public interest that the suspension be extended, and, if so, for how long: *General Medical Council v Kerr* [2002] EWHC 2338 (Admin), [2002] All ER (D) 220 (Oct). The fact that the practitioner is not going to practise in the future does not mean that the court cannot order the suspension to continue: *General Medical Council v Kerr* supra. The right to a fair trial within a reasonable time as guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 8 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 134 et seq) is a matter which the court must take into account when considering such an application: *General Medical Council v Pembrey* [2002] EWHC 1602 (Admin), [2002] All ER (D) 195 (Jul). In exceptional cases, taking account of the interests of the practitioner, the court may accept undertakings from the practitioner in place of extending the order: *General Medical Council Mehrotra* [2004] EWHC 2212 (Admin), [2004] All ER (D) 52 (Sep). See also *General Medical Council v George* [2004] EWHC 2261 (Admin), [2004] All ER (D) 1 (Sep); *General Medical Council v Baluchi* [2005] EWHC 439 (Admin), [2005] All ER (D) 133 (Mar).
- 24 Medical Act 1983 s 41A(7) (as added and substituted: see note 4 supra). Any reference in s 41A (as added and substituted) to an interim suspension order, or to an order for interim conditional registration, includes a reference to such an order as so extended: s 41A(8) (as so added and substituted). For the purposes of s 41A(2) (as added and substituted) (see the text to notes 11-14 supra) the first review after the relevant court's extension of an order made by a panel or after a replacement order made by a panel under s 41A(3)(c), (d) (as added and substituted) (see the text to notes 19, 20 supra) must take place: (1) if the order (or the order which has been replaced) has not been reviewed at all under s 41A(2) (as added and substituted), within the period of six months beginning on the date on which the relevant court ordered the extension or on which a replacement order under s 41A(3)(c), (d) (as added and substituted) was made (s 41A(9)(a) (as so added and substituted)); and (2) if it has been reviewed, within the period of three months beginning on that date (s 41A(9)(b) (as so added and substituted)).
- 25 Ibid s 41A(10)(a) (as added and substituted: see note 4 supra).
- 26 Ibid s 41A(10)(b) (as added and substituted: see note 4 supra).
- 27 Ibid s 41A(10)(c) (as added and substituted: see note 4 supra).
- 28 Ibid s 41A(10) (as added and substituted: see note 4 supra).
- 29 For the meaning of 'the registrar' see PARA 23 note 1 ante.
- 30 Medical Act 1983 s 41A(5) (as added and substituted: see note 4 supra). As to the service of such notification see PARA 142 note 6 ante.

## UPDATE

### 138-189 Fitness to practise

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to have power to adjudicate in fitness to practice cases in relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: see s 98(2) (not yet in force). As to the OHPA generally, see further PARA 189A.

### 148 Interim orders

NOTE 4--1983 Act s 41A(13) amended: SI 2006/1914.

NOTE 11--As to guidance in relation to the extension of an interim suspension order see *General Medical Council v Hiew* [2007] EWCA Civ 369, [2007] 1 WLR 2007.

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### **149. Restoration to the register.**

Where the name of a person has been erased from the register<sup>1</sup>, an application may be made to the registrar<sup>2</sup> who must refer the application to a fitness to practise panel<sup>3</sup> which may, if it thinks fit, direct that the person's name be restored to the register<sup>4</sup>. No such application for the restoration of a name to the register may be made to a fitness to practise panel before the expiration of five years from the date of erasure<sup>5</sup> or in any period of 12 months in which an application for the restoration of his name has already been made by or on behalf of the person whose name has been erased<sup>6</sup>. Before determining whether to give such a direction, a panel must require an applicant for restoration to provide such evidence as it directs as to his fitness to practise; and it must not give such a direction if that evidence does not satisfy it<sup>7</sup>.

Where, during the same period of erasure, a second or subsequent application for the restoration of a name to the register, made by or on behalf of the person whose name has been erased, is unsuccessful, a fitness to practise panel may direct that his right to make any further such applications be suspended indefinitely<sup>8</sup>. Where a panel gives such a direction, the registrar must without delay serve on the person in respect of whom it has been made a notification of the direction and of his right to appeal against it<sup>9</sup>. Any person in respect of whom such a direction has been given may, after the expiration of three years from the date on which the direction was given, apply to the registrar for that direction to be reviewed by a fitness to practise panel and, thereafter, may make further applications for review; but no such application may be made before the expiration of three years from the date of the most recent review decision<sup>10</sup>.

1    le under the Medical Act 1983 s 35D (as added): see PARAS 144-145 ante. For the meaning of 'the register' see PARA 34 note 3 ante.

2    For the meaning of 'the registrar' see PARA 23 note 1 ante.

3    See the Medical Act 1983 s 41(3) (s 41 substituted by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 13).

4    Medical Act 1983 s 41(1) (as substituted: see note 3 supra). In the case of a person who was provisionally registered under ss 15, 15A, 21 (s 15A as added) (see PARAS 102, 103, 108 ante) before his name was erased, such a direction must be a direction that his name be restored by way of provisional registration under ss 15, 15A, 21 (s 15A as added), as the case requires: s 41(4) (as so substituted). For the meaning of 'the register' see PARA 34 note 3 ante. For the meaning of 'provisionally registered' see PARA 102 note 6 ante. As to the procedure in respect of the hearing of an application for restoration see PARA 181 post.

As from a day to be appointed, the following provisions have effect: see the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 1(2), (3). At the date at which this volume states the law no such day had been appointed. A fitness to practise panel must not give a direction under the Medical Act 1983 s 41(1) (as substituted) unless at the same time in accordance with regulations made by the General Medical Council under this provision it directs the registrar to restore the practitioner's licence to practise: s 41(7) (as so substituted). The provisions of s 29J(3)-(5) (as added) (see PARA 130 ante) apply to such regulations as they apply in relation to regulations made under s 29A (as added): s 41(8) (as so substituted). As to the General Medical Council see PARA 13 et seq ante. For the meaning of 'licence to practise' see PARA 130 note 3 ante.

5    Ibid s 41(2)(a) (as substituted: see note 3 supra).

6    Ibid s 41(2)(b) (as substituted: see note 3 supra).

7    Ibid s 41(6) (as substituted: see note 3 supra). The requirements of Pt II (ss 3-18) (as amended) (see PARAS 95-96 ante) or Pt III (ss 19-29) (as amended) (see PARA 104 et seq ante) as to the experience required for

registration as a fully registered medical practitioner do not apply to registration in pursuance of such a direction: s 41(5) (as so substituted).

As a general principle, where a practitioner has been convicted of a serious criminal offence or offences he should not be permitted to resume his practice until he has satisfactorily completed his sentence; only circumstances which plainly justify a different course should permit otherwise. Such circumstances could arise in connection with a period of disqualification from driving or time allowed by the court for the payment of a fine. The rationale for the principle is not that it can serve to punish the practitioner whilst serving his sentence, but that good standing in a profession must be earned if the reputation of the profession is to be maintained: *Council for the Regulation of Healthcare Professionals v General Dental Council* [2005] EWHC 87 (Admin), [2005] All ER (D) 47 (Feb).

8 Medical Act 1983 s 41(9) (as substituted: see note 3 supra). As to appeals against such directions see PARA 188 post. Suspension of the right to apply for restoration should not be regarded as an exceptional or unusual remedy, or restricted to very clear cases. In exercising the discretion to make such an order, regard may be had to the public interest and to the interest of those who would be otherwise affected by repeated applications for restoration, such as the family of the victim of a practitioner's misconduct: *Gosai General Medical Council* [2003] UKPC 31, 75 BMLR 52. The principle of fairness requires that the issue of suspension of a person's right to make further applications for restoration should be considered separately after the decision on restoration and the reasons for it have been announced: *Raji v General Medical Council* [2003] UKPC 24, [2003] 1 WLR 1052.

9 In accordance with the Medical Act 1983 s 40 (as substituted) (see PARA 188 post): s 41(10) (as substituted: see note 3 supra). As to the service of such a notification see PARA 142 note 6 ante.

10 Ibid s 41(11) (as substituted: see note 3 supra).

## UPDATE

### 138-189 Fitness to practise

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to have power to adjudicate in fitness to practice cases in relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: see s 98(2) (not yet in force). As to the OHPA generally, see further PARA 189A.

### 149 Restoration to the register

NOTE 4--Appointed day for Medical Act 1983 s 41(7), (8) is 8 September 2009: London Gazette, 21 August 2009. The regulations made by the General Medical Council in exercise of the power conferred by s 41(7) are set out in General Medical Council (Licence to Practise) Regulations Order of Council 2009, SI 2009/2739.

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### **150. Disciplinary provisions affecting visiting practitioners.**

If a national of an EEA state<sup>1</sup>, who has medical qualifications<sup>2</sup> entitling him to registration<sup>3</sup> but is not so registered and who renders medical services while visiting the United Kingdom<sup>4</sup>, whether or not registered as a visiting EEA practitioner<sup>5</sup>, is found by a fitness to practise panel<sup>6</sup> to have been convicted of a criminal offence in any EEA state where he was practising medicine<sup>7</sup>, or is subject to a finding that his fitness to practise is impaired<sup>8</sup>, the panel may, if it thinks fit, impose on him a prohibition in respect of the rendering of medical services in the United Kingdom in the future<sup>9</sup>.

A person may apply to the General Medical Council<sup>10</sup> for termination of a prohibition imposed on him and the Council may, on any such application, terminate the prohibition or reduce the period of it<sup>11</sup>. Before determining whether to terminate a prohibition, the Council must require the person applying for its termination to provide such evidence as it directs as to one or more of his good character, professional competence and health, and must not terminate the prohibition if that evidence does not satisfy it<sup>12</sup>.

Where, during the same period of prohibition, a second or subsequent application for termination of the prohibition, made by or on behalf of a person on whom the prohibition has been imposed, is unsuccessful, the Council may direct that his right to make any further such applications be suspended indefinitely<sup>13</sup>. Where the Council gives such a direction, the registrar<sup>14</sup> must without delay serve on the person in respect of whom it has been made a notification<sup>15</sup> of the direction and of his right to appeal against it<sup>16</sup>. Any person in respect of whom such a direction has been given may, after the expiration of three years from the date on which the direction was made, apply to the Council for that direction to be reviewed by the Council and, thereafter, may make further applications for review; but no such application may be made before the expiration of three years from the date of the most recent review decision<sup>17</sup>.

1 For the meanings of 'national', in relation to an EEA state, and 'EEA state' see PARA 3 note 2 ante.

2 For the meaning of 'qualification' see PARA 34 note 2 ante.

3 I.e. under the Medical Act 1983 s 3 (as substituted and amended): see PARA 99 ante.

4 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

5 As to the registration of visiting EEA practitioners see para 100 ante.

6 As to the constitution of fitness to practise panels see PARAS 138-140 ante. As to fitness to practise panels as statutory committees see PARA 26 ante. As to the functions of fitness to practise panels see PARA 144 et seq ante. As to proceedings relating to fitness to practise and the procedure before fitness to practise panels see PARA 151 et seq post.

7 Medical Act 1983 s 45(1)(a) (s 45 substituted by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 13).

8 Medical Act 1983 s 45(1)(b) (as substituted: see note 7 supra). For the meaning of 'impaired' see PARA 141 ante.

9 Ibid s 45(1) (as substituted: see note 7 supra). A prohibition must either relate to a period specified by the panel or be expressed to continue for an indefinite period: s 45(2) (as so substituted). Section 18(1) (see PARA

100 ante) does not apply to a person, and that person must not be registered as a visiting EEA practitioner, at a time when he is subject to such a prohibition: s 45(4) (as so substituted).

10 As to the General Medical Council see PARA 13 et seq ante.

11 Medical Act 1983 s 45(3) (as substituted: see note 7 supra). No such application may be made: (1) earlier than five years from the date on which the prohibition was imposed (s 45(3)(a) (as so substituted)); or (2) in the period of 12 months following a decision made on an earlier application (s 45(3)(b) (as so substituted)).

12 Ibid s 45(5) (as substituted: see note 7 supra).

13 Ibid s 45(6) (as substituted: see note 7 supra).

14 For the meaning of 'the registrar' see PARA 23 note 1 ante.

15 As to the service of such notification see para 142 note 6 ante.

16 In accordance with the Medical Act 1983 s 40 (as substituted) (see PARA 188 post): s 45(7) (as substituted: see note 7 supra).

17 Ibid s 45(8) (as substituted: see note 7 supra).

## **UPDATE**

### **138-189 Fitness to practise**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to have power to adjudicate in fitness to practice cases in relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: see s 98(2) (not yet in force). As to the OHPA generally, see further PARA 189A.

### **150 Disciplinary provisions affecting visiting practitioners**

TEXT AND NOTES--Medical Act 1983 s 45 repealed: SI 2007/3101.

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## **(ii) Proceedings relating to Fitness to Practise**

### **A. IN GENERAL**

#### **151. Disclosure of information and notification of investigations.**

For the purpose of assisting the General Medical Council<sup>1</sup> or any of its committees<sup>2</sup> in carrying out functions in respect of a practitioner's fitness to practise<sup>3</sup>, a person authorised by the Council may require a practitioner<sup>4</sup> or any other person<sup>5</sup>, who in his opinion is able to supply information or produce any document which appears relevant to the discharge of any such function, to supply such information or produce such a document<sup>6</sup>. This provision does not apply in relation to the supplying of information or the production of a document which a person could not be compelled to supply or produce in civil proceedings before the relevant court<sup>7</sup>, and nothing in this provision requires or permits any disclosure of information which is prohibited by or under any other enactment<sup>8</sup>.

As soon as is reasonably practicable after the relevant date<sup>9</sup>, the Council must require, from a practitioner whose fitness to practise is being investigated, details of any person by whom the practitioner is employed to provide services in, or in relation to, any area of medicine<sup>10</sup> or with whom he has an arrangement to do so<sup>11</sup>. As soon as is reasonably practicable after the relevant date, the Council must notify the following of an investigation by the Council of a practitioner's fitness to practise: (1) the Secretary of State<sup>12</sup> and the National Assembly for Wales<sup>13</sup>; and (2) any person in the United Kingdom<sup>14</sup> of whom the Council is aware by whom the practitioner concerned is employed to provide services in, or in relation to, any area of medicine<sup>15</sup>, or with whom he has an arrangement to do so<sup>16</sup>.

The Council may disclose to any person any information relating to a practitioner's fitness to practise which it considers it to be in the public interest to disclose<sup>17</sup>.

1 As to the General Medical Council see PARA 13 et seq ante.

2 As to the committees of the Council see PARAS 25-26 ante.

3 As to such functions see PARAS 13, 141 et seq ante.

4 Medical Act 1983 s 35A(1)(a) (ss 35A, 35B added by the Medical Act 1983 (Amendment) Order 2000, SI 2000/1803, arts 2, 4; and substituted by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 13). This provision does not apply to the practitioner in respect of whom the information or document is sought: Medical Act 1983 s 35A(1)(a) (as so added and substituted). 'Practitioner' means a fully registered person, a provisionally registered person or a person registered with limited registration: s 35A(8) (as so added and substituted). For the meaning of 'fully registered person' see PARA 3 ante. For the meaning of 'provisionally registered' see PARA 102 note 6 ante. For the meaning of 'limited registration' see PARA 109 note 10 ante.

5 Ibid s 35A(1)(b) (as added and substituted: see note 4 supra). For the meaning of 'person' see PARA 7 note 5 ante.

6 Ibid s 35A(1) (as added and substituted: see note 4 supra).

7 Ibid s 35A(6) (as added and substituted: see note 4 supra). For the meaning of 'the relevant court' see PARA 188 note 14 post. As to the production of documents in civil proceedings see CIVIL PROCEDURE vol 11 (2009) PARAS 538-583.

8 Ibid s 35A(4) (as added and substituted: see note 4 supra). In determining for these purposes whether a disclosure is not prohibited, by reason of being a disclosure of personal data which is exempt from the non-disclosure provisions of the Data Protection Act 1998 by virtue of s 35(1) (see CONFIDENCE AND DATA PROTECTION vol 8(1) (2003 Reissue) PARA 554), it must be assumed that the disclosure is required by the Medical Act 1983 s 35A (as added and substituted): s 35A(5A) (as so added and substituted). Where information is held in a form in which the prohibition operates because the information is capable of identifying an individual, the person authorised to require the information may, in exercising his functions, require that the information be put into a form which is not capable of identifying that individual: s 35A(5) (as so added and substituted). 'Enactment' includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament, and any provision of, or any instrument made under, Northern Ireland legislation: s 35A(7) (as so added and substituted). As to the Scottish Parliament and Northern Ireland legislation see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

9 The 'relevant date' is the date specified by the Council by rules under ibid Sch 4 para 1 (see PARA 152 post): s 35A(3) (as added and substituted: see note 4 supra). The relevant date is the day on which the earliest of the following occurs:

- 34 (1) the decision of the registrar to carry out investigations under the General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, rr 4(4), 7(2) (see PARAS 160-161 post) (r 13(a));
- 35 (2) the referral of an allegation to an interim orders panel (r 13(b));
- 36 (3) the referral of an allegation for consideration by the case examiners under r 8 (see PARA 162 post) (r 13(c));
- 37 (4) the referral of an allegation to a fitness to practise panel (r 13(d)); or
- 38 (5) the making of a direction that an assessment of the practitioner's performance or health be carried out in accordance with Sch 1, 2 (see PARAS 184-185 post) (r 13(e)).

For the meaning of 'allegation' see PARA 160 note 1 post; and for the meaning of 'case examiners' see PARA 160 note 7 post. As to the constitution of fitness to practise panels see PARAS 138-140 ante. As to fitness to practise panels as statutory committees see PARA 26 ante. As to the functions of fitness to practise panels see PARA 144 et seq ante. As to the constitution of interim orders panels see PARAS 138-140 ante. As to interim orders panels as statutory committees see PARA 26 ante. As to interim orders and the procedure in relation to them see PARAS 148 ante, 186 et seq post.

10 Medical Act 1983 s 35A(2)(a) (as added and substituted: see note 4 supra).

11 Ibid s 35A(2)(b) (as added and substituted: see note 4 supra).

12 As to the Secretary of State see PARA 5 ante.

13 Medical Act 1983 s 35B(1)(a) (as added and substituted: see note 4 supra). The Council must also notify the Scottish Ministers and the Department of Health, Social Services and Public Safety in Northern Ireland: s 35B(1)(a) (as so added and substituted). As to the National Assembly for Wales and the Scottish Ministers see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

14 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

15 Medical Act 1983 s 35B(1)(b)(i) (as added and substituted: see note 4 supra).

16 Ibid s 35B(1)(b)(ii) (as added and substituted: see note 4 supra).

17 Ibid s 35B(2) (as added and substituted: see note 4 supra).

## UPDATE

### 138-189 Fitness to practise

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to have power to adjudicate in fitness to practice cases in



relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: see s 98(2) (not yet in force). As to the OHPA generally, see further PARA 189A.

### **151 Disclosure of information and notification of investigations**

TEXT AND NOTES 1-6--Medical Act 1983 s 35A(1) amended: SI 2008/1774.

NOTE 4--1983 Act s 35A(8) amended: SI 2006/1914.

NOTE 9--Head (1). SI 2004/2608 r 13(a) amended: SI 2009/1913.

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## **152. Rules.**

The General Medical Council<sup>1</sup> must make rules for the investigation committee<sup>2</sup>, interim orders panels<sup>3</sup> and fitness to practise panels<sup>4</sup> with respect to the reference of cases to, and the procedure to be followed and rules of evidence to be observed in proceedings before, that committee or such a panel<sup>5</sup>. Before making such rules the Council must consult such bodies of persons representing medical practitioners, or medical practitioners of any description, as appear to it requisite to be consulted<sup>6</sup>. Any such rules do not come into force until approved by order of the Privy Council<sup>7</sup>.

Rules made in connection with the consideration by the investigation committee of whether to warn a person regarding his future conduct or performance<sup>8</sup> must include provision: (1) securing that notice be given to this effect to the person concerned<sup>9</sup>; (2) securing that the person concerned be entitled to make representations in writing to the committee<sup>10</sup>; (3) securing that if the committee determines that there should be an oral hearing, the person concerned is, if he so requires, entitled to be heard by the committee<sup>11</sup>; (4) enabling the person concerned to be represented before the committee by counsel or a solicitor, or, if the rules so provide and he so elects, by a person of such other description as may be specified in the rules<sup>12</sup>; and (5) securing that notice be served on the person concerned of any decision taken in relation to him by the committee<sup>13</sup>.

Rules made in connection with the consideration by an interim orders panel or a fitness to practise panel of the making of an interim suspension order or an order for interim conditional registration<sup>14</sup>, or in connection with the review of such an interim order, must include provision: (a) securing that notice that the proceedings are to be brought be given, at such time and in such manner as may be specified in the rules, to the person to whom the proceedings relate<sup>15</sup>; (b) securing that a person in relation to whom an order has been made is, if he so requires, entitled to be heard by the panel on each occasion on which it reviews the order<sup>16</sup>; (c) enabling the person in relation to whom the order has been made to be represented before the panel by counsel or a solicitor, or, if the rules so provide and he so elects, by a person of such other description as may be specified in the rules<sup>17</sup>; (d) for service on the person to whom the proceedings relate of notice of any decision taken in relation to him by the panel<sup>18</sup>; and (e) determining when proceedings before the panel are to be held in public and when in private, including provision securing that they are to be held in public if the person to whom the proceedings relate so requests<sup>19</sup>.

Rules made in connection with any other proceedings before a fitness to practise panel must include provision: (i) securing that notice that the proceedings are to be brought be given, at such time and in such manner as may be specified in the rules, to the person to whose registration the proceedings relate<sup>20</sup>; (ii) securing that any party<sup>21</sup> to the proceedings is, if he so requires, entitled to be heard by a panel<sup>22</sup>; (iii) enabling any party to the proceedings to be represented before the panel by counsel or a solicitor, or, if the rules so provide and the party so elects, by a person of such other description as may be specified in the rules<sup>23</sup>; (iv) in relation to conduct<sup>24</sup>, conviction<sup>25</sup> or determination proceedings<sup>26</sup>, for proceedings before a panel to be held in public unless and to the extent that the rules provide otherwise<sup>27</sup>; and (v) in relation to health<sup>28</sup> or performance proceedings<sup>29</sup>, requiring proceedings before a panel to be held in public if the person concerned so requests unless and to the extent that the rules provide otherwise<sup>30</sup>.

- 1 As to the General Medical Council see PARA 13 et seq ante.
- 2 As to the constitution of the investigation committee see PARAS 138-140 ante. As to the investigation committee as a statutory committee see PARA 26 ante. As to the functions of the investigation committee see PARAS 141-142 ante.
- 3 As to the constitution of interim orders panels see PARAS 138-140 ante. As to interim orders panels as statutory committees see PARA 26 ante. As to interim orders and the procedure in relation to them see PARAS 148 ante, 186 et seq post.
- 4 As to the constitution of fitness to practise panels see PARAS 138-140 ante. As to fitness to practise panels as statutory committees see PARA 26 ante. As to the functions of fitness to practise panels see PARA 144 et seq ante. As to the procedure before fitness to practise panels see PARA 178 et seq post.
- 5 Medical Act 1983 s 43, Sch 4 para 1(1)(a), (b) (s 43, Sch 4 substituted by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 13, 14). Such rules must specify the relevant date for the purposes of the Medical Act 1983 ss 35A, 35B (both as added and substituted) (see PARA 151 ante); Sch 4 para 1(5) (as so substituted). As to the rules that have been made see the General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608 (para 160 et seq post); and the General Medical Council (Fitness to Practise) (Disqualifying Decisions and Determinations by Regulatory Bodies) Procedure Rules Order of Council 2004, SI 2004/2607 (para 182 post).
- 6 Medical Act 1983 Sch 4 para 1(6) (as substituted: see note 5 supra).
- 7 Ibid Sch 4 para 1(7) (as substituted: see note 5 supra). The Privy Council may approve such rules as submitted to it, or subject to such modifications as appear to it to be requisite: Sch 4 para 1(8) (as so substituted). Where the Privy Council proposes to approve rules subject to modifications, it must notify the General Medical Council of the modifications it proposes to make, and consider any observations which that Council may make on the modifications: Sch 4 para 1(9) (as so substituted). As to the exercise by the Privy Council of its powers under the Medical Act 1983 see PARA 32 ante. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.
- 8 Ie under ibid s 35C(6) (as added): see PARA 142 ante.
- 9 Ibid Sch 4 para 1(2)(a) (as substituted: see note 5 supra).
- 10 Ibid Sch 4 para 1(2)(b) (as substituted: see note 5 supra).
- 11 Ibid Sch 4 para 1(2)(c) (as substituted: see note 5 supra).
- 12 Ibid Sch 4 para 1(2)(d) (as substituted: see note 5 supra).
- 13 Ibid Sch 4 para 1(2)(e) (as substituted: see note 5 supra).
- 14 Ie under ibid s 41A (as added and substituted): see PARA 148 ante.
- 15 Ibid Sch 4 para 1(3)(a) (as substituted: see note 5 supra).
- 16 Ibid Sch 4 para 1(3)(b) (as substituted: see note 5 supra).
- 17 Ibid Sch 4 para 1(3)(c) (as substituted: see note 5 supra).
- 18 Ibid Sch 4 para 1(3)(d) (as substituted: see note 5 supra).
- 19 Ibid Sch 4 para 1(3)(e) (as substituted: see note 5 supra).
- 20 Ibid Sch 4 para 1(4)(a) (as substituted: see note 5 supra).
- 21 'Party', in relation to proceedings before the investigation committee, an interim orders panel or fitness to practise panel means any person to whose registration the proceedings relate, or the solicitor to the General Medical Council: ibid Sch 4 para 13 (as substituted: see note 5 supra).
- 22 Ibid Sch 4 para 1(4)(b) (as substituted: see note 5 supra).
- 23 Ibid Sch 4 para 1(4)(c) (as substituted: see note 5 supra).
- 24 'Conduct proceedings' means proceedings involving an allegation of a kind mentioned in ibid s 35C(2)(a) (as added) (see PARA 141 ante); Sch 4 para 1(10) (as substituted: see note 5 supra).

25 'Conviction proceedings' means proceedings involving an allegation of a kind mentioned in *ibid* s 35C(2)(c) (as added) (see *PARA 141 ante*): Sch 4 para 1(10) (as substituted: see note 5 *supra*).

26 'Determination proceedings' means proceedings involving an allegation of a kind mentioned in *ibid* s 35C(2)(e) (as added) (see *PARA 141 ante*): Sch 4 para 1(10) (as substituted: see note 5 *supra*).

27 *Ibid* Sch 4 para 1(4)(d) (as substituted: see note 5 *supra*).

28 'Health proceedings' means proceedings involving an allegation of a kind mentioned in *ibid* s 35C(2)(d) (as added) (see *PARA 141 ante*): Sch 4 para 1(10) (as substituted: see note 5 *supra*).

29 'Performance proceedings' means proceedings involving an allegation of a kind mentioned in *ibid* s 35C(2)(b) (as added) (see *PARA 141 ante*): Sch 4 para 1(10) (as substituted: see note 5 *supra*).

30 *Ibid* Sch 4 para 1(4)(e) (as substituted: see note 5 *supra*).

## **UPDATE**

### **138-189 Fitness to practise**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to have power to adjudicate in fitness to practice cases in relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: see s 98(2) (not yet in force). As to the OHPA generally, see further *PARA 189A*.

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### **153. Administration of oaths; attendance of witnesses.**

For the purpose of proceedings before the investigation committee<sup>1</sup>, an interim orders panel<sup>2</sup>, or a fitness to practise panel<sup>3</sup>, the committee or panel may administer oaths<sup>4</sup>, and any party<sup>5</sup> to the proceedings may require a witness to attend to give evidence or to produce documents<sup>6</sup>, but no person may be compelled to produce any document which he could not be compelled to produce on the trial of a claim<sup>7</sup>.

1 Medical Act 1983 s 43, Sch 4 para 2(1)(a) (s 43, Sch 4 substituted by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 13, 14). As to the constitution of the investigation committee see PARAS 138-140 ante. As to the investigation committee as a statutory committee see PARA 26 ante. As to the functions of the investigation committee see PARAS 141-142 ante.

2 Medical Act 1983 Sch 4 para 2(1)(b) (as substituted: see note 1 supra). As to the constitution of interim orders panels see PARAS 138-140 ante. As to interim orders panels as statutory committees see PARA 26 ante. As to interim orders and the procedure in relation thereto see PARAS 148 ante, 186 et seq post.

3 Ibid Sch 4 para 2(1)(c) (as substituted: see note 1 supra). As to the constitution of fitness to practise panels see PARAS 138-140 ante. As to fitness to practise panels as statutory committees see PARA 26 ante. As to the functions of fitness to practise panels see PARA 144 et seq ante. As to the procedure before fitness to practise panels see PARA 178 et seq post.

4 'Oath' includes affirmation and declaration: Interpretation Act 1978 s 5, Sch 1. As to oaths, affirmations and declarations see CIVIL PROCEDURE vol 11 (2009) PARA 1021 et seq.

5 For the meaning of 'party' see PARA 152 note 21 ante.

6 See the Medical Act 1983 Sch 4 para 2(1) (as substituted: see note 1 supra). See also CIVIL PROCEDURE vol 11 (2009) PARA 1004.

7 Ibid Sch 4 para 2(1) (as substituted: see note 1 supra). As to the production of documents in civil proceedings see CIVIL PROCEDURE vol 11 (2009) PARAS 538-583.

The special procedure under the Supreme Court Act 1981 s 36 (see CIVIL PROCEDURE vol 11 (2009) PARAS 1008, 1016) in relation to a witness who is out of the jurisdiction but within the United Kingdom applies in relation to proceedings before the committee or panels as it applies in relation to causes or matters in the High Court: Medical Act 1983 Sch 4 para 2(2) (as so substituted). For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

## **UPDATE**

### **138-189 Fitness to practise**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to have power to adjudicate in fitness to practice cases in relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: see s 98(2) (not yet in force). As to the OHPA generally, see further PARA 189A.

### **153 Administration of oaths; attendance of witnesses**

NOTE 7--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

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#### **154. Legal assessors: appointment and rules.**

For the purposes of advising the investigation committee<sup>1</sup> where it is considering giving a warning to a person<sup>2</sup>, an interim orders panel<sup>3</sup>, or a fitness to practise panel<sup>4</sup>, on questions of law arising in proceedings before them, there must in all such proceedings be an assessor to the panel appointed by the General Medical Council<sup>5</sup>. An assessor may be appointed either generally or for any particular proceedings or class of proceedings<sup>6</sup>.

The Lord Chancellor<sup>7</sup> may make rules as to the functions of such assessors, including without prejudice to the generality of the powers to make such rules, the function of advising on the drafting of decisions<sup>8</sup>. Rules made in connection with proceedings before the investigation committee, an interim orders panel or a fitness to practise panel may in particular contain such provisions as appear to the Lord Chancellor expedient for: (1) securing that where an assessor advises the committee or a panel on any question of law as to evidence, procedure or any other matter specified in the rules, he must either so advise in the presence of every party<sup>9</sup>, or person representing a party, to the proceedings who appears at the proceedings<sup>10</sup>, or inform every such party or person of the advice that he has tendered, if the advice is tendered after the committee or the panel has begun its deliberations<sup>11</sup>; (2) securing that every such party or person is informed if in any case the committee or the panel does not accept the advice of the assessor on any such question<sup>12</sup>.

The Council may pay to persons appointed to act as assessors such remuneration as the Council may determine<sup>13</sup>.

1 As to the constitution of the investigation committee see PARAS 138-140 ante. As to the investigation committee as a statutory committee see PARA 26 ante. As to the functions of the investigation committee see PARAS 141-142 ante.

2 Medical Act 1983 s 43, Sch 4 para 7(1)(a) (s 43, Sch 4 para 7 substituted by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 13, 14). As to the power of the investigation committee to give warnings see PARA 142 ante.

3 Medical Act 1983 Sch 4 para 7(1)(b) (as substituted: see note 2 supra). As to the constitution of interim orders panels see PARAS 138-140 ante. As to interim orders panels as statutory committees see PARA 26 ante. As to interim orders and the procedure in relation to them see PARAS 148 ante, 186 et seq post.

4 Ibid Sch 4 para 7(1)(c) (as substituted: see note 2 supra). As to the constitution of fitness to practise panels see PARAS 138-140 ante. As to fitness to practise panels as statutory committees see PARA 26 ante. As to the functions of fitness to practise panels see PARA 144 et seq ante. As to the procedure before fitness to practise panels see PARA 178 et seq post.

5 Ibid Sch 4 para 7(1) (as substituted: see note 2 supra). Such an assessor must be a person who has a 10 year general qualification, within the meaning of the Courts and Legal Services Act 1990 s 71 (see LEGAL PROFESSIONS vol 65 (2008) PARA 742), an advocate or solicitor in Scotland of at least 10 years' standing, or a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least 10 years' standing: Medical Act 1983 Sch 4 para 7(1)(i)-(iii) (as so substituted). As to the General Medical Council see PARA 13 et seq ante.

6 Ibid Sch 4 para 7(2) (as substituted: see note 2 supra).

7 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

8 Medical Act 1983 Sch 4 para 7(3) (as substituted: see note 2 supra). The power to make rules is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of

Parliament: Sch 4 para 7(6) (as so substituted). As to the rules that have been made see the General Medical Council (Legal Assessors) Rules 2004, SI 2004/2625; and PARA 155 post. As to the annulment of statutory instruments see STATUTES vol 44(1) (Reissue) PARA 1516.

9 For the meaning of 'party' see PARA 152 note 21 ante.

10 Medical Act 1983 Sch 4 para 7(4)(a)(i) (as substituted: see note 2 supra).

11 Ibid Sch 4 para 7(4)(a)(ii) (as substituted: see note 2 supra).

12 Ibid Sch 4 para 7(4)(b) (as substituted: see note 2 supra). The rules may also contain such incidental and supplementary provisions as appear to the Lord Chancellor expedient: Sch 4 para 7(4) (as so substituted).

13 Ibid Sch 4 para 7(5) (as substituted: see note 2 supra).

## **UPDATE**

### **138-189 Fitness to practise**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to have power to adjudicate in fitness to practice cases in relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: see s 98(2) (not yet in force). As to the OHPA generally, see further PARA 189A.

### **154 Legal assessors: appointment and rules**

NOTE 5--Medical Act 1983 Sch 4 para 7(1)(iii) amended: Constitutional Reform Act 2005 Sch 11 para 5 (in force 1 October 2009: SI 2009/1604).



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### 155. Functions of legal assessors.

Legal assessors<sup>1</sup> have the following functions:

- 161 (1) advising the committee<sup>2</sup> or a panel<sup>3</sup> on questions of law arising in proceedings before it, and in particular a legal assessor must, in such proceedings<sup>4</sup>:  
59
84. (a) advise the committee or the panel on any question of law that is referred to him by the committee or the panel<sup>5</sup>; and
85. (b) intervene to advise the committee or the panel on an issue of law where it appears to him that, without his intervention, there is the possibility of a mistake of law being made<sup>6</sup>; and
86. (c) intervene to advise the committee or the panel of any irregularity in the conduct of the proceedings which comes to his knowledge<sup>7</sup>; and  
60
- 162 (2) advising on the drafting of decisions of the committee or a panel, notwithstanding that legal assessors will not themselves be parties to those decisions<sup>8</sup>.

In all proceedings in which a legal assessor must be appointed<sup>9</sup>, the committee or panel conducting those proceedings must not hold any meeting or hearing<sup>10</sup> in respect of those proceedings in the absence of the legal assessor appointed in those proceedings<sup>11</sup>.

Any advice tendered by a legal assessor on a question of law at a hearing must be tendered in the presence of every party, or person representing a party, in attendance at the hearing<sup>12</sup>. However, where the committee or a panel has begun to deliberate on its decision<sup>13</sup> and considers that it would be prejudicial to the discharge of its functions for the advice of the legal assessor to be tendered in the presence of the parties or their representatives<sup>14</sup>, the advice may be tendered in the absence of the parties or their representatives<sup>15</sup>. Where advice is so tendered in the absence of the parties or their representatives, the legal assessor who tendered that advice must, as soon as practicable after the completion of the deliberations, inform each of the parties or their representatives in attendance at the hearing of the advice he gave together with any question which led to that advice<sup>16</sup>, and subsequently record those matters in writing and give a copy to those parties or their representatives<sup>17</sup>.

Where, in proceedings but not at a hearing, a legal assessor tenders advice on a question of law to the committee or a panel which the committee or the panel does not accept, a record must be made by the legal assessor of the advice given together with any question which led to that advice and of the decision not to accept it together with the reasons for that decision<sup>18</sup>, and a copy of the record must be given to every party to the proceedings or their representatives<sup>19</sup>.

1 'Legal assessor' means a person appointed under the Medical Act 1983 s 43, Sch 4 para 7(1) (both as substituted) (see PARA 154 ante): General Medical Council (Legal Assessors) Rules 2004, SI 2004/2625, r 1(2).

2 'Committee' means the investigation committee, in circumstances where it is considering giving a warning to a person under the Medical Act 1983 s 35C(6) (as added) (see PARA 142 ante): General Medical Council (Legal Assessors) Rules 2004, SI 2004/2625, r 1(2). As to the constitution of the investigation committee see PARAS

138-140 ante. As to the investigation committee as a statutory committee see PARA 26 ante. As to the functions of the investigation committee see PARAS 141-142 ante.

3 'Panel' means an interim orders panel, registration appeals panel or a fitness to practise panel: *ibid* r 1(2) (amended by SI 2005/896). As to the constitution of interim orders panels see PARAS 138-140 ante. As to interim orders panels as statutory committees see PARA 26 ante. As to interim orders and the procedure in relation to them see PARAS 148 ante, 186 et seq post. As to the constitution of fitness to practise panels see PARAS 138-140 ante. As to fitness to practise panels as statutory committees see PARA 26 ante. As to the functions of fitness to practise panels see PARA 144 et seq ante. As to the procedure before fitness to practise panels see PARA 178 et seq post.

4 General Medical Council (Legal Assessors) Rules 2004, SI 2004/2625, r 2(a).

5 *Ibid* r 2(a)(i). Where an issue, such as an application that the committee discharge itself on the grounds of bias, arises in the course of proceedings before it, it is the duty of the legal assessor not simply to pose questions but to provide answers or at least advice as to the answers: *R (on the application of Mahfouz) v Professional Conduct Committee of the General Medical Council* [2004] EWCA Civ 233, (2004) Times, 19 March. A material misdirection by a legal assessor may invalidate the decision of the committee: *Silver v General Medical Council* [2003] UKPC 33, (2003) Times, 9 May.

6 General Medical Council (Legal Assessors) Rules 2004, SI 2004/2625, r 2(a)(ii).

7 *Ibid* r 2(a)(iii).

8 *Ibid* r 2(b).

9 *Ie* by virtue of the Medical Act 1983 Sch 4 para 7(1) (as substituted): see PARA 154 ante.

10 'Hearing' means proceedings of the committee or a panel that have been constituted as a hearing at which the parties to the proceedings may attend or be represented: General Medical Council (Legal Assessors) Rules 2004, SI 2004/2625, r 1(2).

11 *Ibid* r 3.

12 *Ibid* r 4(1).

13 *Ibid* r 4(2)(a).

14 *Ibid* r 4(2)(b).

15 *Ibid* r 4(2). Erroneous advice given by a legal assessor may amount to procedural irregularity resulting in a decision being set aside: *Walker v General Medical Council* [2002] UKPC 57, 71 BMLR 53.

16 General Medical Council (Legal Assessors) Rules 2004, SI 2004/2625, r 4(3)(a).

17 *Ibid* r 4(3)(b). Copies of such written advice must be available, on application, to every party to the proceedings who does not attend, and is not represented at, the hearing to which the advice relates: r 4(4).

18 *Ibid* r 5(a).

19 *Ibid* r 5(b).

## UPDATE

### 138-189 Fitness to practise

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to have power to adjudicate in fitness to practice cases in relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: see s 98(2) (not yet in force). As to the OHPA generally, see further PARA 189A.

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## **156. Validity of proceedings.**

Where:

- 163 (1) several sittings of the investigation committee<sup>1</sup>, an interim orders panel<sup>2</sup> or a fitness to practise panel<sup>3</sup> or the General Medical Council<sup>4</sup> are required to enable the committee, panel or Council to dispose of a case<sup>5</sup>; or
- 164 (2) on an appeal to the relevant court<sup>6</sup> the case is remitted to the registrar<sup>7</sup> for him to refer the case to a fitness to practise panel or to the Council for the panel or Council to dispose of the case in accordance with directions given by the court<sup>8</sup>,

the validity of the proceedings on the case before the committee, panel or Council, as the case may be, may not be called into question by reason only that members of the committee, panel or Council who were present at a former meeting were not present at a later meeting of the committee, panel or Council or that members present at a later meeting were not present at a former meeting, as the case may be<sup>9</sup>.

1 As to the constitution of the investigation committee see PARAS 138-140 ante. As to the investigation committee as a statutory committee see PARA 26 ante. As to the functions of the investigation committee see PARAS 141-142 ante.

2 As to the constitution of interim orders panels see PARAS 138-140 ante. As to interim orders panels as statutory committees see PARA 26 ante. As to interim orders and the procedure in relation to them see PARAS 148 ante, 186 et seq post.

3 As to the constitution of fitness to practise panels see PARAS 138-140 ante. As to fitness to practise panels as statutory committees see PARA 26 ante. As to the functions of fitness to practise panels see PARA 144 et seq ante. As to the procedure before fitness to practise panels see PARA 178 et seq post.

4 As to the General Medical Council see PARA 13 et seq ante.

5 Medical Act 1983 s 43, Sch 4 para 3(a) (s 43, Sch 4 substituted by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 13, 14).

6 Ie under the Medical Act 1983 s 40 (as substituted): see PARA 188 post.

7 For the meaning of 'the registrar' see PARA 23 note 1 ante.

8 Medical Act 1983 Sch 4 para 3(b) (as substituted: see note 5 supra).

9 Ibid Sch 4 para 3 (as substituted: see note 5 supra).

## **UPDATE**

### **138-189 Fitness to practise**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to have power to adjudicate in fitness to practice cases in relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: see s 98(2) (not yet in force). As to the OHPA generally, see further PARA 189A.



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### **157. When directions take effect.**

A direction for erasure, for suspension or for conditional registration given by a fitness to practise panel<sup>1</sup>, a variation by such a panel<sup>2</sup>, or a direction for erasure given by the General Medical Council<sup>3</sup> takes effect: (1) where no appeal<sup>4</sup> is brought against the direction or variation within the time specified, on the expiration of that time<sup>5</sup>; (2) where such an appeal is so brought but is withdrawn or dismissed for want of prosecution, on the withdrawal or dismissal of the appeal<sup>6</sup>; (3) where such an appeal is so brought and is not withdrawn or dismissed for want of prosecution, if and when the appeal is dismissed<sup>7</sup>.

If, while a person's registration is suspended<sup>8</sup>, a direction is given: (a) extending the period of suspension, or for erasure, or for conditional registration<sup>9</sup>; or (b) on the review of a health case<sup>10</sup>, then the suspension of his registration continues to have effect throughout any period which may intervene between the time when, but for this provision, the suspension of his registration would end and the time when the direction takes effect<sup>11</sup> or an appeal<sup>12</sup> against it is, otherwise than by the dismissal of the appeal, determined<sup>13</sup>.

If, while a person's registration is subject to conditions<sup>14</sup>, a direction<sup>15</sup> is given for erasure, suspension, or extension or variation of conditional registration, the conditions attached to his registration continue to attach to it throughout any period which may intervene between the time when, but for this provision, his registration would cease to be conditional and the time when the direction takes effect<sup>16</sup> or an appeal<sup>17</sup> against it is determined (otherwise than by the dismissal of the appeal)<sup>18</sup>.

1     Ie under the Medical Act 1983 s 35D (as added): see PARA 144 ante. As to the constitution of fitness to practise panels see PARAS 138-140 ante. As to fitness to practise panels as statutory committees see PARA 26 ante. As to the functions of fitness to practise panels see PARA 144 et seq ante. As to the procedure before fitness to practise panels see PARA 178 et seq post.

2     Ie under ibid s 35D(12) (as added): see PARA 144 ante.

3     Ie under ibid s 39 (as substituted): see PARA 189 post. As to the General Medical Council see PARA 13 et seq ante.

4     Ie under ibid s 40 (as substituted): see PARA 188 post.

5     Ibid s 43, Sch 4 para 10(1)(a) (s 43, Sch 4 substituted by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 13, 14). Any reference in the Medical Act 1983 Sch 4 para 10 (as substituted) to a direction for suspension or for conditional registration includes a reference to a direction extending a period of suspension or conditional registration: Sch 4 para 10(3) (as so substituted).

Where the time for appealing against a direction or variation is extended by an authorisation under Sch 4 para 9 (as substituted) (see PARAS 144 note 28 ante, 189 note 5 post):

39     (1)   Sch 4 para 10(1) (as substituted) applies to the direction as if the reference in Sch 4 para 10(1)(a) (as substituted) to the time specified in s 40 (as substituted) were a reference to that time as so extended (Sch 4 para 10(2)(a)(as so substituted)); and

40     (2)   if the authorisation is given after the expiration of the time specified in s 40 (as substituted), the direction or variation is deemed not to have taken effect on the expiration of that time (Sch 4 para 10(2)(b)(as so substituted)),

and any reference to the time when such a direction takes effect is to be construed accordingly: (Sch 4 para 10(2) (as so substituted)).

- 6 Ibid Sch 4 para 10(1)(b) (as substituted: see note 5 supra). See also note 5 supra.
- 7 Ibid Sch 4 para 10(1)(c) (as substituted: see note 5 supra). See also note 5 supra.
- 8 Ie under ibid s 35D(2) (as added): see PARA 144 ante.
- 9 Ie under ibid s 35D(5) (as added): see PARA 144 ante.
- 10 Ie under ibid s 35D(8)(a), (c) (as added): see PARA 145 ante.
- 11 Ie in accordance with ibid Sch 4 para 10 (as substituted): see the text to notes 1-7 supra.
- 12 Ie under ibid s 40 (as substituted): see PARA 188 post.
- 13 Ibid Sch 4 para 11(1) (as substituted: see note 5 supra). If, on the determination of such an appeal, a direction extending a current period of suspension for a further period takes effect after the time when, but for Sch 4 para 11(1) (as substituted), the current period of suspension would have ended, that further period is treated as having started to run from that time: Sch 4 para 11(2) (as so substituted).
- 14 Ie imposed under ibid s 35D(2) (as added): see PARA 144 ante.
- 15 Ie under s 35D(10), (12) (as added): see PARA 144 ante.
- 16 Ie in accordance with ibid Sch 4 para 10 (as substituted): see the text to notes 1-7 supra.
- 17 Ie under ibid s 40 (as substituted): see PARA 188 post.
- 18 Ibid Sch 4 para 11(3) (as substituted: see note 5 supra). If, on the determination of an appeal under s 40 (as substituted), a direction extending a current period of conditional registration for a further period takes effect after the time when, but for Sch 4 para 11(3) (as substituted), the current period of conditional registration would have ended, that further period is treated as having started to run from that time: Sch 4 para 11(4) (as so substituted).

## **UPDATE**

### **138-189 Fitness to practise**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to have power to adjudicate in fitness to practice cases in relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: see s 98(2) (not yet in force). As to the OHPA generally, see further PARA 189A.

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### **158. Recording of directions.**

Where a direction made by a fitness to practise panel<sup>1</sup> for suspension or for conditional registration takes effect<sup>2</sup> in relation to any person, the registrar<sup>3</sup> must record in the register<sup>4</sup> the fact that that person's registration is suspended or subject to conditions<sup>5</sup>.

1     le under the Medical Act 1983 s 35D (as added) (see PARAS 144-145 ante), or under rules made by virtue of Sch 4 para 5A(3) (as substituted) (see PARA 183 post). As to the constitution of fitness to practise panels see PARAS 138-140 ante. As to fitness to practise panels as statutory committees see PARA 26 ante. As to the functions of fitness to practise panels see PARA 144 et seq ante. As to the procedure before fitness to practise panels see PARA 178 et seq post.

2     As to the time when such directions take effect see PARA 157 ante.

3     For the meaning of 'the registrar' see PARA 23 note 1 ante.

4     For the meaning of 'the register' see PARA 34 note 3 ante.

5     Medical Act 1983 s 43, Sch 4 para 12 (both substituted by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 13, 14). As to the registration of medical practitioners generally see PARA 99 et seq ante.

## **UPDATE**

### **138-189 Fitness to practise**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to have power to adjudicate in fitness to practice cases in relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: see s 98(2) (not yet in force). As to the OHPA generally, see further PARA 189A.

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### **159. Effect of directions or orders on a licence to practise.**

As from a day to be appointed the following provisions have effect<sup>1</sup>. Where<sup>2</sup> a direction is given that a medical practitioner's name be erased from the register<sup>3</sup>, or an order is made or a direction is given that his registration as a medical practitioner be suspended<sup>4</sup>, the practitioner's licence to practise<sup>5</sup> must be withdrawn with effect from the date when the direction or order has effect<sup>6</sup>. Where a medical practitioner's registration has been suspended and that suspension expires without being further extended<sup>7</sup>, or the suspension is brought to an end without any direction for erasure or further suspension being made<sup>8</sup>, the practitioner's licence to practise must be restored with effect from the date on which the suspension comes to an end<sup>9</sup>.

1 The Medical Act 1983 s 41C is added by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, art 13 and comes into effect as from a day to be appointed: see art 1(2), (3). At the date at which this volume states the law no such day had been appointed.

2 I.e. under the Medical Act 1983 Pt V (ss 35-45) (as amended) (para 141 et seq ante) or under rules made by virtue of Sch 4 para 5A(3) (as substituted) (see PARA 183 post).

3 Ibid s 41C(1)(a) (prospectively added: see note 1 supra). For the meaning of 'the register' see PARA 34 note 3 ante.

4 Ibid s 41C(1)(b) (prospectively added: see note 1 supra).

5 For the meaning of 'licence to practise' see PARA 130 note 3 ante.

6 Medical Act 1983 s 41C(1) (prospectively added: see note 1 supra).

7 Ibid s 41C(2)(a) (prospectively added: see note 1 supra).

8 Ibid s 41C(2)(b) (prospectively added: see note 1 supra).

9 Ibid s 41C(2) (prospectively added: see note 1 supra).

### **UPDATE**

#### **138-189 Fitness to practise**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to have power to adjudicate in fitness to practice cases in relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: see s 98(2) (not yet in force). As to the OHPA generally, see further PARA 189A.

### **159 Effect of directions or orders on a licence to practise**

NOTE 1--Appointed day is 16 November 2009: London Gazette, 21 August 2009.



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## ***B. INVESTIGATION AND DETERMINATION OF ALLEGATIONS***

### **(A) PRELIMINARY AND GENERAL MATTERS**

#### **160. Initial consideration and referral of allegations.**

An allegation<sup>1</sup> must initially be considered by the registrar<sup>2</sup>. The registrar may, before deciding whether to refer an allegation, carry out any such investigations as in his opinion are appropriate to the consideration of: (1) whether or not the allegation falls within the Medical Act 1983<sup>3</sup>; or (2) the practitioner's fitness to practise<sup>4</sup>. Where the registrar considers that the allegation falls within the Medical Act 1983, he must refer the matter to a medical<sup>5</sup> and a lay<sup>6</sup> case examiner<sup>7</sup> for consideration<sup>8</sup>. Where the registrar considers that an allegation does not fall within the Medical Act 1983<sup>9</sup> or, in the case of an excepted allegation<sup>10</sup>, the registrar does not consider it to be in the public interest for the allegation to proceed<sup>11</sup>, he must notify the practitioner and the maker of the allegation, if any, accordingly<sup>12</sup>.

The registrar must refer an allegation relating to a conviction for a criminal offence<sup>13</sup> resulting in the imposition of a custodial sentence, whether immediate or suspended, directly to a fitness to practise panel<sup>14</sup>, and must refer any other allegation relating to a criminal conviction or caution or a determination by a regulatory body<sup>15</sup> directly to such a panel, unless he is of the opinion that it ought to be referred to a medical and a lay case examiner<sup>16</sup>.

However, no allegation may proceed further if, at the time it is first made or first comes to the attention of the General Medical Council<sup>17</sup>, more than five years have elapsed since the most recent events giving rise to the allegation, unless the registrar considers that it is in the public interest, in the exceptional circumstances of the case, for it to proceed<sup>18</sup>.

If, at any stage, the registrar is of the opinion that an interim orders panel<sup>19</sup> should consider making an interim order<sup>20</sup> in relation to a practitioner, he must refer the allegation to such a panel accordingly<sup>21</sup>.

1 'Allegation' means an allegation that the fitness to practise of a practitioner (see note 4 *infra*) is impaired and includes an allegation treated as arising by virtue of the Medical Act 1983 s 35CC(3) (as added) (see PARA 141 text to notes 18, 19 *ante*) and an allegation relating to a person whose registration is suspended: General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 2. For the meaning of 'impaired' see PARA 141 *ante*. As to the registration of medical practitioners see PARA 99 *et seq ante*. As to the suspension of registration see PARAS 144-146 *ante*.

2 *Ibid* r 4(1). For the meaning of 'the registrar' see PARA 23 note 1 *ante*.

3 *Ie* within the Medical Act 1983 s 35C(2) (as added) (see PARA 141 *ante*): General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 4(4)(a).

4 *Ibid* r 4(4)(b). For these purposes, 'practitioner' means a person holding full, provisional or limited registration under the Medical Act 1983 (including any person whose registration is suspended) who is the subject of an allegation or in respect of whom a direction has been made under s 35D (as added) (see PARAS 144-145 *ante*): General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 2.

5 'Medical', in relation to any person, means a registered medical practitioner: *ibid* r 2. For the meaning of 'registered medical practitioner' see PARA 4 *ante*.

6 'Lay', in relation to any person, means a person who is neither a registered medical practitioner nor a holder of any qualification registrable under the Medical Act 1983: General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 2. As to the registration of qualifications under the Medical Act 1983 see PARAS 99, 102, 107, 109, 111 ante.

7 'Case examiner' means a medical or lay officer of the General Medical Council appointed by the registrar for the purposes of exercising the functions of the investigation committee; and 'case examiners' means the medical and lay case examiners to whom an allegation is referred under the General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, rr 4(2), 5(2) (see the text to notes 15, 16 infra) and includes any replacement case examiner appointed by the registrar: r 2.

8 le under ibid r 8 (see PARA 162 post): r 4(2). This provision is expressed to be subject to rr 4(5), 5: see the text to notes 14-18 infra.

9 Ibid r 4(3)(a).

10 le an allegation falling within ibid r 4(5): see the text to notes 17, 18 infra.

11 Ibid r 4(3)(b).

12 Ibid r 4(3).

13 le an allegation falling within the Medical Act 1983 s 35C(2)(c) (as added): see PARA 141 ante.

14 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 5(1). This provision is expressed to be subject to r 4(5): see the text to notes 17, 18 infra. As to the constitution of fitness to practise panels see PARAS 138-140 ante. As to fitness to practise panels as statutory committees see PARA 26 ante. As to the functions of fitness to practise panels see PARA 144 et seq ante.

15 le falling within the Medical Act 1983 s 35C(2)(c), (e) (as added): see PARA 141 post.

16 le for consideration under the General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 8 (see PARA 162 post): r 5(2). This provision is expressed to be subject to r 4(5): see the text to notes 17, 18 infra.

17 As to the General Medical Council see PARA 13 et seq ante.

18 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 4(5).

19 For the meaning of 'interim orders panel' see PARA 186 note 2 post.

20 As to interim orders see PARA 148 ante.

21 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 6.

## UPDATE

### 138-189 Fitness to practise

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to have power to adjudicate in fitness to practice cases in relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: see s 98(2) (not yet in force). As to the OHPA generally, see further PARA 189A.

### 160 Initial consideration and referral of allegations

TEXT AND NOTES 3, 4--The registrar may also carry out any such investigations as in his opinion are appropriate to the consideration of the matters outlined within SI 2004/2608 r 4(5): r 4(4)(c) (added by SI 2009/1913).

NOTE 4--In the definition of 'practitioner' for 'person holding ... limited registration' read 'person holding full or provisional registration': SI 2004/2608 r 2 (amended by SI 2009/1913).

NOTE 6--'Lay', in relation to any person, now means a person who is not and never has been provisionally registered or fully registered, was at no time registered with limited registration and does not hold qualifications which would entitle them to apply for provisional or full registration under the Medical Act 1983: SI 2004/2608 r 2 (amended by SI 2009/1913).

NOTE 7--Definition of 'case examiner' amended: SI 2004/2608 r 2 (amended by SI 2009/1913).

TEXT AND NOTES 9-12--The registrar must also notify the practitioner and the maker of the allegation if he considers that an allegation should not proceed on grounds that it is vexatious: SI 2004/2608 r 4(3)(c) (added by SI 2009/1913).

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### **161. Preliminary procedure.**

As soon as is reasonably practicable after referral of an allegation<sup>1</sup> for consideration by case examiners<sup>2</sup>, the registrar<sup>3</sup> must write to the practitioner<sup>4</sup>: (1) informing him of the allegation and stating the matters which appear to raise a question as to whether his fitness to practise is impaired<sup>5</sup>; (2) providing him with copies of any documents received by the General Medical Council<sup>6</sup> in support of the allegation<sup>7</sup>; (3) inviting him to respond to the allegation with written<sup>8</sup> representations within the period of 28 days from the date of the letter<sup>9</sup>; and (4) informing him that representations received from him will be disclosed, where appropriate, to the maker of the allegation, if any, for comment<sup>10</sup>.

The registrar must carry out any such investigations, whether or not any have been carried out previously<sup>11</sup>, as in his opinion are appropriate to the consideration of the allegation by case examiners<sup>12</sup>, and may direct that an assessment of the practitioner's performance or health be carried out<sup>13</sup>. Where the registrar receives information that: (a) the practitioner has failed to submit to, or comply with, such an assessment<sup>14</sup>; or (b) having submitted to an assessment of his performance, the practitioner has failed to comply with reasonable requirements imposed by the assessment team<sup>15</sup>, then the registrar may refer the allegation for determination by a fitness to practise panel<sup>16</sup>, and, in a case where the practitioner has failed to comply with reasonable requirements imposed by the assessment team, the registrar may refer the practitioner to a fitness to practise panel for the purposes of making a direction<sup>17</sup> for the suspension of or the attachment of conditions to the practitioners registration<sup>18</sup>.

1 For the meaning of 'allegation' see PARA 160 note 1 ante.

2 Ie under the General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 8: see PARA 162 post. For the meaning of 'case examiners' see PARA 160 note 7 ante.

3 For the meaning of 'the registrar' see PARA 23 note 1 ante.

4 Any notice or document, other than a notice of hearing (as to the service of which see PARA 169 note 5 post), to be served on a person under the General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, may be sent by ordinary post (r 40(3)) and the service of any notice may be proved by a confirmation of posting issued by or on behalf of the Post Office or other postal operator or delivery service, or a signed statement from any person serving the notice by hand (r 40(4)(a), (b)). As to references to service by post see PARA 20 note 22 ante. For the meaning of 'practitioner' for these purposes see PARA 160 note 4 ante.

5 Ibid r 7(1)(a). For the meaning of 'impaired' see PARA 141 ante.

6 As to the General Medical Council see PARA 13 et seq ante.

7 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 7(1)(b).

8 For the meaning of 'written' see PARA 20 note 22 ante.

9 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 7(1)(c).

10 Ibid r 7(1)(d).

11 Ie under ibid r 4(4): see PARA 160 ante.

12 Ibid r 7(2).

13 le in accordance with *ibid* Schs 1, 2 (see PARAS 164, 184-185 post): r 7(3). Where an assessment of the practitioner's performance or health has been carried out in accordance with Schs 1, 2, the registrar must send a copy of the assessment report to the practitioner: r 7(4). Where an assessment of the practitioner's performance has been carried out in accordance with Sch 1, the registrar must send a copy of the assessment report to any person by whom the practitioner is employed to provide medical services or with whom he has an arrangement to do so: r 7(5). 'Assessment report' means a report prepared following the assessment of a practitioner's performance or health in accordance with Schs 1, 2: r 2.

14 *Ibid* r 7(6)(a).

15 *Ibid* r 7(6)(b). For the meaning of 'assessment team' see PARA 184 note 11 post.

16 *Ibid* r 7(6)(i). As to the review of a decision not to refer an allegation to a fitness to practise panel see PARA 167 post. As to the constitution of fitness to practise panels see PARAS 138-140 ante. As to fitness to practise panels as statutory committees see PARA 26 ante. As to the functions of fitness to practise panels see PARA 144 et seq ante. As to the procedure before fitness to practise panels see PARA 178 et seq post.

17 le under the Medical Act 1983 s 43, Sch 4 para 5A(3) (both as substituted): see PARA 183 post.

18 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 7(6)(ii).

## **UPDATE**

### **138-189 Fitness to practise**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to have power to adjudicate in fitness to practice cases in relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: see s 98(2) (not yet in force). As to the OHPA generally, see further PARA 189A.

### **161 Preliminary procedure**

NOTE 4--SI 2004/2608 r 40 substituted: SI 2009/1913. See now SI 2004/2608 r 40(2), (4).

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## **162. Consideration by case examiners.**

An allegation<sup>1</sup> referred by the registrar<sup>2</sup> must be considered by the case examiners<sup>3</sup>. Upon consideration of an allegation, the case examiners may unanimously decide: (1) that the allegation should not proceed further<sup>4</sup>; (2) to issue a warning to the practitioner<sup>5</sup>; (3) to refer the allegation to the investigation committee<sup>6</sup> for determination<sup>7</sup>; or (4) to refer the allegation for determination by a fitness to practise panel<sup>8</sup>. The case examiners may unanimously decide to recommend that the practitioner be invited to comply with undertakings<sup>9</sup> and, where they do so and the practitioner confirms he is prepared to comply with such undertakings<sup>10</sup>, they must make no decision under heads (1) to (4) above<sup>11</sup>.

As soon as reasonably practicable, the case examiners must inform the registrar of their decision, together with the reasons for that decision, and the registrar must notify<sup>12</sup> the practitioner and the maker of the allegation, if any, in writing<sup>13</sup>, accordingly<sup>14</sup>. If the case examiners fail to agree as to the disposal of an allegation under heads (1) to (4) above, or whether to recommend that the practitioner be invited to comply with undertakings, they must notify the registrar accordingly, and he must refer the allegation for consideration by the investigation committee<sup>15</sup>. If, at any stage, one of the case examiners is of the opinion that an interim orders panel<sup>16</sup> should consider making an interim order in relation to a practitioner, he must direct the registrar accordingly<sup>17</sup>.

1 For the meaning of 'allegation' see PARA 160 note 1 ante.

2 Ie under the General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, rr 4(2), 5(2): see PARA 160 ante. For the meaning of 'the registrar' see PARA 23 note 1 ante.

3 Ibid r 8(1). For the meaning of 'case examiners' see PARA 160 note 7 ante. As to the principles applied to the preliminary stages of disciplinary matters under the previous rules, now replaced, made under the Medical Act 1983 see *R v General Medical Council ex p Toth* [2000] 1 WLR 2209, 61 BMLR 149; *R (on the application of Richards) v General Medical Council* [2000] All ER (D) 2350, (2001) Times, 24 Jan; *R (on the application of Holmes) v General Medical Council* [2001] EWHC 321 (Admin), 63 BMLR 131.

4 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 8(2)(a). Persons performing such a role must take account of the legitimate expectation that complaints, in the absence of some special and sufficient reason, will proceed through to the disciplinary committee. They should be particularly slow in halting a complaint against a practitioner who continues to practise, as opposed to one who has since retired, for the paramount consideration must be the public's protection in respect of those continuing to practise: *R v General Medical Council ex p Toth* [2000] 1 WLR 2209, 61 BMLR 149.

5 Ie in accordance with the General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 11(2) (see PARA 166 post): r 8(2)(b). For the meaning of 'warning' see PARA 166 note 3 post. For the meaning of 'practitioner' for these purposes see PARA 160 note 4 ante.

6 Ie under ibid r 11(3): see PARA 166 post. As to the constitution of the investigation committee see PARAS 138-140 ante. As to the investigation committee as a statutory committee see PARA 26 ante. As to the functions of the investigation committee see PARAS 141-142 ante.

7 Ie under ibid r 11(6) (see PARA 166 post): r 8(2)(c).

8 Ibid r 8(2)(d). As to the review of a decision not to refer an allegation to a fitness to practise panel see PARA 167 post. As to the constitution of fitness to practise panels see PARAS 138-140 ante. As to fitness to practise panels as statutory committees see PARA 26 ante. As to the functions of fitness to practise panels see PARA 144 et seq ante. As to the procedure before fitness to practise panels see PARA 178 et seq post.

- 9 le in accordance with *ibid* r 10(2): see PARA 165 post.
- 10 le in accordance with *ibid* r 10(3): see PARA 165 post.
- 11 *Ibid* r 8(3). As to the review of such decisions see PARA 167 post.
- 12 As to the service of notices and documents see PARA 161 note 4 ante.
- 13 For the meaning of 'writing' see PARA 20 note 22 ante.
- 14 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 8(4).
- 15 le under *ibid* r 9 (see PARA 163 post): r 8(5).
- 16 For the meaning of 'interim orders panel' see PARA 186 note 2 post.
- 17 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 8(6). As to interim orders see PARA 148 ante.

## **UPDATE**

### **138-189 Fitness to practise**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to have power to adjudicate in fitness to practice cases in relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: see s 98(2) (not yet in force). As to the OHPA generally, see further PARA 189A.

### **162 Consideration by case examiners**

NOTE 3--SI 2004/2608 r 8(1) amended: SI 2009/1913. See *R (on the application of McNicholas) v Nursing and Midwifery Council* [2009] EWHC 627 (Admin), [2009] All ER (D) 187 (Jul).

NOTE 11--SI 2004/2608 r 8(3) amended: SI 2007/3168.

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### **163. Determinations by the investigation committee in cases referred from case examiners.**

Upon consideration of an allegation<sup>1</sup> referred from case examiners<sup>2</sup>, the investigation committee<sup>3</sup> may: (1) determine that the allegation should not proceed further<sup>4</sup>; (2) dispose of the allegation by issuing a warning<sup>5</sup> to the practitioner<sup>6</sup> without an oral hearing<sup>7</sup>; (3) determine that an oral hearing should be held for determination<sup>8</sup>; (4) refer the allegation for determination by a fitness to practise panel<sup>9</sup>; or (5) where the case examiners have failed to agree whether to recommend that the practitioner be invited to comply with undertakings<sup>10</sup>, determine that the practitioner be invited to comply with such undertakings as the committee thinks fit and direct the case examiners to make no decision<sup>11</sup> accordingly<sup>12</sup>.

1 For the meaning of 'allegation' see PARA 160 note 1 ante.

2 Ie under the General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 8(5); see PARA 162 ante. For the meaning of 'case examiners' see PARA 160 note 7 ante.

3 As to the constitution of the investigation committee see PARAS 138-140 ante. As to the investigation committee as a statutory committee see PARA 26 ante. As to the functions of the investigation committee see PARAS 141-142 ante.

A court should exercise caution when considering an application to judicially review the decision of such a committee particularly if the court is asked to assess evidence of medical practice, or expert medical reports, with a view to determining whether the committee could legitimately conclude that there is a real prospect of a charge or charges being proved; the degree of caution appropriate is, however, significantly less if the issue before the court is whether the committee correctly interpreted or applied the rules governing its procedure: *David v General Medical Council* [2004] EWHC 2977 (Admin), [2004] All ER (D) 346 (Dec). It is not the role of such a committee to resolve conflicts, or at least substantial conflicts, of evidence; and in performing its functions it must balance the interests of the practitioner against the interests of the complainant and the public and bear in mind the need for the reassurance of the complainant and the public that complaints are fully and properly investigated and that there is no cover-up. The committee should be particularly slow in halting a complaint against a practitioner who continues to practise, as opposed to one who has since retired, for the paramount consideration must be the public's protection in respect of those continuing to practise: *R v General Medical Council ex p Toth* [2000] 1 WLR 2209, 61 BMLR 149; *R (on the application of Richards) v General Medical Council* [2000] All ER (D) 2350, (2001) Times, 24 Jan; and see also *David v General Medical Council* supra. As to judicial review see CIVIL PROCEDURE vol 12 (2009) PARA 1530; JUDICIAL REVIEW.

4 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 9(a).

5 For the meaning of 'warning' see PARA 166 note 3 post.

6 For the meaning of 'practitioner' for these purposes see PARA 160 note 4 ante.

7 Ie in accordance with the General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 11(2)-(4) (see PARA 166 post); r 9(b).

8 Ie under *ibid* r 11(6) (see PARA 166 post); r 9(c).

9 *Ibid* r 9(d). It is good practice that reasons be given for a decision not to refer a decision to the disciplinary committee: *R (on the application of Tudor) v General Medical Council* [2004] All ER (D) 258 (Oct). As to the review of a decision not to refer an allegation to a fitness to practise panel see PARA 167 post. As to the constitution of fitness to practise panels see PARAS 138-140 ante. As to fitness to practise panels as statutory committees see PARA 26 ante. As to the functions of fitness to practise panels see PARA 144 et seq ante. As to the procedure before fitness to practise panels see PARA 178 et seq post.



10 le in accordance with *ibid* r 10(2): see PARA 165 post.

11 le under *ibid* r 8(2): see PARA 162 ante.

12 *Ibid* r 9(e).

## **UPDATE**

### **138-189 Fitness to practise**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to have power to adjudicate in fitness to practice cases in relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: see s 98(2) (not yet in force). As to the OHPA generally, see further PARA 189A.

### **163 Determinations by the investigation committee in cases referred from case examiners**

NOTE 3--*David*, cited, reported at (2005) 84 BMLR 30.

NOTE 12--SI 2004/2608 r 9(e) amended: SI 2007/3168.

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#### **164. Health assessments.**

The registrar<sup>1</sup> may appoint a panel of medical examiners<sup>2</sup> for the purposes of carrying out health assessments<sup>3</sup>. The registrar must invite the practitioner<sup>4</sup> within 14 days to agree to attend before two medical examiners selected by the registrar from such panel<sup>5</sup>. If the practitioner accepts the invitation within 14 days from the date of such invitation, or such further period as the registrar may allow, the registrar must make arrangements for the assessments to be carried out<sup>6</sup>. The medical examiners must each be required to prepare a report on the practitioner's physical or mental condition which must express an opinion as to whether the practitioner is fit to practise either generally or on limited basis<sup>7</sup>, and any recommendations as to the management of the case<sup>8</sup>.

1 For the meaning of 'the registrar' see PARA 23 note 1 ante.

2 'Medical examiner' means a registered medical practitioner appointed by the registrar under the General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 3(1)(b) (see the text and note 3 infra) for the purposes of carrying out health assessments in accordance with Sch 2: r 2. For the meaning of 'registered medical practitioner' see PARA 4 ante.

3 Ibid r 3(1)(b). Members of the General Medical Council are not eligible for appointment to such a panel: r 3(3). 'Assessment' means an assessment of the physical or mental condition of the practitioner: Sch 2 para 1. As to the General Medical Council see PARA 13 et seq ante. As to the membership of the General Medical Council see PARAS 14-16 ante.

4 For the meaning of 'practitioner' for these purposes see PARA 160 note 4 ante.

5 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, Sch 2 para 2.

6 Ibid Sch 2 para 3.

7 Ibid Sch 2 para 4(a).

8 Ibid Sch 2 para 4(b).

#### **UPDATE**

#### **138-189 Fitness to practise**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to have power to adjudicate in fitness to practice cases in relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: see s 98(2) (not yet in force). As to the OHPA generally, see further PARA 189A.

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## **165. Undertakings.**

Where, after an assessment of the practitioner's<sup>1</sup> performance or health has been carried out<sup>2</sup> and before the relevant allegation<sup>3</sup> has been determined by the case examiners<sup>4</sup> or referred to the investigation committee<sup>5</sup> or a fitness to practise panel<sup>6</sup>, the registrar<sup>7</sup> considers it appropriate to do so, he may refer the assessment report<sup>8</sup> to the case examiners for consideration<sup>9</sup>. If after considering the assessment report it appears to the case examiners that the practitioner:

- 165 (1) is not fit to practise<sup>10</sup>;
- 166 (2) is not fit to practise except on a limited basis or under supervision, or both<sup>11</sup>;  
or
- 167 (3) suffers from a continuing or episodic physical or mental condition which, although in remission at the time of the assessment, may be expected to cause a recurrence of impairment of the practitioner's fitness to practise<sup>12</sup>,

they may recommend that the practitioner be invited to comply with such undertakings as they think fit, including any limitations on his practice, and must inform the registrar who must write to the practitioner accordingly, inviting him to state within the period of 28 days from the date of the letter, or such further period as the registrar may allow, whether he is prepared to comply with such undertakings<sup>13</sup>.

If, within the 28 day period, or such further period as the registrar may allow, the practitioner confirms in writing that he is prepared to comply with the undertakings proposed, the case examiners cease consideration of the allegation<sup>14</sup> and the registrar must notify the practitioner and the maker of the allegation, if any, in writing<sup>15</sup>. Where, as a result of information received by the General Medical Council<sup>16</sup> it appears to the case examiners that any undertakings the practitioner has agreed to comply with should be varied or cease to apply, they must inform the registrar accordingly and the registrar must invite the practitioner to comply with such varied undertakings as appear to the case examiners to be appropriate<sup>17</sup>, or direct that the undertakings should no longer apply and that the allegation should proceed no further<sup>18</sup>.

Where the registrar receives information that: (a) the practitioner has not within the 28 day period, or such further period as the registrar may allow, agreed to comply with the undertakings proposed<sup>19</sup>; (b) the practitioner has failed to observe an undertaking he has agreed to comply with or which has been varied<sup>20</sup>; or (c) the practitioner's health or performance has deteriorated, or otherwise gives rise to further concern regarding his fitness to practise<sup>21</sup>, then the registrar may refer the allegation for determination by a fitness to practise panel<sup>22</sup>.

The registrar must disclose details of any relevant undertakings, save those relating exclusively to the health of the practitioner, to any person by whom the practitioner is employed to provide medical services or with whom he has an arrangement to do so<sup>23</sup>, and any enquirer<sup>24</sup>.

1 For the meaning of 'practitioner' for these purposes see PARA 160 note 4 ante.

2 ie in accordance with the General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, Schs 1, 2 (see PARAS 164 ante, 184-185 post): r 10(1)(a).

3 For the meaning of 'allegation' see PARA 160 note 1 ante.

4 le under the General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 8: see PARA 162 ante. For the meaning of 'case examiners' see PARA 160 note 7 ante.

5 As to the constitution of the investigation committee see PARAS 138-140 ante. As to the investigation committee as a statutory committee see PARA 26 ante. As to the functions of the investigation committee see PARAS 141-142 ante.

6 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 10(1)(b). As to the constitution of fitness to practise panels see PARAS 138-140 ante. As to fitness to practise panels as statutory committees see PARA 26 ante. As to the functions of fitness to practise panels see PARA 144 et seq ante. As to the procedure before fitness to practise panels see PARA 178 et seq post.

7 For the meaning of 'the registrar' see PARA 23 note 1 ante.

8 For the meaning of 'assessment report' see PARA 161 note 13 ante.

9 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 10(1).

10 Ibid r 10(2)(a).

11 Ibid r 10(2)(b).

12 Ibid r 10(2)(c).

13 Ibid r 10(2). The registrar must not invite the practitioner to comply with any such undertakings where there is a realistic prospect that, if the allegation were referred to a fitness to practise panel, his name would be erased from the register: r 10(4). For the meaning of 'the register' see PARA 34 note 3 ante. As to the service of notices and documents see PARA 161 note 4 ante. As to orders of erasure by fitness to practise panels see PARAS 144-145 ante.

14 The case examiners must accordingly make no decision under ibid r 8(2) (see PARA 162 ante): r 10(3). As to the review of a decision to cease consideration of an allegation upon receipt of undertakings from the practitioner in accordance with r 10(3) see PARA 167 post.

15 Ibid r 10(3). Where the case examiners have ceased consideration of an allegation in accordance with r 10(3), the registrar may: (1) request one or more medical practitioners to supervise the practitioner and to provide reports as necessary (r 10(5)(a)); (2) direct that a further assessment be carried out in accordance with Sch 1 or Sch 2 (r 10(5)(b)). For the meaning of 'writing' see PARA 20 note 22 ante.

16 As to the General Medical Council see PARA 13 et seq ante.

17 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 10(6)(a).

18 Ibid r 10(6)(b).

19 le under ibid r 10(2), (6)(a) (see the text to notes 10-13, 17 supra): r 10(7)(a).

20 le under ibid r 10(6) (see the text to notes 17-18 supra): r 10(7)(b).

21 Ibid r 10(7)(c).

22 Ibid r 10(7)(d). As to the review of a decision not to refer an allegation to a fitness to practise panel see PARA 167 post.

23 Ibid r 10(8)(a).

24 Ibid r 10(8)(b).

## UPDATE

### 138-189 Fitness to practise

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to have power to adjudicate in fitness to practice cases in relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: see s 98(2) (not yet in force). As to the OHPA generally, see further PARA 189A.

## **165 Undertakings**

TEXT AND NOTES--SI 2004/2608 r 10 substituted: SI 2007/3168.

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## **166. Warnings.**

If it appears to one or both of the case examiners<sup>1</sup> that an allegation<sup>2</sup> is one with respect to which he or they may wish to give a warning<sup>3</sup>, he or they must inform the registrar<sup>4</sup>, and the registrar must write<sup>5</sup> to the practitioner<sup>6</sup> to inform him that he is entitled to make written<sup>7</sup> representations within the period of 28 days from the date of the letter<sup>8</sup>. If the case examiners are satisfied that the allegation ought not to be considered by a fitness to practise panel<sup>9</sup> and the practitioner has made no representations<sup>10</sup>, or they have considered any representations made and the practitioner has not contested the facts upon which the allegation is based<sup>11</sup>, they may if they think fit issue a warning to the practitioner<sup>12</sup>. However, if after considering any representations made by the practitioner, where: (1) the practitioner has requested that the allegation be referred for an oral hearing before the investigation committee<sup>13</sup>; or (2) the case examiners otherwise consider it appropriate to do so<sup>14</sup>, the case examiners must refer the allegation to the committee for an oral hearing<sup>15</sup>.

Where an allegation has been referred to the investigation committee for an oral hearing, the registrar must give notice to the practitioner: (a) particularising the allegation against the practitioner and the facts upon which it is based<sup>16</sup>; (b) specifying the date, time and venue of the hearing<sup>17</sup>; (c) informing him of his right to attend the hearing and to be represented at a hearing<sup>18</sup>; (d) informing him of the power of the committee to proceed in his absence<sup>19</sup>; and (e) informing him of the committee's powers of disposal<sup>20</sup>. The order of proceedings before the committee is as follows:

- 168 (i) the presenting officer<sup>21</sup> outlines the allegation and the facts upon which it is based and, where the committee considers such evidence is desirable to enable it to discharge its functions in relation to the hearing, may adduce any relevant oral or documentary evidence<sup>22</sup>;
- 169 (ii) the practitioner may respond to the allegation and, where the committee considers such evidence is desirable to enable it to discharge its functions in relation to the hearing, may adduce any relevant oral or documentary evidence<sup>23</sup>;
- 170 (iii) the parties<sup>24</sup> may make such further submissions as the committee may allow<sup>25</sup>;
- 171 (iv) before making its decision, the committee may adjourn for further investigations to be carried out, including an assessment of the practitioner's performance or health<sup>26</sup>; and
- 172 (v) the committee announces its decision, and gives its reasons for that decision<sup>27</sup>.

The committee must consider any allegation referred to it and: (A) determine that the matter should not proceed further<sup>28</sup>; (B) dispose of the allegation by issuing a warning<sup>29</sup>; or (C) where new information adduced into evidence at the hearing indicates that to do so would be appropriate, refer the allegation for determination by a fitness to practise panel<sup>30</sup>. In making its decision, the committee must, where appropriate, take into account the practitioner's previous fitness to practise history with the General Medical Council or any other regulatory body<sup>31</sup>.

The registrar must serve written notification of the committee's decision upon the practitioner as soon as practicable<sup>32</sup>.

- 1 For the meaning of 'case examiners' see PARA 160 note 7 ante.
- 2 For the meaning of 'allegation' see PARA 160 note 1 ante.
- 3 'Warning' means a warning under the Medical Act 1983 ss 35C(6), 35D(3) (both as added) (see PARAS 142, 144 ante): General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 2.
- 4 For the meaning of 'the registrar' see PARA 23 note 1 ante.
- 5 As to the service of notices and documents see PARA 161 note 4 ante.
- 6 For the meaning of 'practitioner' for these purposes see PARA 160 note 4 ante.
- 7 For the meaning of 'written' see PARA 20 note 22 ante.
- 8 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 11(1).
- 9 As to the review of a decision not to refer an allegation to a fitness to practise panel see PARA 167 post. As to the constitution of fitness to practise panels see PARAS 138-140 ante. As to fitness to practise panels as statutory committees see PARA 26 ante. As to the functions of fitness to practise panels see PARA 144 et seq ante. As to the procedure before fitness to practise panels see PARA 178 et seq post.
- 10 Ie under the General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 11: r 11(2)(a).
- 11 Ibid r 11(2)(b).
- 12 Ibid r 11(2). Where the investigation committee is considering an allegation under r 9 (see PARA 163 ante) which has been referred as a result of the failure of the case examiners to agree as to disposal under r 8(2)(a), (d) (that the allegation should not proceed further, or should be referred for determination by a fitness to practise panel: see PARA 162 ante) and considers that the allegation is one with respect to which it may wish to give a warning, it must inform the registrar, and the registrar must write to the practitioner in accordance with r 11(1) (see the text to notes 1-8 supra), and r 11(2), (3) apply as if references to the case examiners were references to the committee: r 11(4). As to the review of decisions under r 11(2), (4) see PARA 167 post.
- 13 Ibid r 11(3)(a). As to the constitution of the investigation committee see PARAS 138-140 ante. As to the investigation committee as a statutory committee see PARA 26 ante. As to the functions of the investigation committee see PARAS 141-142 ante.
- 14 Ibid r 11(3)(b).
- 15 Ibid r 11(3). See also note 12 supra.
- 16 Ibid r 11(5)(a).
- 17 Ibid r 11(5)(b).
- 18 Ie in accordance with ibid r 33 (see PARA 169 note 9 post): r 11(5)(c).
- 19 Ie under ibid r 31 (see PARA 172 post): r 11(5)(d).
- 20 Ie as set out in ibid r 11(6) (see the text to notes 28-30 infra): r 11(5)(e).
- 21 'The presenting officer' means the representative of the General Medical Council instructed by the registrar to present the case on behalf of the Council at any hearing before a panel or the investigation committee, and may include solicitor or counsel; and 'panel' means a fitness to practise panel or an interim orders panel: ibid r 2. For the meaning of 'interim orders panel' see PARA 186 note 2 post. As to the General Medical Council see PARA 13 et seq ante.
- 22 Ibid r 11(7)(a). As to evidence see PARA 173 post.
- 23 Ibid r 11(7)(b).
- 24 'Party' means the practitioner or the General Medical Council, or their representatives; and references to 'the parties' are to be construed accordingly: ibid r 2.

- 25 Ibid r 11(7)(c).
- 26 le under ibid Schs 1, 2 (see PARAS 164 ante, 184-185 post): r 11(7)(d).
- 27 Ibid r 11(7)(e).
- 28 Ibid r 11(6)(a).
- 29 Ibid r 11(6)(b). As to the review of such a decision see PARA 167 post.
- 30 Ibid r 11(6)(c).
- 31 Ibid r 11(8). For the meaning of 'regulatory body' see PARA 141 note 15 ante; definition applied by r 2.
- 32 Ibid r 11(9). The notice of decision must: (1) where the committee decides that the matter should be referred to a fitness to practise panel, particularise the allegation against the practitioner that is to be referred (r 11(10)(a)); and (2) where the committee decides that the matter should be disposed of by issuing a warning, particularise the terms of the warning issued to the practitioner (r 11(10)(b)).

## **UPDATE**

### **138-189 Fitness to practise**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to have power to adjudicate in fitness to practice cases in relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: see s 98(2) (not yet in force). As to the OHPA generally, see further PARA 189A.

### **166 Warnings**

TEXT AND NOTE 32--Now read as reasonably practicable: SI 2004/2608 r 11(9) (amended by SI 2009/1913).



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### **167. Review of decisions.**

The following decisions may be reviewed by the president of the General Medical Council<sup>1</sup>: (1) a decision not to refer an allegation<sup>2</sup> to a fitness to practise panel<sup>3</sup>; (2) a decision to issue a warning<sup>4</sup>; or (3) a decision to cease consideration of an allegation upon receipt of undertakings from the practitioner<sup>5</sup>. However, the president must not review a decision unless he considers that there is new evidence or information which makes such review necessary for the protection of the public<sup>6</sup>, necessary for the prevention of injustice to the practitioner<sup>7</sup>, or otherwise necessary in the public interest<sup>8</sup>.

Where the president decides to review a decision the registrar<sup>9</sup> must: (a) inform the practitioner and the maker of the allegation, if any, of the decision to review<sup>10</sup>; (b) inform the practitioner and the maker of the allegation, if any, of any new evidence or information and, where appropriate, provide them with copies of any new evidence received<sup>11</sup>; and (c) seek representations from the practitioner and the maker of the allegation, if any, regarding the review of the decision<sup>12</sup>. The president may determine that the original decision should stand<sup>13</sup>; refer the allegation for consideration by case examiners<sup>14</sup>; or refer the allegation for consideration in respect of undertakings<sup>15</sup>. The registrar must notify the practitioner<sup>16</sup>, the maker of the allegation, if any<sup>17</sup>, and any other person he considers has an interest in receiving notification<sup>18</sup>, in writing<sup>19</sup>, as soon as reasonably practicable, of the president's decision, together with his reasons for that decision<sup>20</sup>.

1 As to the president of the General Medical Council see PARA 22 ante. As to the General Medical Council see PARA 13 et seq ante.

2 For the meaning of 'allegation' see PARA 160 note 1 ante.

3 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 12(1)(a). As to the constitution of fitness to practise panels see PARAS 138-140 ante. As to fitness to practise panels as statutory committees see PARA 26 ante. As to the functions of fitness to practise panels see PARA 144 et seq ante. As to the procedure before fitness to practise panels see PARA 178 et seq post.

4 *Ie* in accordance with *ibid* r 11(2), (4), (6) (see PARA 166 ante): r 12(1)(b). For the meaning of 'warning' see PARA 166 note 3 ante.

5 *Ie* in accordance with *ibid* r 10(3) (see PARA 165 ante): r 12(1)(c).

6 *Ibid* r 12(2)(a). However, the president may review a decision where he receives information that the General Medical Council has erred in its administrative handling of the case and he is satisfied that it is necessary in the public interest to do so: r 12(3).

7 *Ibid* r 12(2)(b). See also note 6 *supra*.

8 *Ibid* r 12(2)(c). See also note 6 *supra*.

9 For the meaning of 'the registrar' see PARA 23 note 1 ante.

10 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 12(4)(a). As to the service of notices and documents see PARA 161 note 4 ante.

11 *Ibid* r 12(4)(b).

12 *Ibid* r 12(4)(c).

- 13 Ibid r 12(5)(a).
- 14 Ie under ibid r 8 (see PARA 162 ante): r 12(5)(b). For the meaning of 'case examiners' see PARA 160 note 7 ante.
- 15 Ie under ibid r 10(2) (see PARA 165 ante): r 12(5)(c).
- 16 Ibid r 12(6)(a).
- 17 Ibid r 12(6)(b).
- 18 Ibid r 12(6)(c).
- 19 For the meaning of 'writing' see PARA 20 note 22 ante.
- 20 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 12(6).

## **UPDATE**

### **138-189 Fitness to practise**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to have power to adjudicate in fitness to practice cases in relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: see s 98(2) (not yet in force). As to the OHPA generally, see further PARA 189A.

### **167 Review of decisions**

TEXT AND NOTES--SI 2004/2608 r 12 substituted: SI 2009/1913.

NOTES--See *R (on the application of Higham) v University of Plymouth* [2005] All ER (D) 398 (Nov), CA.

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### **168. Appointment of specialist advisers.**

The registrar<sup>1</sup> may appoint: (1) a panel of specialist health advisers<sup>2</sup> for the purposes of advising a fitness to practise panel<sup>3</sup> in relation to medical issues regarding a practitioner's<sup>4</sup> health which may arise at a hearing before the panel<sup>5</sup>; and (2) a panel of specialist performance advisers<sup>6</sup> for the purposes of advising a fitness to practise panel in relation to medical issues regarding a practitioner's performance which may arise at a hearing before the panel<sup>7</sup>. Before the opening of any hearing before a fitness to practise panel, the registrar may select from such panels:

- 173 (a) one or more specialist health advisers<sup>8</sup>;
- 174 (b) one or more specialist performance advisers<sup>9</sup>; or
- 175 (c) one or more specialist health advisers and specialist performance advisers<sup>10</sup>,

in order to advise the panel, as required, during the hearing<sup>11</sup>.

1 For the meaning of 'the registrar' see PARA 23 note 1 ante.

2 'Specialist health adviser' means a registered medical practitioner appointed by the registrar under the General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 3(2) for the purposes of advising a fitness to practise panel (see note 3 infra) in relation to medical issues regarding a practitioner's health: reg 2. For the meaning of 'registered medical practitioner' see PARA 4 ante.

3 As to the constitution of fitness to practise panels see PARAS 138-140 ante. As to fitness to practise panels as statutory committees see PARA 26 ante. As to the functions of fitness to practise panels see PARA 144 et seq ante. As to the procedure before fitness to practise panels see PARA 178 et seq post.

4 For the meaning of 'practitioner' for these purposes see PARA 160 note 4 ante.

5 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 3(2)(a).

6 'Specialist performance adviser' means a registered medical practitioner appointed by the registrar under ibid r 3(2) for the purposes of advising a fitness to practise panel in relation to medical issues regarding a practitioner's performance: r 2.

7 Ibid r 3(2)(b).

8 Ibid r 14(a). In selecting a specialist health adviser in relation to a particular case, the registrar must: (1) have regard to the physical or mental condition which is alleged to impair the practitioner's fitness to practise (r 3(4)(a)); and (2) not select a person who has previously been selected to act as a medical examiner in relation to that case (r 3(4)(b)). For the meaning of 'medical examiner' see PARA 164 note 2 ante.

9 Ibid r 14(b). In selecting a specialist performance adviser in relation to a particular case, the registrar must: (1) have regard to the specialty to which the allegation relates (r 3(5)(a)); and (2) not select a person who has previously been selected to act as a member of an assessment team in relation to that case (r 3(5)(b)). For the meaning of 'specialty' see PARA 184 note 13 post. For the meaning of 'assessment team' see PARA 184 note 11 post.

10 Ibid r 14(c).

11 Ibid r 14. The advice of a specialist health adviser or a specialist performance adviser must be given or repeated in the presence of the parties in attendance at the hearing: r 3(6). For the meaning of 'parties' see PARA 166 note 24 ante.

## **UPDATE**

### **138-189 Fitness to practise**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to have power to adjudicate in fitness to practice cases in relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: see s 98(2) (not yet in force). As to the OHPA generally, see further *PARA 189A*.

### **168 Appointment of specialist advisers**

TEXT AND NOTES--After an allegation has been referred to a fitness to practise panel, the registrar may carry out such investigations as he considers appropriate including directing that an assessment of the practitioner's performance or health be carried out in accordance with SI 2004/2608 Sch 1 (see *PARA 185*) or 2 (see *PARA 164*): r 13A (added by SI 2009/1913).

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### **169. Notice of hearing.**

Subject to the provisions relating to case managers<sup>1</sup>, as soon as reasonably practicable after an allegation<sup>2</sup> has been referred to a fitness to practise panel<sup>3</sup>, the registrar<sup>4</sup> must serve<sup>5</sup> a notice of hearing on the practitioner<sup>6</sup>. The notice of hearing must:

- 176 (1) particularise the allegation against the practitioner and the facts upon which it is based<sup>7</sup>;
- 177 (2) specify the date, time and venue of the hearing<sup>8</sup>;
- 178 (3) inform the practitioner of his right to attend the hearing and to be represented at the hearing<sup>9</sup>;
- 179 (4) inform the practitioner of the power of the panel to proceed in his absence<sup>10</sup>;
- 180 (5) inform the practitioner of his right to adduce evidence<sup>11</sup> and to call and cross-examine witnesses<sup>12</sup>; and
- 181 (6) inform the practitioner of the panel's powers of disposal<sup>13</sup>.

<sup>1</sup> See the General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 16: see PARA 170 post.

<sup>2</sup> For the meaning of 'allegation' see PARA 160 note 1 ante.

<sup>3</sup> As to the constitution of fitness to practise panels see PARAS 138-140 ante. As to fitness to practise panels as statutory committees see PARA 26 ante. As to the functions of fitness to practise panels see PARA 144 et seq ante. As to the procedure before fitness to practise panels see PARA 178 et seq post.

<sup>4</sup> For the meaning of 'the registrar' see PARA 23 note 1 ante.

<sup>5</sup> Any notice of hearing required to be served upon the practitioner must be served in accordance with the Medical Act 1983 s 43, Sch 4 para 8 (both as substituted) (see PARA 142 note 6 ante): General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 40(1). If the practitioner is represented by a solicitor, any such notice must be served at the solicitor's practising address: r 40(2). For the meaning of 'practitioner' for these purposes see PARA 160 note 4 ante.

<sup>6</sup> Ibid r 15(1).

<sup>7</sup> Ibid r 15(2)(a).

<sup>8</sup> Ibid r 15(2)(b). The registrar must give no less than 28 days' notice of the date and location of the hearing and no less than 7 days' notice of the precise time and venue of the hearing (r 15(3)); but the registrar may give a shorter period of notice where the practitioner consents or the registrar considers it reasonable in the public interest in the exceptional circumstances of the case (r 15(4)).

<sup>9</sup> Ibid r 15(2)(c). At a hearing, the practitioner may be represented by a solicitor or counsel, a representative from any professional organisation of which he is a member, or, at the discretion of the investigation committee or panel, by a member of his family or other person: r 33(1). A person who gives evidence at a hearing is not entitled to represent or accompany the practitioner at that hearing: r 33(2). The practitioner, either in person or by a representative under r 33(1), and the presenting officer are entitled to be heard by the committee or panel: r 33(3). For the meanings of 'panel' and 'presenting officer' see PARA 166 note 21 ante. As to the constitution of the investigation committee see PARAS 138-140 ante. As to the investigation committee as a statutory committee see PARA 26 ante. As to the functions of the investigation committee see PARAS 141-142 ante.

<sup>10</sup> See under ibid r 31 (see PARA 172 post): r 15(2)(d).

11 le in accordance with *ibid* r 34: see PARA 173 post.

12 *Ibid* r 15(2)(e). As to witnesses see PARA 173 post.

13 le under the Medical Act 1983 s 35D (as added), s 38 (as substituted), and s 41A (as substituted) (see PARAS 144-146, 148 ante): General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 15(2)(f).

## **UPDATE**

### **138-189 Fitness to practise**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to have power to adjudicate in fitness to practice cases in relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: see s 98(2) (not yet in force). As to the OHPA generally, see further PARA 189A.

### **169 Notice of hearing**

NOTE 5--SI 2004/2608 r 40 substituted: SI 2009/1913. See now SI 2004/2608 r 40 r 40(1), (3).

NOTE 9--See *Kulkarni v Milton Keynes Hospital NHS Trust* [2009] EWCA Civ 789, [2009] IRLR 829 (doctor under investigation contractually entitled to be represented by a lawyer instructed by defence organisation despite attempt by trust to not allow legal representation at hearing).

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## **170. Case management.**

The registrar<sup>1</sup> must appoint one or more legally qualified case managers<sup>2</sup>. Following the referral of a case to a fitness to practise panel<sup>3</sup> for: (1) a hearing to consider an allegation<sup>4</sup>; (2) a review hearing to consider an allegation<sup>5</sup>; or (3) consideration of an application for restoration<sup>6</sup>, the registrar may list the matter for a case review before a case manager<sup>7</sup>.

The case manager must act independently of the parties and may give directions to secure the just, expeditious and effective running of proceedings before the fitness to practise panel<sup>8</sup>. Directions issued by the case manager may include, but are not limited to, such of the following as he considers appropriate having regard to the nature of the allegation, any representations made by the parties and all other material factors<sup>9</sup>:

- 182 (a) that each party disclose to the other:
  - 61 87. (i) any documentary evidence in their possession or power relating to the allegation<sup>10</sup>;
  88. (ii) details of the witnesses, including the practitioner<sup>11</sup>, on whom they intend to rely and signed witness statements setting out the substance of their evidence<sup>12</sup>;
  89. (iii) a curriculum vitae and an expert report in respect of any expert on whom they intend to rely<sup>13</sup>; and
  90. (iv) skeleton arguments<sup>14</sup>;
  - 62 183 (b) that each party provide an estimate as to the likely length of the hearing and the date or dates on which they propose that the hearing should take place<sup>15</sup>;
  - 184 (c) that the parties state whether or not the health of the practitioner is to be raised as an issue in the proceedings<sup>16</sup>;
  - 185 (d) that the practitioner indicates, so far as is practicable:
    - 63 91. (i) whether the allegation is admitted<sup>17</sup>;
    92. (ii) which facts are admitted and which facts remain in dispute<sup>18</sup>;
    93. (iii) which witness evidence is admitted and which witnesses are required for cross examination<sup>19</sup>; and
    94. (iv) whether any preliminary legal arguments are to be made<sup>20</sup>;
    - 64 186 (e) where the allegation is admitted, a direction that the parties produce a statement of agreed facts<sup>21</sup>;
    - 187 (f) where the parties agree, a direction that a witness statement stand as the evidence-in-chief of that witness<sup>22</sup>;
    - 188 (g) a direction that a particular witness should be treated as a vulnerable witness, and directions as to how the evidence of such witness should be obtained or presented to the panel<sup>23</sup>;
    - 189 (h) a direction for an adjournment of the case review or an additional case review where the circumstances of the case require<sup>24</sup>; and
    - 190 (i) time limits for compliance with any of the directions listed above<sup>25</sup>.

Within the period of seven days beginning with the date of a case review, the case manager must serve on the parties a record of the directions issued by him<sup>26</sup>.

A fitness to practise panel may draw such inferences as it considers appropriate in respect of the failure by a party to comply with directions issued by the case manager<sup>27</sup>.

1 For the meaning of 'the registrar' see PARA 23 note 1 ante.

2 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 16(1). 'Case manager' means a legally qualified person appointed by the registrar for the purposes of r 16: r 2.

3 As to the constitution of fitness to practise panels see PARAS 138-140 ante. As to fitness to practise panels as statutory committees see PARA 26 ante. As to the functions of fitness to practise panels see PARA 144 et seq ante. As to the procedure before fitness to practise panels see PARA 178 et seq post.

4 In accordance with the General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 17 (see PARAS 178-179 post): r 16(2)(a). For the meaning of 'allegation' see PARA 160 note 1 ante.

5 In accordance with *ibid* r 22 (see PARA 180 post): r 16(2)(b).

6 In accordance with *ibid* r 24 (see PARA 181 post): r 16(2)(c).

7 *Ibid* r 16(2). Unless the parties agree otherwise, the practitioner (see note 11 *infra*) must be given no less than 14 days' notice of any case review: r 16(3). A case review may be conducted by telephone or by such other method as may be agreed between the parties or, where the parties fail to agree, as decided by the case manager: r 16(4). For the meaning of 'parties' see PARA 166 note 24 ante.

8 *Ibid* r 16(5).

9 *Ibid* r 16(6).

10 *Ibid* r 16(6)(a)(i). As to evidence generally see PARA 173 post.

11 For the meaning of 'practitioner' for these purposes see PARA 160 note 4 ante.

12 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 16(6)(a)(ii). As to witnesses generally see PARA 174 post.

13 *Ibid* r 16(6)(a)(iii).

14 *Ibid* r 16(6)(a)(iv).

15 *Ibid* r 16(6)(b).

16 *Ibid* r 16(6)(c).

17 *Ibid* r 16(6)(d)(i).

18 *Ibid* r 16(6)(d)(ii).

19 *Ibid* r 16(6)(d)(iii).

20 *Ibid* r 16(6)(d)(iv). As to the determination of preliminary legal arguments see PARA 172 post.

21 *Ibid* r 16(6)(e).

22 *Ibid* r 16(6)(f).

23 *Ibid* r 16(6)(g). As to vulnerable witnesses see PARA 174 post.

24 *Ibid* r 16(6)(h).

25 *Ibid* r 16(6)(i).

26 *Ibid* r 16(7).



27 Ibid r 16(8).

## **UPDATE**

### **138-189 Fitness to practise**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to have power to adjudicate in fitness to practice cases in relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: see s 98(2) (not yet in force). As to the OHPA generally, see further PARA 189A.

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### **171. Cancellation, postponement or adjournment of hearings.**

Where, after an allegation<sup>1</sup> has been referred to a panel<sup>2</sup> and before the opening of the hearing before the panel: (1) evidence becomes available that suggests that the practitioner's<sup>3</sup> fitness to practise is not impaired<sup>4</sup>; (2) in the case of proceedings relating to interim orders, evidence becomes available that suggests an issue does not arise as to whether the interim orders panel<sup>5</sup> should make or review an interim order<sup>6</sup>; or (3) it appears that for some other reason, the hearing before the panel should not be held<sup>7</sup>, then the registrar<sup>8</sup> may refer the matter to a member of the investigation committee<sup>9</sup> or the president of the General Medical Council<sup>10</sup> for a decision as to whether or not the hearing should be cancelled<sup>11</sup>. Where a decision is taken that a hearing should be cancelled, the registrar must, as soon as practicable, serve notice<sup>12</sup> of the decision upon the practitioner and the maker of the allegation, if any, and give the reasons for that decision<sup>13</sup>.

Before the opening of any hearing of which notice has been served on the practitioner, a member of the investigation committee<sup>14</sup> or the president of the General Medical Council<sup>15</sup> may, of his own motion or upon the application of a party<sup>16</sup> to the proceedings, postpone the hearing until such time and date as he thinks fit<sup>17</sup>. Where a hearing of which notice has been served on the practitioner has commenced, the investigation committee or panel considering the matter may, at any stage in its proceedings, whether of its own motion or upon the application of a party to the proceedings, adjourn the hearing until such time and date as it thinks fit<sup>18</sup>. Where a hearing has been postponed or adjourned, the registrar must, as soon as practicable, notify the parties of the time, date and place at which the hearing is to take place or to resume<sup>19</sup>.

1 For the meaning of 'allegation' see PARA 160 note 1 ante.

2 For the meaning of 'panel' see PARA 166 note 21 ante.

3 For the meaning of 'practitioner' for these purposes see PARA 160 note 4 ante.

4 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 28(1)(a). For the meaning of 'impaired' see PARA 141 ante.

5 For the meaning of 'interim orders panel' see PARA 186 note 2 post.

6 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 28(1)(b). As to interim orders see PARA 148 ante.

7 Ibid r 28(1)(c).

8 For the meaning of 'the registrar' see PARA 23 note 1 ante.

9 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 28(2)(a). As to the constitution of the investigation committee see PARAS 138-140 ante. As to the investigation committee as a statutory committee see PARA 26 ante. As to the functions of the investigation committee see PARAS 141-142 ante.

10 Ibid r 28(2)(b). As to the president of the General Medical Council see PARA 22 ante. As to the General Medical Council see PARA 13 et seq ante.

11 Ibid r 28(1).

12 As to the service of notices and documents see PARA 161 note 4 ante.

13 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 28(3).

14 Ibid r 29(1)(a).

15 Ibid r 29(1)(b).

16 For the meaning of 'party' see PARA 166 note 24 ante.

17 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 29(1). No hearing may be postponed or adjourned under r 29(1), (2) (see the text to note 18 infra) unless the parties have been given a reasonable opportunity to make representations on the matter: r 29(3).

18 Ibid r 29(2). See also note 17 supra.

19 Ibid r 29(4).

## UPDATE

### 138-189 Fitness to practise

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to have power to adjudicate in fitness to practice cases in relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: see s 98(2) (not yet in force). As to the OHPA generally, see further PARA 189A.

### 171 Cancellation, postponement or adjournment of hearings

TEXT AND NOTES 1-13--SI 2004/2608 r 28 substituted: SI 2009/1913.

NOTE 11--See *R (on the application of the Singapore Medical Council) v General Medical Council* [2006] EWHC 3277 (Admin), [2006] All ER (D) 343 (Dec) (practitioner found guilty of professional misconduct abroad; foreign medical regulator provided information relating to its inquiry; General Medical Council had no duty of fairness to consult foreign regulator before deciding to cancel proceedings).

TEXT AND NOTES 14-17--Before the opening of any hearing of which notice has been served on the practitioner in accordance with SI 2004/2608, a member of the committee may, of his own motion or on the application of a party to the proceedings, postpone the hearing until such time and date as he thinks fit: r 29(1) (substituted by SI 2009/1913).

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## **172. Miscellaneous powers of the investigation committee and panels.**

Where the investigation committee<sup>1</sup> or a panel<sup>2</sup> considers and determines any preliminary legal arguments, such determination binds any subsequent committee or panel considering the case notwithstanding that any panellists<sup>3</sup> present at the original hearing are not present at the subsequent hearing, or that any panellists present at the subsequent hearing were not present at the original hearing, unless the subsequent committee or panel, on the advice of the legal assessor<sup>4</sup>, considers such determination to have been wrongly decided<sup>5</sup>.

Where the practitioner<sup>6</sup> is neither present nor represented at a hearing, the investigation committee or panel may nevertheless proceed to consider and determine the allegation if it is satisfied that all reasonable efforts have been made to serve the practitioner with notice of the hearing<sup>7</sup>.

The investigation committee or panel may consider and determine together:

- 191 (1) two or more allegations against the same practitioner which fall within the same category<sup>8</sup>, or separate categories<sup>9</sup>, of impairment<sup>10</sup>; or
- 192 (2) allegations against two or more practitioners<sup>11</sup>,

where it would be just to do so<sup>12</sup>.

1 As to the constitution of the investigation committee see PARAS 138-140 ante. As to the investigation committee as a statutory committee see PARA 26 ante. As to the functions of the investigation committee see PARAS 141-142 ante.

2 For the meaning of 'panel' see PARA 166 note 21 ante.

3 'Panellist' means a person sitting on the investigation committee or a panel: General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 2.

4 'Legal assessor' means a person appointed under the Medical Act 1983 s 43, Sch 4 para 7 (both as substituted) (see PARA 154 ante): General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 2.

5 Ibid r 30.

6 For the meaning of 'practitioner' for these purposes see PARA 160 note 4 ante.

7 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 31. As to service of such notices see PARA 169 note 5 ante.

8 Ibid r 32(a)(i).

9 Ibid r 32(a)(ii).

10 Ie as set out in the Medical Act 1983 s 35C(2)(a)-(e) (as added) (see PARA 141 ante): General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 32(a).

11 Ibid r 32(b).

12 Ibid r 32.

## **UPDATE**

### **138-189 Fitness to practise**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to have power to adjudicate in fitness to practice cases in relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: see s 98(2) (not yet in force). As to the OHPA generally, see further *PARA 189A*.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(4) FITNESS TO PRACTISE/(ii) Proceedings relating to Fitness to Practise/B. INVESTIGATION AND DETERMINATION OF ALLEGATIONS/(A) Preliminary and General Matters/173. Evidence.

### 173. Evidence.

The investigation committee<sup>1</sup> or a panel<sup>2</sup> may admit any evidence it considers fair and relevant to the case before it, whether or not such evidence would be admissible in a court of law<sup>3</sup>. However, where evidence would not be admissible in criminal proceedings in England, the committee or panel must not admit such evidence unless, on the advice of the legal assessor<sup>4</sup>, it is satisfied that its duty of making due inquiry into the case before it makes its admission desirable<sup>5</sup>. A copy of a document of which the original is admissible may be received by the committee or a panel without strict proof<sup>6</sup>. The practitioner<sup>7</sup> may admit a fact or description of a fact, and a fact or description of a fact so admitted may be treated as proved<sup>8</sup>.

Production of a certificate purporting to be under the hand of a competent officer of a court in the United Kingdom<sup>9</sup> or overseas that a person has been convicted of a criminal offence or, in Scotland an extract conviction, is conclusive evidence of the offence committed<sup>10</sup>; and production of a certificate signed by an officer of a regulatory body<sup>11</sup> that has made a determination about the fitness to practise of a person is conclusive evidence of the facts found proved in relation to that determination<sup>12</sup>.

A party<sup>13</sup> may, at any time, serve notice<sup>14</sup> on the other party to produce the original or a copy of any document that is relevant to the proceedings<sup>15</sup> and alleged to be in the possession, ownership or control of that party<sup>16</sup>, and such notice may be admitted into evidence by the committee or panel<sup>17</sup>. In relation to proceedings before the committee or a fitness to practise panel<sup>18</sup>, unless otherwise agreed between the parties or directed by a case manager<sup>19</sup>, each party must not less than 28 days before the date of a hearing: (1) provide to the other party a list of every document which he proposes to introduce as evidence<sup>20</sup>; (2) provide to the other party a copy of every such document which the other party has not previously received<sup>21</sup>; and (3) require the other party to notify him, within 14 days of the list being provided to him, whether or not he requires any relevant person to attend and give oral evidence in relation to the subject matter or making of such document<sup>22</sup>. Having regard to any directions given by a case manager<sup>23</sup>, on the application of a party, the committee or a panel may admit any signed witness statement containing a statement of truth as the evidence-in-chief of the witness concerned<sup>24</sup>.

1 As to the constitution of the investigation committee see PARAS 138-140 ante. As to the investigation committee as a statutory committee see PARA 26 ante. As to the functions of the investigation committee see PARAS 141-142 ante.

2 For the meaning of 'panel' see PARA 166 note 21 ante.

3 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 34(1). The principle that admissibility of evidence does not depend upon its having been legally obtained, established in criminal law, is applicable to disciplinary proceedings; what is essential is that the evidence be relevant to the issue to be determined: *Idenburg v General Medical Council* (2000) 55 BMLR 101, PC. As to the procedure applicable to the disclosure of documents held on a court file, including medical reports see *Re A (A Minor) (Disclosure of Medical Records to the GMC)* [1999] 1 FCR 30. As to the admissibility of evidence in criminal proceedings see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1359 et seq. As to evidence in civil proceedings see CIVIL PROCEDURE vol 11 (2009) PARA 749 et seq.

4 For the meaning of 'legal assessor' see PARA 172 note 4 ante.

5 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 34(2).

- 6 Ibid r 34(7).
- 7 For the meaning of 'practitioner' for these purposes see PARA 160 note 4 ante.
- 8 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 34(6).
- 9 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.
- 10 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 34(3). The only evidence which may be adduced by the practitioner in rebuttal of a conviction or determination certified in the manner specified in r 34(3), (4) (see the text to notes 11, 12 infra) is evidence for the purposes of proving that he is not the person referred to in the certificate or extract: r 34(5).
- 11 For the meaning of 'regulatory body' see PARA 141 note 15 ante; definition applied by ibid r 2.
- 12 Ibid r 34(4). See also note 10 supra.
- 13 For the meaning of 'party' see PARA 166 note 24 ante.
- 14 As to the service of notices and documents see PARA 161 note 4 ante.
- 15 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 34(8)(a).
- 16 Ibid r 34(8)(b).
- 17 Ibid r 34(8).
- 18 As to the constitution of fitness to practise panels see PARAS 138-140 ante. As to fitness to practise panels as statutory committees see PARA 26 ante. As to the functions of fitness to practise panels see PARA 144 et seq ante. As to the procedure before fitness to practise panels see PARA 178 et seq post.
- 19 For the meaning of 'case manager' see PARA 170 note 2 ante.
- 20 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 34(9)(a).
- 21 Ibid r 34(9)(b).
- 22 Ibid r 34(9)(c). Where one party notifies the other that he requires a relevant person to attend to give oral evidence, the document concerned may nonetheless be received into evidence without such oral evidence where the committee or fitness to practise panel is of the view that, having regard to all the circumstances (including the difficulty or expense of obtaining such attendance) and the justice of the case, it is proper to do so: r 34(10).
- 23 As to the giving of directions by a case manager see PARA 170 ante.
- 24 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 34(11). As to statements of truth see CIVIL PROCEDURE vol 11 (2009) PARA 613 et seq.

## UPDATE

### 138-189 Fitness to practise

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to have power to adjudicate in fitness to practice cases in relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: see s 98(2) (not yet in force). As to the OHPA generally, see further PARA 189A.

### 173 Evidence

TEXT AND NOTES--The standard of proof applicable to all proceedings before the investigation committee or a fitness to practise panel is that applicable to civil

proceedings: General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 34(12) (added by SI 2008/1256).

NOTE 10--Where it is alleged that a practitioner has been included in a barred list (within the meaning of Safeguarding Vulnerable Groups Act 2006) by the Independent Barring Board (1) information provided by the Secretary of State under the 2006 Act that attests to the inclusion is conclusive evidence of it, unless the practitioner can prove that he is not the person referred to in the information; and (2) a document from the Board, authenticated in whatever way the General Council may approve, that provides a statement of the findings of fact made by the Board that led to the inclusion is conclusive evidence of the facts found proved by the Board: SI 2004/2608 r 34(5A) (added by SI 2009/1182) (in force on the coming into force of the Safeguarding Vulnerable Groups Act 2006 s 44(1) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 704)). As to the system under the 2006 Act see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 675 et seq.



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#### **174. Witnesses.**

The investigation committee<sup>1</sup> or panel<sup>2</sup> may, on the application of a party<sup>3</sup> or of its own motion, require a witness to attend a hearing<sup>4</sup>. Witnesses must be required to take an oath<sup>5</sup>, or to affirm, before giving oral evidence at a hearing<sup>6</sup>. Save in the case of vulnerable witnesses<sup>7</sup>, witnesses: (1) are first examined by the party calling them<sup>8</sup>; (2) may then be cross-examined by the opposing party<sup>9</sup>; (3) may then be re-examined by the party calling them<sup>10</sup>; and (4) may at any time be questioned by the committee or panel and, with the leave of the chairman at the hearing, a specialist health adviser<sup>11</sup> or specialist performance adviser<sup>12</sup>. Any further questioning of the witnesses by the parties is at the discretion of the committee or panel<sup>13</sup>. The committee or panel may, upon the application of a party, agree that the identity of a witness should not be revealed in public<sup>14</sup>.

In proceedings before the investigation committee or a panel, the following may, if the quality of their evidence is likely to be adversely affected as a result, be treated as a vulnerable witness: (a) any witness under the age of 17 at the time of the hearing<sup>15</sup>; (b) any witness with a mental disorder<sup>16</sup>; (c) any witness who is significantly impaired in relation to intelligence and social functioning<sup>17</sup>; (d) any witness with physical disabilities who requires assistance to give evidence<sup>18</sup>; (e) any witness, where the allegation<sup>19</sup> against the practitioner<sup>20</sup> is of a sexual nature and the witness was the alleged victim<sup>21</sup>; and (f) any witness who complains of intimidation<sup>22</sup>. Subject to the advice of the legal assessor<sup>23</sup>, and upon hearing representations from the parties, the committee or panel may adopt such measures as it considers desirable to enable it to receive evidence from a vulnerable witness<sup>24</sup>.

1 As to the constitution of the investigation committee see PARAS 138-140 ante. As to the investigation committee as a statutory committee see PARA 26 ante. As to the functions of the investigation committee see PARAS 141-142 ante.

2 For the meaning of 'panel' see PARA 166 note 21 ante.

3 For the meaning of 'party' see PARA 166 note 24 ante.

4 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 35(5). The relevant party must exercise its power to compel attendance under the Medical Act 1983 s 43, Sch 4 para 2 (both as substituted) (see PARA 153 ante) accordingly: General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 35(5). A witness of fact is not, without leave of the committee or panel, entitled to give evidence at a hearing unless he has been excluded from the proceedings until such time as he is called: r 35(6). There is no good reason why medical expert witnesses should be excluded from the hearing whilst other witnesses are giving their evidence. In this way they would be able to comment on the evidence given: *Cullen v General Medical Council* [2005] EWHC 353 (Admin) at 67, [2005] All ER (D) 209 (Mar) per Stanley Burnton J.

5 For the meaning of 'oath' see PARA 153 note 4 ante.

6 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 35(1). As to oaths and affirmations see CIVIL PROCEDURE vol 11 (2009) PARA 1021 et seq.

7 *le save* as provided in *ibid* r 36: see the text to notes 15-24 *infra*.

8 *Ibid* r 35(2)(a).

9 *Ibid* r 35(2)(b).

- 10 Ibid r 35(2)(c).
- 11 For the meaning of 'specialist health adviser' see PARA 168 note 2 ante.
- 12 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 35(2)(d). For the meaning of 'specialist performance adviser' see PARA 168 note 6 ante.
- 13 Ibid r 35(3).
- 14 Ibid r 35(4).
- 15 Ibid r 36(1)(a).
- 16 le within the meaning of the Mental Health Act 1983 (see MENTAL HEALTH vol 30(2) (Reissue) PARA 402): General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 36(1)(b).
- 17 Ibid r 36(1)(c).
- 18 Ibid r 36(1)(d).
- 19 For the meaning of 'allegation' see PARA 160 note 1 ante.
- 20 For the meaning of 'practitioner' for these purposes see PARA 160 note 4 ante.
- 21 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 36(1)(e).
- 22 Ibid r 36(1)(f).
- 23 For the meaning of 'legal assessor' see PARA 172 note 4 ante.
- 24 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 36(2). Measures adopted by the committee or panel may include, but are not limited to:
  - 41 (1) use of video links (r 36(3)(a));
  - 42 (2) use of pre-recorded evidence as the evidence-in-chief of a witness, provided always that such witness is available at the hearing for cross-examination and questioning by the committee or panel (r 36(3)(b));
  - 43 (3) use of interpreters (including signers and translators) or intermediaries (r 36(3)(c));
  - 44 (4) use of screens or such other measures as the committee or panel considers necessary in the circumstances, in order to prevent:
    1. (a) the identity of the witness being revealed to the press or the general public (r 36(3)(d)(i)); or
      - 1
    2. (b) access to the witness by the practitioner (r 36(3)(d)(ii)); and
      - 2
  - 45 (5) the hearing of evidence by the committee or panel in private (r 36(3)(e)).

'Private' means in the presence of the parties and their representatives but in the absence of the wider public: r 2.

Where the allegation against a practitioner is based on facts which are sexual in nature, a witness is an alleged victim and the practitioner is acting in person, the practitioner must not, without the written consent of the witness, be allowed to cross-examine the witness in person: r 36(4). In such circumstances, in the absence of written consent, the practitioner must no less than seven days before the hearing appoint a legally qualified person to cross-examine the witness on his behalf and, in default, the General Medical Council must appoint such person on behalf of the practitioner: r 36(5). As to the General Medical Council see PARA 13 et seq ante.

## UPDATE

### 138-189 Fitness to practise

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be

appointed the OHPA is to have power to adjudicate in fitness to practice cases in relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: see s 98(2) (not yet in force). As to the OHPA generally, see further PARA 189A.

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### **175. Hearings to be in public.**

Generally<sup>1</sup>, hearings before the investigation committee<sup>2</sup> and a fitness to practise panel<sup>3</sup> must be held in public<sup>4</sup>. However, the committee or panel may determine that the public be excluded from the proceedings or any part of the proceedings, where it considers that the particular circumstances of the case outweigh the public interest in holding the hearing in public<sup>5</sup>.

The committee or a panel must sit in private<sup>6</sup>, where it is considering: (1) whether to make or review an interim order<sup>7</sup>; or (2) the physical or mental health of the practitioner<sup>8</sup>. However, the committee or panel may, where it is considering matters under head (1) or head (2) above, hold a hearing in public where it considers that to do so would be appropriate, having regard to: (a) the interests of the maker of the allegation<sup>9</sup>, if any<sup>10</sup>; (b) the interests of any patient concerned<sup>11</sup>; (c) whether a public hearing would adversely affect the health of the practitioner<sup>12</sup>; and (d) all the circumstances, including the public interest<sup>13</sup>. However, a panel must, where it is considering matters under head (1) above, sit in public where the practitioner requests it to do so<sup>14</sup>.

The committee or panel may deliberate in camera, in the absence of the parties<sup>15</sup> and of their representatives and of the public, at any time<sup>16</sup>. The committee or panel may exclude from any hearing any person whose conduct, in its opinion, is likely to disrupt the orderly conduct of the proceedings<sup>17</sup>.

1     le subject to the General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 41(2)-(6): see the text to notes 5-14 infra.

2     As to the constitution of the investigation committee see PARAS 138-140 ante. As to the investigation committee as a statutory committee see PARA 26 ante. As to the functions of the investigation committee see PARAS 141-142 ante.

3     As to the constitution of fitness to practise panels see PARAS 138-140 ante. As to fitness to practise panels as statutory committees see PARA 26 ante. As to the functions of fitness to practise panels see PARA 144 et seq ante. As to the procedure before fitness to practise panels see PARA 178 et seq post.

4     General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 41(1).

5     Ibid r 41(2).

6     For the meaning of 'private' see PARA 174 note 24 ante.

7     General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 41(3)(a). Where it is considering an allegation, the fitness to practise panel may revoke an interim order in public: r 41(4). As to interim orders see PARA 148 ante.

8     Ibid r 41(3)(b). For the meaning of 'practitioner' for these purposes see PARA 160 note 4 ante.

9     For the meaning of 'allegation' see PARA 160 note 1 ante.

10    General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 41(6)(a).

11    Ibid r 41(6)(b).

12    Ibid r 41(6)(c).

13    Ibid r 41(6)(d).

14 Ibid r 41(5).

15 For the meaning of 'parties' see PARA 166 note 24 ante.

16 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 41(7).

17 Ibid r 42.

## **UPDATE**

### **138-189 Fitness to practise**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to have power to adjudicate in fitness to practice cases in relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: see s 98(2) (not yet in force). As to the OHPA generally, see further PARA 189A.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(4) FITNESS TO PRACTISE/(ii) Proceedings relating to Fitness to Practise/B. INVESTIGATION AND DETERMINATION OF ALLEGATIONS/(A) Preliminary and General Matters/176. Notes and transcript of proceedings.

## **176. Notes and transcript of proceedings.**

The registrar<sup>1</sup> must arrange for the proceedings of the investigation committee<sup>2</sup> or panel<sup>3</sup> to be recorded by electronic means or otherwise<sup>4</sup>. Any party to the proceedings must, on application to the registrar, be furnished with a copy of the record of any part of the proceedings at which he was entitled to be present<sup>5</sup>. However, these provisions do not apply to the deliberations of the committee or panel<sup>6</sup>.

1 For the meaning of 'the registrar' see PARA 23 note 1 ante.

2 As to the constitution of the investigation committee see PARAS 138-140 ante. As to the investigation committee as a statutory committee see PARA 26 ante. As to the functions of the investigation committee see PARAS 141-142 ante.

3 For the meaning of 'panel' see PARA 166 note 21 ante.

4 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 39(1).

5 Ibid r 39(2).

6 Ibid r 39(3).

## **UPDATE**

### **138-189 Fitness to practise**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to have power to adjudicate in fitness to practice cases in relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: see s 98(2) (not yet in force). As to the OHPA generally, see further PARA 189A.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(4) FITNESS TO PRACTISE/(ii) Proceedings relating to Fitness to Practise/B. INVESTIGATION AND DETERMINATION OF ALLEGATIONS/(A) Preliminary and General Matters/177. Decisions.

## 177. Decisions.

Decisions of the investigation committee<sup>1</sup> or of a panel<sup>2</sup> must be taken by simple majority<sup>3</sup>. No chairman of the committee or panel may exercise a casting vote<sup>4</sup>, and no member of the committee or panel may abstain from voting<sup>5</sup>. Where the votes are equal, the committee or panel must decide the issue under consideration in favour of the practitioner<sup>6</sup>. However, where a fitness to practise panel<sup>7</sup> is considering:

- 193 (1) an application to restore a practitioner's name to the register<sup>8</sup>; or
- 194 (2) submissions made by the practitioner<sup>9</sup> as to the sufficiency of evidence<sup>10</sup>,

and the votes are equal, it must decide the issue against the practitioner<sup>11</sup>.

The person acting as secretary to the investigation committee or panel must: (a) record in writing<sup>12</sup> the decision of the committee or panel and reasons for the decision<sup>13</sup>; (b) with the exception of confidential issues concerning the physical or mental health of the practitioner, publish the decision<sup>14</sup>; and (c) inform the registrar<sup>15</sup> of the decision and the reasons for it<sup>16</sup>.

1 As to the constitution of the investigation committee see PARAS 138-140 ante. As to the investigation committee as a statutory committee see PARA 26 ante. As to the functions of the investigation committee see PARAS 141-142 ante.

2 For the meaning of 'panel' see PARA 166 note 21 ante.

3 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 38(1).

4 Ibid r 38(2).

5 Ibid r 38(3).

6 Ibid r 38(4). For the meaning of 'practitioner' for these purposes see PARA 160 note 4 ante.

7 As to the constitution of fitness to practise panels see PARAS 138-140 ante. As to fitness to practise panels as statutory committees see PARA 26 ante. As to the functions of fitness to practise panels see PARA 144 et seq ante. As to the procedure before fitness to practise panels see PARA 178 et seq post.

8 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 38(5)(a). As to such applications see PARA 149 ante. For the meaning of 'the register' see PARA 34 note 3 ante.

9 *Ie* under *ibid* r 17(2)(g): see PARA 178 post.

10 Ibid r 38(5)(b).

11 Ibid r 38(5).

12 For the meaning of 'writing' see PARA 20 note 22 ante.

13 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 37(a).

14 Ibid r 37(b).

15 For the meaning of 'the registrar' see PARA 23 note 1 ante.

16 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 37(c).

## **UPDATE**

### **138-189 Fitness to practise**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to have power to adjudicate in fitness to practice cases in relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: see s 98(2) (not yet in force). As to the OHPA generally, see further PARA 189A.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(4) FITNESS TO PRACTISE/(ii) Proceedings relating to Fitness to Practise/B. INVESTIGATION AND DETERMINATION OF ALLEGATIONS/ (B) Procedure before a Fitness to Practise Panel/178. Order of proceedings.

## (B) PROCEDURE BEFORE A FITNESS TO PRACTISE PANEL

### 178. Order of proceedings.

A fitness to practise panel<sup>1</sup> must consider any allegations<sup>2</sup> referred to it<sup>3</sup>, and dispose of the case in accordance with the relevant statutory provisions<sup>4</sup>. The order of proceedings at the hearing is as follows:

- 195 (1) the panel hears and considers any preliminary legal arguments<sup>5</sup>;
- 196 (2) the chairman of the panel:
- 65
95. (a) where the practitioner<sup>6</sup> is present, requires the practitioner to confirm his name and registration number<sup>7</sup>; or
96. (b) otherwise, requires the presenting officer<sup>8</sup> to confirm the practitioner's name and registration number<sup>9</sup>;
- 66
- 197 (3) the person acting as secretary to the panel reads out the allegation, and the alleged facts upon which it is based<sup>10</sup>;
- 198 (4) the chairman of the panel inquires whether the practitioner wishes to make any admissions<sup>11</sup>;
- 199 (5) where facts have been admitted, the chairman of the panel announces that such facts have been found proved<sup>12</sup>;
- 200 (6) where facts remain in dispute, the presenting officer opens the case for the General Medical Council<sup>13</sup> and may adduce evidence and call witnesses in support of it<sup>14</sup>;
- 201 (7) the practitioner may make submissions regarding whether sufficient evidence has been adduced to find the facts proved or to support a finding of impairment, and the panel considers and announces its decision as to whether any such submissions should be upheld<sup>15</sup>;
- 202 (8) the practitioner may open his case and may adduce evidence and call witnesses in support of it<sup>16</sup>;
- 203 (9) the panel considers and announces its findings of fact<sup>17</sup>;
- 204 (10) the panel receives further evidence and hears any further submissions from the parties<sup>18</sup> as to whether, on the basis of any facts found proved, the practitioner's fitness to practise is impaired<sup>19</sup>;
- 205 (11) the panel considers and announces its finding on the question of whether the fitness to practise of the practitioner is impaired, and gives its reasons for that decision<sup>20</sup>;
- 206 (12) the panel may receive further evidence and hear any further submissions from the parties as to the appropriate sanction, if any, to be imposed or, where the practitioner's fitness to practise is not found to be impaired, the question of whether a warning should be imposed<sup>21</sup>;
- 207 (13) the panel may take into account any written undertakings<sup>22</sup>, including limitations on his practice, entered into by the practitioner:
- 67
97. (a) which it considers to be sufficient to protect patients and protect the public interest<sup>23</sup>; and

98. (b) where the practitioner expressly agrees that the registrar<sup>24</sup> may disclose details of any such undertakings, save those relating exclusively to the health of the practitioner, to any person by whom the practitioner is employed to provide medical services or with whom he has an arrangement to do so<sup>25</sup>, to any person from whom the practitioner is seeking such employment or such an arrangement<sup>26</sup>, and to any enquirer<sup>27</sup>;
- 68
- 208 (14) the panel considers and announces its decision as to the sanction or warning, if any, to be imposed or undertakings to be taken into account and gives its reasons for that decision<sup>28</sup>;
- 209 (15) where the panel considers that an order for immediate suspension or immediate conditions should be imposed on the practitioner's registration<sup>29</sup>, it invites representations from the parties before considering and announcing whether it will impose such order, together with its reasons for that decision<sup>30</sup>; and
- 210 (16) the panel deals with any interim order in place in respect of the practitioner<sup>31</sup>.

At any stage before making its decision as to sanction or warning, the panel may adjourn for further information or reports to be obtained in order to assist it in exercising its functions<sup>32</sup>.

1 As to the constitution of fitness to practise panels see PARAS 138-140 ante. As to fitness to practise panels as statutory committees see PARA 26 ante. As to the functions of fitness to practise panels see PARA 144 et seq ante. As to proceedings relating to fitness to practise see PARA 151 et seq ante.

2 For the meaning of 'allegation' see PARA 160 note 1 ante.

3 In accordance with the General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608.

4 In accordance with the Medical Act 1983 s 35D (as added), s 38 (as substituted) and s 41A (as added) (see PARAS 144-146, 148 ante): General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 17(1). In general it is preferable for proceedings to be allowed to take their course and a challenge to their validity to be taken by way of appeal; however, special circumstances may arise where justice and the appearance of justice require that the proceedings be adjourned to give at least an opportunity for that matter to be raised before a court: *R (on the application of Mahfouz) v Professional Conduct Committee of the General Medical Council* [2004] EWCA Civ 233, (2004) Times, 19 March, (where the practitioner applied for the committee to discharge itself on the grounds of bias).

5 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 17(2)(a). As to the determination of preliminary legal arguments see PARA 172 ante.

6 For the meaning of 'practitioner' for these purposes see PARA 160 note 4 ante.

7 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 17(2)(b)(i). As to the registration of medical practitioners see PARA 99 et seq ante.

8 For the meaning of 'presenting officer' see PARA 166 note 21 ante.

9 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 17(2)(b)(ii).

10 Ibid r 17(2)(c).

11 Ibid r 17(2)(d).

12 Ibid r 17(2)(e).

13 As to the General Medical Council see PARA 13 et seq ante.

14 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 17(2)(f). As to evidence and witnesses see PARAS 173-174 ante.

15 Ibid r 17(2)(g).

16 Ibid r 17(2)(h).

17 Ibid r 17(2)(i). Public interest immunity attaches to the deliberations in camera of disciplinary committee and the detail of discussion, including notes thereof, and the manner by which the decision is reached ought normally to remain confidential; it could only be in quite exceptional circumstances, if ever, that an inquiry could be permitted into such in camera discussions: see *Roylance v General Medical Council* (1999) Times, 27 January, PC; *Roylance v General Medical Council No 2* [2000] 1 AC 311, 47 BMLR 63, PC. As to public interest immunity see CIVIL PROCEDURE vol 11 (2009) PARA 574 et seq.

18 For the meaning of 'parties' see PARA 166 note 24 ante.

19 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 17(2)(j). For the meaning of 'impaired' see PARA 141 ante. The issues of proving serious professional misconduct and determining the appropriate penalty are distinct and to be determined separately on the basis of evidence relevant to each of them: *R (on the application of Campbell) v General Medical Council* [2005] EWCA Civ 250, [2005] All ER (D) 193 (Mar). See also note 21 infra.

20 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 17(2)(k). See also note 17 supra. As to the adjournment of proceedings, before making a determination that a practitioner's fitness to practise is impaired, to enable the appointment of a specialist health adviser or specialist performance adviser, or so that an assessment of the practitioner's performance or health may be carried out see PARA 179 post. As to matters which a panel may take into account when determining whether a practitioner's fitness to practise is impaired by reason of adverse physical or mental health see PARA 179 post. A committee must give its reasons for preferring the evidence of one expert witness to that of another: *Cullen v General Medical Council* [2005] EWHC 353 (Admin), [2005] All ER (D) 209 (Mar).

21 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 17(2)(l). In matters of professional discipline, the relevant committee is not concerned exclusively, or even primarily, with the punishment of the practitioner concerned; the essential issue is the need to maintain public confidence in the integrity of the profession and the reputation of the profession is more important than the fortunes of any individual member; thus considerations which would normally weigh in mitigation of punishment have less effect than in other jurisdictions and it can never be an objection to an order for erasure or suspension that the practitioner may subsequently be unable to re-establish his practice: see *Bolton v Law Society* [1994] 2 All ER 486 at 491-493, [1994] 1 WLR 512; *Gupta v General Medical Council* [2001] UKPC 61, [2002] 1 WLR 1691; *Gosai v General Medical Council* [2003] UKPC 31, 75 BMLR 52. Mitigation arising from the circumstances in which the practitioner found himself may be relevant to the level of culpability: once serious professional misconduct is proved, personal mitigation will be relevant to possible penalty. These are distinct issues, to be determined separately, on the basis of evidence relevant to them: *R (on the application of Campbell) v General Medical Council* [2005] EWCA Civ 250, [2005] All ER (D) 193 (Mar). As to the weight to be given to testimonials see *Council for the Regulation of Health Care Professionals v General Medical Council* [2005] EWHC 579 (Admin), [2005] All ER (D) 169 (Apr).

22 As to undertakings see PARA 165 ante. For the meaning of 'written' see PARA 20 note 22 ante.

23 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 17(2)(m)(i).

24 For the meaning of 'the registrar' see PARA 23 note 1 ante.

25 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 17(2)(m)(ii) (aa).

26 Ibid r 17(2)(m)(ii)(bb).

27 Ibid r 17(2)(m)(ii)(cc).

28 Ibid r 17(2)(n). See also note 17 supra.

29 As to such orders see PARA 146 ante.

30 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 17(2)(o).

31 Ibid r 17(2)(p). As to interim orders see PARA 148 ante.

32 Ibid r 17(9). In order for a stay of proceedings to be justified, the party seeking the stay should establish either that a fair trial would not be possible or that for some other compelling reason it would be unfair to try him: *R (on the application of Gibson) v General Medical Council* [2004] All ER (D) 106 (Nov).

## UPDATE

### 138-189 Fitness to practise

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to have power to adjudicate in fitness to practice cases in relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: see s 98(2) (not yet in force). As to the OHPA generally, see further PARA 189A.

### 178 Order of proceedings

TEXT AND NOTES 7, 9--References to registration number are now to GMC reference number: SI 2004/2608 r 17(2)(b)(i), (ii) (amended by SI 2009/1913).

NOTE 20--See *Southall v General Medical Council* [2010] EWCA Civ 407, [2010] 2 FCR 77; *Southall v General Medical Council* [2010] EWCA Civ 484, [2010] All ER (D) 24 (May) (sufficiency of reasons where issue as to credibility of evidence).

TEXT AND NOTES 22, 23--Head (13). For 'the panel ... entered into by the practitioner' read 'the panel may agree as an alternative to imposing any sanction any written undertakings, including any limitations on his practice, offered by the practitioner': SI 2004/2608 r 17(2)(m)(i) (amended by SI 2009/1913). Where undertakings have been agreed under head (13) the registrar may carry out any investigations, which may include, but are not limited to, requesting the provision of reports or directing an assessment be carried out in accordance with SI 2004/2608 Sch 1 (see PARA 185) or 2 (see PARA 164), that are, in the registrar's opinion, appropriate to the consideration of whether the practitioner has complied with any undertakings in place or the practitioner's fitness to practise: r 37A (added by SI 2009/1913).

TEXT AND NOTES 29, 30--Now, head (15) the panel must receive any further evidence and hear any further submissions from the parties as to whether an order for immediate suspension or immediate conditions should be imposed on the practitioner's registration, before considering and announcing whether it will impose such an order and its reasons for that decision: SI 2004/2608 r 17(2)(o) (substituted by SI 2009/1913).

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### 179. Further provisions relating to procedure.

Where it appears to the fitness to practise panel<sup>1</sup> at any time that the particulars of the allegation<sup>2</sup> or the facts upon which it is based, of which notice has been given<sup>3</sup>, should be amended<sup>4</sup>, and the amendment can be made without injustice<sup>5</sup>, it may, after hearing the parties<sup>6</sup> and consulting with the legal assessor<sup>7</sup>, amend the particulars on appropriate terms<sup>8</sup>.

At any stage in the proceedings, before making a determination that a practitioner's fitness to practise is impaired<sup>9</sup>, the panel may, having regard to the nature of the allegation under consideration, adjourn and direct that a specialist health adviser<sup>10</sup> or specialist performance adviser<sup>11</sup> be appointed to assist the panel<sup>12</sup>, or that an assessment of the practitioner's performance or health be carried out<sup>13</sup>. On receipt of an assessment report<sup>14</sup> produced further to such an assessment, the panel may proceed to consider and determine the allegation<sup>15</sup>, or refer the allegation to the registrar<sup>16</sup> for consideration by the case examiners<sup>17</sup>.

When determining whether a practitioner's fitness to practise is impaired by reason of adverse physical or mental health, the panel may take into account: (1) the practitioner's current physical or mental condition<sup>18</sup>; (2) any continuing or episodic condition suffered by the practitioner<sup>19</sup>; and (3) a condition suffered by the practitioner which, although currently in remission, may be expected to cause a recurrence of impairment of the practitioner's fitness to practise<sup>20</sup>.

Where a practitioner has been referred<sup>21</sup> for failure to comply with reasonable requirements imposed by an assessment team<sup>22</sup>, the panel may dispose of the case, where it considers it appropriate to do so, by suspending the practitioner's name from the register<sup>23</sup> or imposing conditions on his registration<sup>24</sup>. Otherwise, where a practitioner has failed to submit to, or to comply with, an assessment of his performance or health, and:

- 211 (a) there is credible evidence before the panel that the practitioner's fitness to practise is impaired<sup>25</sup>;
- 212 (b) a reasonable request has been made by the registrar to the practitioner that he submit to or comply with the assessment<sup>26</sup>; and
- 213 (c) no reasonable excuse for such failure has been provided by the practitioner<sup>27</sup>,

the panel may take such failure into account in determining the question of whether the practitioner's fitness to practise is impaired<sup>28</sup>.

1 As to the constitution of fitness to practise panels see PARAS 138-140 ante. As to fitness to practise panels as statutory committees see PARA 26 ante. As to the functions of fitness to practise panels see PARA 144 et seq ante. As to proceedings relating to fitness to practise see PARA 151 et seq ante. As to the order of proceedings before a fitness to practise panel see PARA 178 ante.

2 For the meaning of 'allegation' see PARA 160 note 1 ante.

3 Ie under the General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 15: see PARA 169 ante.

4 Ibid r 17(3)(a).

5 Ibid r 17(3)(b).

- 6 For the meaning of 'parties' see PARA 166 note 24 ante.
- 7 For the meaning of 'legal assessor' see PARA 172 note 4 ante.
- 8 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 17(3).
- 9 For the meaning of 'impaired' see PARA 141 ante.
- 10 For the meaning of 'specialist health adviser' see PARA 168 note 2 ante.
- 11 For the meaning of 'specialist performance adviser' see PARA 168 note 6 ante.
- 12 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 17(4)(a).
- 13 Ie in accordance with *ibid* Schs 1, 2 (see PARAS 164 ante, 184-185 post): r 17(4)(b).
- 14 For the meaning of 'assessment report' see PARA 161 note 13 ante.
- 15 Ie in accordance with the General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 17(2) (see PARA 178 ante): r 17(5)(a).
- 16 For the meaning of 'the registrar' see PARA 23 note 1 ante.
- 17 Ie in accordance with the General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 10(2) (see PARA 165 ante): r 17(5)(b). For the meaning of 'case examiners' see PARA 160 note 7 ante.
- 18 *Ibid* r 17(6)(a).
- 19 *Ibid* r 17(6)(b).
- 20 *Ibid* r 17(6)(c).
- 21 Ie under *ibid* r 7(6)(ii): see PARA 161 ante.
- 22 For the meaning of 'assessment team' see PARA 184 note 11 post.
- 23 For the meaning of 'the register' see PARA 34 note 3 ante.
- 24 Ie in accordance with the Medical Act 1983 s 35D (as added) (see PARAS 144-145 ante): General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 17(7).
- 25 *Ibid* r 17(8)(a).
- 26 *Ibid* r 17(8)(b).
- 27 *Ibid* r 17(8)(c).
- 28 *Ibid* r 17(8).

## **UPDATE**

### **138-189 Fitness to practise**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to have power to adjudicate in fitness to practice cases in relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: see s 98(2) (not yet in force). As to the OHPA generally, see further PARA 189A.

### **179 Further provisions relating to procedure**

TEXT AND NOTES--See also SI 2004/2608 r 17A (notification of determination to fitness to practise panel) (added by SI 2007/3101).

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## 180. Review hearings.

Prior to the opening of a review hearing<sup>1</sup>, the registrar<sup>2</sup> must consider the directions made by a fitness to practise panel<sup>3</sup> in respect of the practitioner<sup>4</sup> at any previous hearing, and may make such inquiry or procure the production of such expert or other report as he considers necessary<sup>5</sup>, and may invite the practitioner to undergo an assessment of his performance or health<sup>6</sup>. No later than 28 days before the hearing, the registrar must serve on the practitioner notice<sup>7</sup> of the review hearing: (1) particularising the direction made at the previous hearing and the grounds for the same<sup>8</sup>; (2) stating the specified matters<sup>9</sup>; (3) where an early review hearing is to be held, disclosing the information that makes such early review desirable<sup>10</sup>; (4) indicating the provision<sup>11</sup> under which the panel is proposing to act, and the powers available to the panel under that provision<sup>12</sup>; (5) requesting the practitioner to notify the registrar, within 14 days of the date of the notice, whether he wishes to attend the hearing<sup>13</sup>; and (6) inviting the practitioner, if he chooses not to attend the hearing, to make written<sup>14</sup> representations to be received by the registrar no later than 14 days before the hearing<sup>15</sup>.

The order of proceedings at a review hearing is as follows:

- 214 (a) the panel hears and considers any preliminary legal arguments<sup>16</sup>;
- 215 (b) the chairman of the panel:  
69
- 99. (i) where the practitioner is present, requires the practitioner to confirm his name and registration number<sup>17</sup>; or
- 100. (ii) otherwise, requires the presenting officer<sup>18</sup> to confirm the practitioner's name and registration number<sup>19</sup>;
- 70
- 216 (c) the presenting officer:  
71
- 101. (i) informs the panel of the background to the case, and the sanction previously imposed<sup>20</sup>;
- 102. (ii) directs the attention of the panel to any relevant evidence, including transcripts of previous hearings, and may adduce evidence and call witnesses<sup>21</sup> in relation to the practitioner's fitness to practise or his failure to comply with any requirement imposed upon him as a condition of registration<sup>22</sup>;
- 72
- 217 (d) the practitioner may present his case and may adduce evidence and call witnesses in support of it<sup>23</sup>;
- 218 (e) the panel receives further evidence and hears any further submissions from the parties<sup>24</sup> as to whether the fitness to practise of the practitioner is impaired<sup>25</sup> or whether the practitioner has failed to comply with any requirement imposed upon him as a condition of registration<sup>26</sup>;
- 219 (f) the panel considers and announces its finding on the question of whether the fitness to practise of the practitioner is impaired or whether the practitioner has failed to comply with any requirement imposed upon him as a condition of registration, and gives its reasons for that decision<sup>27</sup>;
- 220 (g) the panel may receive further evidence and hear any further submissions from the parties as to its decision whether to make a direction<sup>28</sup>;



- 221 (h) the panel may take into account any written undertakings<sup>29</sup>, including limitations on his practice, entered into by the practitioner:
- 73
103. (i) which it considers to be sufficient to protect patients and protect the public interest<sup>30</sup>; and
104. (ii) where the practitioner expressly agrees that the registrar may disclose details of any such undertakings, save those relating exclusively to the health of the practitioner, to any person by whom the practitioner is employed to provide medical services or with whom he has an arrangement to do so<sup>31</sup>, to any person from whom the practitioner is seeking such employment or such an arrangement<sup>32</sup>, and to any enquirer<sup>33</sup>; and
- 74
- 222 (i) the panel considers and announces its decision as to the direction, if any, to be made or undertakings to be taken into account and gives its reasons for that decision<sup>34</sup>.

1 A 'review hearing' means any hearing at which a fitness to practise panel (see note 3 *infra*) is to determine whether or not to make a direction under the Medical Act 1983 s 35D(5), (6), (8), (10), (12) (as added) (see PARAS 144-145 *ante*): General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 18.

2 For the meaning of 'the registrar' see PARA 23 note 1 *ante*.

3 As to the constitution of fitness to practise panels see PARAS 138-140 *ante*. As to fitness to practise panels as statutory committees see PARA 26 *ante*. As to the functions of fitness to practise panels see PARA 144 *et seq ante*. As to proceedings relating to fitness to practise see PARA 151 *et seq ante*.

4 For the meaning of 'practitioner' for these purposes see PARA 160 note 4 *ante*.

5 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 19(a).

6 *Ie* in accordance with *ibid* Schs 1, 2 (see PARAS 164 *ante*, 184-185 *post*): r 19(b).

7 Such notice must be accompanied by a copy of any statement, report or other document which has not previously been sent to the practitioner or his representative, and is relevant to the question whether a direction should be made under *ibid* Pt 5 (rr 18-22), or the terms on which it should be made: r 20(2). If any statement, report or other document is subsequently obtained by the General Medical Council which is relevant to the question whether such a direction should be made or the terms on which it should be made, the practitioner must be given a reasonable opportunity of responding before the panel makes such direction: r 20(3). As to the service of notices of hearings see PARA 169 note 5 *ante*. As to the General Medical Council see PARA 13 *et seq ante*.

8 *Ibid* r 20(1)(a).

9 *Ie* the matters set out in *ibid* r 15(2)(b)-(e) (see PARA 169 *ante*): r 20(1)(b).

10 *Ibid* r 20(1)(c). The registrar may refer a case to a fitness to practise panel for an early review hearing, where information is received that, in the opinion of the registrar, makes an early review hearing desirable: r 21.

11 *Ie* the relevant provision of the Medical Act 1983 s 35D (as added) (see PARAS 144-145 *ante*).

12 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 20(1)(d).

13 *Ibid* r 20(1)(e).

14 For the meaning of 'written' see PARA 20 note 22 *ante*.

15 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 20(1)(f).

16 *Ibid* r 22(a). As to the determination of preliminary legal arguments see PARA 172 *ante*.

17 *Ibid* r 22(b)(i). As to the registration of medical practitioners see PARA 99 *et seq ante*.

- 18 For the meaning of 'presenting officer' see PARA 166 note 21 ante.
- 19 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 22(b)(ii).
- 20 Ibid r 22(c)(i).
- 21 As to evidence and witnesses see PARAS 173-174 ante.
- 22 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 22(c)(ii).
- 23 Ibid r 22(d).
- 24 For the meaning of 'parties' see PARA 166 note 24 ante.
- 25 For the meaning of 'impaired' see PARA 141 ante.
- 26 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 22(e).
- 27 Ibid r 22(f). Public interest immunity attaches to the deliberations in camera of disciplinary committee and the detail of discussion, including notes thereof, and the manner by which the decision is reached ought normally to remain confidential; it could only be in quite exceptional circumstances, if ever, that an inquiry could be permitted into such in camera discussions: see *Roylance v General Medical Council* (1999) Times, 27 January, PC; *Roylance v General Medical Council No 2* [2000] 1 AC 311, 47 BMLR 63, PC. As to public interest immunity see CIVIL PROCEDURE vol 11 (2009) PARA 574 et seq.
- 28 It is a direction under the Medical Act 1983 s 35D(5), (6), (8), (10), (12) (as added) (see PARAS 144-145 ante): General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 22(g).
- 29 As to undertakings see PARA 165 ante.
- 30 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 22(h)(i).
- 31 Ibid r 22(h)(ii)(aa).
- 32 Ibid r 22(h)(ii)(bb).
- 33 Ibid r 22(h)(ii)(cc).
- 34 Ibid r 22(i). See also note 27 supra.

## UPDATE

### 138-189 Fitness to practise

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to have power to adjudicate in fitness to practice cases in relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: see s 98(2) (not yet in force). As to the OHPA generally, see further PARA 189A.

### 180 Review hearings

TEXT AND NOTES--If, since the previous hearing a new allegation against the practitioner has been referred to the fitness to practise panel, it must first proceed with that allegation in accordance with SI 2004/2608 r 17(2)(a)-(i) (see PARA 178): r 21A(1) (r 21A added by SI 2009/1913). The fitness to practise panel must thereafter proceed in accordance with SI 2004/2608 r 22 except that, when determining whether the fitness to practise of the practitioner is impaired and what direction, if any, to impose under the Medical Act 1983 s 35D(5), (6), (8) or (12), it must additionally have regard to its findings in relation to the new allegation: SI 2004/2608 r 21A(2).

TEXT AND NOTES 17, 19--References to registration number are now to GMC reference number: SI 2004/2608 r 22(b)(i), (ii) (amended by SI 2009/1913).

TEXT AND NOTES 29, 30--For 'the fitness to practice panel may take into account any written undertakings, including limitations on his practice, entered into by the practitioner' read 'the fitness to practise panel may agree as an alternative to imposing any sanction any written undertakings, including any limitations on his practice, offered by the practitioner': SI 2004/2608 r 22(h)(i) (amended by SI 2009/1913). Where undertakings have been agreed under SI 2004/2608 r 22(h), the registrar may carry out any investigations, which may include, but are not limited to, requesting the provision of reports or directing an assessment be carried out in accordance with Sch 1 (see PARA 185) or 2 (see PARA 164), that are, in the registrar's opinion, appropriate to the consideration of whether the practitioner has complied with any undertakings in place or the practitioner's fitness to practise: see r 37A (added by SI 2009/1913).

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### 181. Applications for restoration to the register.

Upon receipt of an application for the restoration of a name to the register<sup>1</sup>, the registrar<sup>2</sup> may make such investigations, and obtain such information, documents or reports as he considers appropriate<sup>3</sup>, and may direct the applicant to undergo an assessment of his performance or health<sup>4</sup>. No later than 28 days before the hearing before a fitness to practise panel<sup>5</sup> to consider his application, the registrar must serve on the applicant notice<sup>6</sup> of the hearing: (1) stating the specified matters<sup>7</sup>; (2) requesting the applicant to notify the registrar, within 14 days of the date of the notice, whether he wishes to attend the hearing<sup>8</sup>; (3) inviting the applicant, if he chooses not to attend the hearing, to make written<sup>9</sup> representations to be received by the registrar no later than 14 days before the hearing<sup>10</sup>; (4) where the applicant has made a previous unsuccessful application, informing him of the panel's power<sup>11</sup> to suspend indefinitely his right to make further applications for restoration<sup>12</sup>; and (5) where the applicant has made a previous unsuccessful application and chooses not to attend the hearing, inviting him to make written representations on the issue of indefinite suspension of his right to make further applications, to be received by the registrar no later than 14 days before the hearing<sup>13</sup>.

The fitness to practise panel must consider an application in accordance with the following procedure<sup>14</sup>. The order of proceedings at a hearing to determine an application is as follows:

- 223 (a) the panel hears and considers any preliminary legal arguments<sup>15</sup>;
- 224 (b) the chairman of the panel:  
75
- 105. (i) where the applicant is present, requires the applicant to confirm his name and registration number<sup>16</sup>; or
- 106. (ii) otherwise, requires the presenting officer<sup>17</sup> to confirm the applicant's name and registration number<sup>18</sup>;  
76
- 225 (c) the presenting officer:  
77
- 107. (i) addresses the panel as to the background to the case and the circumstances in which the applicant's name was erased from the register<sup>19</sup>;
- 108. (ii) directs the attention of the panel to any relevant evidence, including transcripts of previous hearings, and may adduce evidence and call witnesses<sup>20</sup> in relation to the practitioner's<sup>21</sup> fitness to practise<sup>22</sup>;  
78
- 226 (d) the applicant may address the panel and adduce evidence and call witnesses in relation to any relevant matter, including his suitability for restoration to the register<sup>23</sup>;
- 227 (e) the panel may receive further evidence and hear any further submissions from the parties<sup>24</sup> as to its decision whether to grant or refuse the application<sup>25</sup>;
- 228 (f) the panel then considers and announces whether to grant or refuse the application, and gives its reasons for that decision<sup>26</sup>;
- 229 (g) before reaching a decision under head (f) above, the panel may adjourn and give such directions as it sees fit, including that the applicant should undergo an assessment of his performance or health<sup>27</sup>;

- 230 (h) where the panel so adjourns it must, before reaching a decision as to whether the applicant should be restored to the register<sup>28</sup>;
- 79
109. (i) consider any assessment reports<sup>29</sup> produced further to such a direction, together with any other relevant evidence and reports<sup>30</sup>; and
110. (ii) invite further representations and evidence from the parties<sup>31</sup>;
111. and
- 80
- 231 (i) before deciding whether or not to make a direction to suspend indefinitely the applicant's right to make further applications for restoration<sup>32</sup>, the panel:
- 81
112. (i) considers any representations made and evidence received<sup>33</sup>; and
113. (ii) where the applicant is present, invites further representations and evidence from him specifically upon this issue<sup>34</sup>.
- 82

1    le an application made under the Medical Act 1983 s 41 (as substituted): see PARA 149 ante. 'Application' means an application to restore a person's name to the register; and 'applicant' is to be construed accordingly: General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 2. For the meaning of 'the register' see PARA 34 note 3 ante.

2    For the meaning of 'the registrar' see PARA 23 note 1 ante.

3    General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 23(1)(a).

4    le in accordance with *ibid* Schs 1, 2 (see PARAS 164 ante, 184-185 post): r 23(1)(b).

5    As to the constitution of fitness to practise panels see PARAS 138-140 ante. As to fitness to practise panels as statutory committees see PARA 26 ante. As to the functions of fitness to practise panels see PARA 144 et seq ante. As to proceedings relating to fitness to practise see PARA 151 et seq ante.

6    Such notice must be accompanied by a copy of any statement, report or other document which has not previously been sent to the applicant or his representative, and is relevant to the question whether his name should be restored to the register: General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 23(3). If any statement, report or other document is subsequently obtained by the General Medical Council which is relevant to the fitness to practise panel's decision whether to direct that the applicant's name be restored to the register, the applicant must be given a reasonable opportunity of responding before the panel makes its decision: r 23(4). As to the service of notices of hearings see PARA 169 note 5 ante.

7    le the matters set out at *ibid* r 15(2)(b)-(e) (see PARA 169 ante): r 23(2)(a).

8    *Ibid* r 23(2)(b).

9    For the meaning of 'written' see PARA 20 note 22 ante.

10   General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 23(2)(c).

11   le under the Medical Act 1983 s 41(9) (as substituted): see PARA 149 ante.

12   General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 23(2)(d).

13   *Ibid* r 23(2)(e).

14   *Ibid* r 24(1).

15   *Ibid* r 24(2)(a). As to the determination of preliminary legal arguments see PARA 172 ante. Public interest immunity attaches to the deliberations in camera of a disciplinary committee and the detail of discussion, including notes thereof, and the manner by which the decision is reached ought normally to remain confidential; it could only be in quite exceptional circumstances, if ever, that an inquiry could be permitted into such in camera discussions: see *Roylance v General Medical Council* (1999) Times, 27 January, PC; *Roylance v General Medical Council No 2* [2000] 1 AC 311, 47 BMLR 63, PC. As to public interest immunity see CIVIL PROCEDURE vol 11 (2009) PARA 574 et seq.

- 16 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 24(2)(b)(i). As to the registration of medical practitioners see PARA 99 et seq ante.
- 17 For the meaning of 'presenting officer' see PARA 166 note 21 ante.
- 18 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 24(2)(b)(ii).
- 19 Ibid r 24(2)(c)(i).
- 20 As to evidence and witnesses see PARAS 173-174 ante.
- 21 For the meaning of 'practitioner' for these purposes see PARA 160 note 4 ante.
- 22 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 24(2)(c)(ii).
- 23 Ibid r 24(2)(d).
- 24 For the meaning of 'parties' see PARA 166 note 24 ante.
- 25 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 24(2)(e).
- 26 Ibid r 24(2)(f). See also note 15 supra.
- 27 Ibid r 24(2)(g).
- 28 Ibid r 24(2)(h).
- 29 For the meaning of 'assessment report' see PARA 161 note 13 ante.
- 30 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 24(2)(h)(i).
- 31 Ibid r 24(2)(h)(ii).
- 32 Ie under the Medical Act 1983 s 41(9) (as substituted): see PARA 149 ante.
- 33 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 24(2)(i)(i).
- 34 Ibid r 24(2)(i)(ii).

## **UPDATE**

### **138-189 Fitness to practise**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to have power to adjudicate in fitness to practice cases in relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: see s 98(2) (not yet in force). As to the OHPA generally, see further PARA 189A.

### **181 Applications for restoration to the register**

TEXT AND NOTES 16, 18--For 'registration number' read 'GMC Reference Number': SI 2004/2608 r 24(b)(i), (ii) (amended by SI 2009/1913).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(4) FITNESS TO PRACTISE/(ii) Proceedings relating to Fitness to Practise/B. INVESTIGATION AND DETERMINATION OF ALLEGATIONS/ (B) Procedure before a Fitness to Practise Panel/182. Disqualifying decisions and determinations by regulatory bodies.

## 182. Disqualifying decisions and determinations by regulatory bodies.

Where a matter relating to:

- 232 (1) a practitioner<sup>1</sup> who is registered for a period of not less than one month by virtue of being a national of any EEA state<sup>2</sup> holding one or more primary European qualifications<sup>3</sup>, and who is subject to a disqualifying decision<sup>4</sup> which decision has been in force throughout the period he has been registered<sup>5</sup>; or
- 233 (2) a practitioner registered by virtue of any other provision of the Medical Act 1983<sup>6</sup> for a period of not less than one month, who is subject to a determination by a regulatory body<sup>7</sup> that his fitness to practise is impaired<sup>8</sup> which determination has been in force throughout the period he has been registered<sup>9</sup>,

has been referred<sup>10</sup> to a fitness to practise panel<sup>11</sup>, the registrar<sup>12</sup> must give no less than 28 days notice of the hearing to the practitioner<sup>13</sup>.

The order of proceedings before the fitness to practise panel is as follows:

- 234 (a) the chairman of the panel:
- 83 114. (i) where the practitioner is present, requires the practitioner to confirm his name and registration number<sup>14</sup>; or
- 115. (ii) otherwise, requires the presenting officer<sup>15</sup> to confirm the practitioner's name and registration number<sup>16</sup>;
- 84 235 (b) the presenting officer opens the case for the General Medical Council and presents details of the disqualifying decision or determination and the facts upon which it is based and, where the panel considers such evidence is desirable to enable it to discharge its functions, may adduce any relevant oral or documentary evidence<sup>17</sup>;
- 236 (c) the practitioner may open his case and, where the panel considers such evidence is desirable to enable it to discharge its functions, may adduce any relevant oral or documentary evidence, and may call witnesses in support of it<sup>18</sup>;
- 237 (d) the parties may make such further submissions as the panel may allow<sup>19</sup>;
- 238 (e) the panel considers and announces its findings of fact<sup>20</sup>;
- 239 (f) the panel may receive further evidence and hear any further submissions from the parties as to whether the panel should suspend the practitioner's registration<sup>21</sup>;
- 240 (g) the panel considers and announces its decision as to whether to suspend the practitioner's registration and gives reasons for its decision<sup>22</sup>; and
- 241 (h) in making its decision, the panel must, where appropriate, take into account the practitioner's previous fitness to practise history with the General Medical Council or any other regulatory body<sup>23</sup>.

- 1 For these purposes, 'practitioner' means a registered medical practitioner: General Medical Council (Fitness to Practise) (Disqualifying Decisions and Determinations by Regulatory Bodies) Procedure Rules Order of Council 2004, SI 2004/2607, r 2. For the meaning of 'registered medical practitioner' see PARA 4 ante.
- 2 For the meanings of 'national', in relation to an EEA state, and 'EEA state' see PARA 3 note 2 ante.
- 3 Ie by virtue of the Medical Act 1983 s 3(1)(b): see PARA 99 text to notes 5, 6 ante. For the meaning of 'primary European qualification' see PARA 98 ante.
- 4 For the meaning of 'disqualifying decision' see PARA 101 note 1 ante; definition applied by the General Medical Council (Fitness to Practise) (Disqualifying Decisions and Determinations by Regulatory Bodies) Procedure Rules Order of Council 2004, SI 2004/2607, r 2.
- 5 See *ibid* r 3(a); and PARA 101 note 6 ante.
- 6 Ie any provision other than the Medical Act 1983 ss 3(1)(b), 18 (see PARA 100 ante).
- 7 For the meaning of 'regulatory body' see PARA 141 note 15 ante; definition applied by the General Medical Council (Fitness to Practise) (Disqualifying Decisions and Determinations by Regulatory Bodies) Procedure Rules Order of Council 2004, SI 2004/2607, r 2.
- 8 For the meaning of 'impaired' see PARA 141 ante.
- 9 See the General Medical Council (Fitness to Practise) (Disqualifying Decisions and Determinations by Regulatory Bodies) Procedure Rules Order of Council 2004, SI 2004/2607, r 3(b); and PARA 116 note 12 ante.
- 10 Ie under *ibid* r 3: see PARAS 101 note 6, 116 note 12 ante. Where a matter has been referred to a fitness to practise panel under r 3, the General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, rr 28-31 (see PARAS 171-172 ante), rr 33-35 (see PARAS 169, 173-174 ante), rr 37-42 (see PARAS 169, 175-177 ante) apply with modifications: see the General Medical Council (Fitness to Practise) (Disqualifying Decisions and Determinations by Regulatory Bodies) Procedure Rules Order of Council 2004, SI 2004/2607, r 6(a)-(i).
- 11 Ie a fitness to practise panel constituted under rules made under the Medical Act 1983 s 1(4), Sch 1 para 19E (as added) (see PARA 26 ante): General Medical Council (Fitness to Practise) (Disqualifying Decisions and Determinations by Regulatory Bodies) Procedure Rules Order of Council 2004, SI 2004/2607, r 2.
- 12 For the meaning of 'the registrar' see PARA 23 note 1 ante.
- 13 General Medical Council (Fitness to Practise) (Disqualifying Decisions and Determinations by Regulatory Bodies) Procedure Rules Order of Council 2004, SI 2004/2607, r 4. The notice must:
  - 46 (1) specify the date, time and venue of the hearing (r 4(a));
  - 47 (2) inform the practitioner of his right to attend the hearing and to be represented at the hearing in accordance with the General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 33 (see note 10 *supra*; and PARA 169 note 9 ante) (General Medical Council (Fitness to Practise) (Disqualifying Decisions and Determinations by Regulatory Bodies) Procedure Rules Order of Council 2004, SI 2004/2607, r 4(b));
  - 48 (3) inform him of the power of the fitness to practise panel to proceed in his absence under the General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 31 (see note 10 *supra*; and PARA 172 ante) (General Medical Council (Fitness to Practise) (Disqualifying Decisions and Determinations by Regulatory Bodies) Procedure Rules Order of Council 2004, SI 2004/2607, r 4(c)); and
  - 49 (4) inform him of the fitness to practise panel's powers of disposal under the Medical Act 1983 ss 44(5), 44A(4) (both as substituted) (see PARAS 101, 116 note 9 ante) (General Medical Council (Fitness to Practise) (Disqualifying Decisions and Determinations by Regulatory Bodies) Procedure Rules Order of Council 2004, SI 2004/2607, r 4(d)).
- 14 *Ibid* r 5(a)(i). As to the registration of medical practitioners see PARA 99 *et seq* ante.
- 15 'The presenting officer' means the representative of the General Medical Council instructed by the registrar to present the case on behalf of the Council at any hearing before a fitness to practise panel, and may include a solicitor or counsel: *ibid* r 2. As to the General Medical Council see PARA 13 *et seq* ante.
- 16 *Ibid* r 5(a)(ii).



17 Ibid r 5(b). As to evidence and witnesses see note 10 supra; and PARAS 173-174 ante.

18 Ibid r 5(c).

19 Ibid r 5(d).

20 Ibid r 5(e). Public interest immunity attaches to the deliberations in camera of disciplinary committee and the detail of discussion, including notes thereof, and the manner by which the decision is reached ought normally to remain confidential; it could only be in quite exceptional circumstances, if ever, that an inquiry could be permitted into such in camera discussions: see *Roylance v General Medical Council* (1999) Times, 27 January, PC; *Roylance v General Medical Council No 2* [2000] 1 AC 311, 47 BMLR 63, PC. As to public interest immunity see CIVIL PROCEDURE vol 11 (2009) PARA 574 et seq.

21 In accordance with the Medical Act 1983 s 44(5) (as substituted) or s 44A(4) (as substituted) (see PARAS 101, 116 note 9 ante): General Medical Council (Fitness to Practise) (Disqualifying Decisions and Determinations by Regulatory Bodies) Procedure Rules Order of Council 2004, SI 2004/2607, r 5(f).

22 Ibid r 5(g). See also note 20 supra.

23 Ibid r 5(h).

## UPDATE

### 138-189 Fitness to practise

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to have power to adjudicate in fitness to practice cases in relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: see s 98(2) (not yet in force). As to the OHPA generally, see further PARA 189A.

### 182 Disqualifying decisions and determinations by regulatory bodies

NOTES 13, 21, 22--References to 1983 Act s 44A(4) omitted: SI 2004/2607 rr 4(d), 5(f), (g) (amended by SI 2009/2765).

TEXT AND NOTES 14, 16--References to registration number are now references to GMC reference number: SI 2004/2607 r 5(a)(i), (ii) (amended by SI 2009/2765).

NOTE 15--Definition of 'the presenting officer' in SI 2004/2607 r 2 amended: SI 2009/2765.

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## (C) PROFESSIONAL PERFORMANCE ASSESSMENTS

### 183. Rules.

The General Medical Council<sup>1</sup> may make rules<sup>2</sup>: (1) authorising the giving of directions by any of the investigation committee<sup>3</sup>, a fitness to practise panel<sup>4</sup>, or such other persons as may be specified in the rules<sup>5</sup>, requiring an assessment of the standard of a registered person's professional performance to be carried out<sup>6</sup>; (2) specifying circumstances in which such an assessment may be carried out otherwise than in accordance with a direction<sup>7</sup>.

Such rules may authorise a fitness to practise panel to make directions<sup>8</sup> for the suspension of, or the attachment of conditions to, a person's registration where the person fails to comply with reasonable requirements imposed by an assessment team<sup>9</sup> for the purposes of carrying out an assessment of the standard of his professional performance<sup>10</sup>. The rules may also provide for the investigation committee to give a direction to the registrar<sup>11</sup> that a case be referred, or for the registrar to refer a case, to a fitness to practise panel for the purposes of that panel making such a direction<sup>12</sup>. An appeal lies to the relevant court<sup>13</sup> from any such direction of a fitness to practise panel, and on an appeal the relevant court may: (a) quash the direction<sup>14</sup>; (b) substitute for the direction any other direction which the panel could have made<sup>15</sup>; or (c) remit the case to the registrar for him to refer it to a fitness to practise panel to be disposed of in accordance with the court's directions<sup>16</sup>. The decision of the court on any appeal is final<sup>17</sup>.

1 As to the General Medical Council see PARA 13 et seq ante.

2 The provisions of the Medical Act 1983 Sch 4 para 1(6), (7) (as substituted) (see PARA 152 ante) apply in relation to rules made under Sch 4 para 5A (as substituted) as they apply in relation to rules under Sch 4 para 1 (as substituted): s 43, Sch 4 para 5A(9) (s 43, Sch 4 substituted by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 13, 14). The General Medical Council (Fitness to Practise) Rules 2004 have been approved by the General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608: see PARAS 184-185 post.

3 Medical Act 1983 Sch 4 para 5A(1)(a)(i) (as substituted: see note 2 supra). As to the constitution of the investigation committee see PARAS 138-140 ante. As to the investigation committee as a statutory committee see PARA 26 ante. As to the functions of the investigation committee see PARAS 141-142 ante.

4 Ibid Sch 4 para 5A(1)(a)(ii) (as substituted: see note 2 supra). As to the constitution of fitness to practise panels see PARAS 138-140 ante. As to fitness to practise panels as statutory committees see PARA 26 ante. As to the functions of fitness to practise panels see PARA 144 et seq ante. As to proceedings relating to fitness to practise see PARA 151 et seq ante.

5 Ibid Sch 4 para 5A(1)(a)(iii) (as substituted: see note 2 supra).

6 Ibid Sch 4 para 5A(1)(a) (as substituted: see note 2 supra). An assessment of the standard of a registered person's professional performance may include an assessment of his professional performance at any time prior to the assessment and may include an assessment of the standard of his professional performance at the time of the assessment: Sch 4 para 5A(2A) (as so substituted). As to the registration of medical practitioners see PARA 99 et seq ante.

7 Ibid Sch 4 para 5A(1)(b) (as substituted: see note 2 supra).

8 I.e. of a kind which may be made under *ibid* s 35D (as added): see PARAS 144-145 ante.

9 As to assessment teams see PARA 184 post.

10 Medical Act 1983 Sch 4 para 5A(3) (as substituted: see note 2 supra). As to the effect of a direction made under such rules see PARA 159 ante.

11 For the meaning of 'the registrar' see PARA 23 note 1 ante.

12 Medical Act 1983 Sch 4 para 5A(3A) (as substituted: see note 2 supra).

13 For the meaning of 'relevant court' see PARA 188 note 14 post: definition applied by ibid Sch 4 para 5A(5) (as substituted: see note 2 supra).

14 Ibid Sch 4 para 5A(5)(a) (as substituted: see note 2 supra).

15 Ibid Sch 4 para 5A(5)(b) (as substituted: see note 2 supra).

16 Ibid Sch 4 para 5A(5)(c) (as substituted: see note 2 supra).

17 Ibid Sch 4 para 5A(5) (as substituted: see note 2 supra).

## **UPDATE**

### **138-189 Fitness to practise**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to have power to adjudicate in fitness to practice cases in relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: see s 98(2) (not yet in force). As to the OHPA generally, see further PARA 189A.

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#### **184. Assessment teams.**

An assessment of the standard of a registered person's professional performance must be carried out by an assessment team in accordance with rules<sup>1</sup> which must, in particular, provide for: (1) the constitution and proceedings of assessment teams<sup>2</sup>; (2) the procedures to be followed by such teams in carrying out assessments<sup>3</sup>; and (3) the procedures to be followed following the making of a report by an assessment team<sup>4</sup>.

The registrar<sup>5</sup> may appoint a panel of medical<sup>6</sup> and lay<sup>7</sup> performance assessors<sup>8</sup> for the purposes of carrying out performance assessments<sup>9</sup>. An assessment<sup>10</sup> must be carried out by an assessment team<sup>11</sup>. The registrar must select from the panel of performance assessors appointed by him an assessment team comprising: (a) a team leader, who must be a medical performance assessor<sup>12</sup>; (b) one or more other medical performance assessors<sup>13</sup>; and (c) one or more lay performance assessors<sup>14</sup>. However, a person must not be selected as a member of an assessment team in any case where he has been selected to act as a specialist adviser at a previous hearing of the case<sup>15</sup>.

1 The provisions of the Medical Act 1983 Sch 4 para 1(6), (7) (as substituted) (see PARA 152 ante) apply in relation to rules made under Sch 4 para 5A (as substituted) as they apply in relation to rules under Sch 4 para 1 (as substituted): s 43, Sch 4 para 5A(9) (s 43, Sch 4 substituted by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 13, 14). The General Medical Council (Fitness to Practise) Rules 2004 have been approved by the General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608: see the text and notes 8-15 infra; and PARA 185 post.

2 Medical Act 1983 Sch 4 para 5A(2)(a) (as substituted: see note 1 supra).

3 Ibid Sch 4 para 5A(2)(b) (as substituted: see note 1 supra).

4 Ibid Sch 4 para 5A(2)(c) (as substituted: see note 1 supra).

5 For the meaning of 'the registrar' see PARA 23 note 1 ante.

6 For the meaning of 'medical' see PARA 160 note 5 ante.

7 For the meaning of 'lay' see PARA 160 note 6 ante.

8 'Performance assessor' means a person appointed by the registrar under the General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 3(1)(a) for the purposes of carrying out performance assessments in accordance with Sch 1: r 2.

9 Ibid r 3(1)(a). Members of the General Medical Council are not eligible for appointment to such a panel: r 3(3). As to the General Medical Council and its membership see PARA 13 et seq ante.

10 'Assessment' means an assessment of the standard of the practitioner's professional performance: ibid Sch 1 para 1.

11 Ibid Sch 1 para 2(1). 'Assessment team' means a team of three or more performance assessors appointed by the registrar in order to carry out the assessment of a practitioner's performance in accordance with Sch 1: r 2.

12 Ibid Sch 1 para 2(2)(a).

13 Ibid Sch 1 para 2(2)(b). In selecting a medical performance assessor as a member of an assessment team, the registrar must have regard to the specialty to which the allegation relates: Sch 1 para 2(4). 'Specialty' is to be construed to include general medical practice: r 2.

14 Ibid Sch 1 para 2(2)(c).

15 Ibid Sch 1 para 2(3). As to specialist advisers see PARA 168 ante.

## **UPDATE**

### **138-189 Fitness to practise**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to have power to adjudicate in fitness to practice cases in relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: see s 98(2) (not yet in force). As to the OHPA generally, see further PARA 189A.

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### **185. Proceedings and procedures of assessment teams.**

An assessment team<sup>1</sup> must adopt such procedures as appear to it to be necessary, having regard to the nature of the practitioner's employment, in order to assess the standard of the practitioner's<sup>2</sup> professional performance<sup>3</sup>. An assessment team may seek advice or information from any person who might, in the opinion of the team, assist it in carrying out the assessment<sup>4</sup>. An assessment team must disclose to the practitioner any written information or opinion received by it which in its opinion may influence its assessment of the standard of his professional performance, and must afford him a reasonable opportunity to respond<sup>5</sup>. An assessment team must produce a report on the standard of the practitioner's professional performance which must express an opinion as to whether the practitioner is fit to practise either generally or on a limited basis<sup>6</sup>, and any recommendations as to the management of the case<sup>7</sup>.

For the purposes of carrying out an assessment, an assessment team may require the production of, inspect and take copies of any records<sup>8</sup>, in whatever form they are held, arising out of or relating to the person's professional practice<sup>9</sup>, and where such records are kept otherwise than in legible form, may require a copy of them to be given to the team in legible form<sup>10</sup>. A person who, without reasonable excuse, obstructs an assessment team in the execution of such powers with regard to records is guilty of an offence and liable on summary conviction to a fine<sup>11</sup>.

A justice of the peace may issue a warrant if satisfied by the evidence on oath of at least two members of an assessment team that there are reasonable grounds for suspecting that the team will require a warrant for the purposes of carrying out an assessment<sup>12</sup>. Such a warrant must authorise one or more members of the assessment team (who must, if so required, produce documents identifying themselves) together with any constables<sup>13</sup> to enter any building specified in the warrant, but not a dwelling-house, using such force as is reasonably necessary for the purpose<sup>14</sup>, and to search the premises for the purposes of the exercise of the powers with regard to records<sup>15</sup>. A person who intentionally obstructs the exercise of any rights conferred by such a warrant is guilty of an offence and liable on summary conviction to a fine<sup>16</sup>.

1 For the meaning of 'assessment team' see PARA 184 note 11 ante.

2 For the meaning of 'practitioner' see para 160 note 4 ante.

3 See the General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, Sch 1 para 3(1). As to the matters to be taken into account in the conduct of assessments see *Krippendorf v General Medical Council* [2001] 1 WLR 1054, 59 BMLR 81, PC; *Sadler v General Medical Council* [2003] UKPC 59, [2003] 1 WLR 2259.

4 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, Sch 1 para 3(2).

5 Ibid Sch 1 para 3(3).

6 Ibid Sch 1 para 3(4)(a).

7 Ibid Sch 1 para 3(4)(b).

8 Nothing in this provision requires or permits any disclosure of information which is prohibited by or under any other enactment; but where information is held in a form in which the prohibition operates by reason of the fact that the information is capable of identifying an individual, an assessment team may require that the information be put into a form in which it is not capable of identifying an individual: Medical Act 1983 s 43, Sch 4 para 5A(8) (s 43, Sch 4 substituted by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 13, 14). In determining whether a disclosure is not prohibited, by reason of being a disclosure of personal data which is exempt from the non-disclosure provisions of the Data Protection Act 1998 by virtue of s 35(1) (see CONFIDENCE AND DATA PROTECTION vol 8(1) (2003 Reissue) PARA 554), it must be assumed that the disclosure is required under the Medical Act 1983 Sch 4 para 5A (as substituted): Sch 4 para 5A(8A) (as so substituted). For the meaning of 'enactment' see PARA 4 note 1 ante.

9 Medical Act 1983 Sch 4 para 5A(6)(a) (as substituted: see note 8 supra).

10 Ibid Sch 4 para 5A(6)(b) (as substituted: see note 8 supra).

11 Ibid Sch 4 para 5A(7) (as substituted: see note 8 supra). The penalty is a fine not exceeding level 3 on the standard scale: see Sch 4 para 5A(7) (as so substituted). 'Standard scale' means the standard scale of maximum fines for summary offences as set out in the Criminal Justice Act 1982 s 37 (as amended): see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 142. At the date at which this volume states the law, the standard scale is as follows: level 1, £200; level 2, £500; level 3, £1,000; level 4, £2,500; level 5, £5,000: Criminal Justice Act 1982 s 37(2) (substituted by the Criminal Justice Act 1991 s 17(1)). As to the determination of the amount of the fine actually imposed, as distinct from the level on the standard scale which it may not exceed, see the Powers of Criminal Courts (Sentencing) Act 2000 s 128 (prospectively repealed); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 144.

12 Medical Act 1983 Sch 4 para 5B(1) (as substituted: see note 8 supra). Such a warrant continues in force until the end of the period of 21 days beginning with the day on which it is issued: Sch 4 para 5B(3) (as so substituted). As to justices of the peace see MAGISTRATES vol 29(2) (Reissue) PARA 501 et seq.

13 As to the office of constable see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

14 Medical Act 1983 Sch 4 para 5B(2)(a) (as substituted: see note 8 supra).

15 Ie the powers under ibid Sch 4 para 5A(6) (as substituted) (see the text to notes 9, 10 supra): Sch 4 para 5B(2)(b) (as substituted: see note 8 supra).

16 Ibid Sch 4 para 5B(4) (as substituted: see note 8 supra). The penalty is a fine not exceeding level 3 on the standard scale: see Sch 4 para 5B(4) (as so substituted).

## UPDATE

### 138-189 Fitness to practise

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to have power to adjudicate in fitness to practice cases in relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: see s 98(2) (not yet in force). As to the OHPA generally, see further PARA 189A.

### 185 Proceedings and procedures of assessment teams

NOTE 5--See also *Watson v General Medical Council* [2005] EWHC 1896 (Admin), (2005) 86 BMLR 152.

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## (D) INTERIM ORDERS

### 186. Preliminary matters.

Where an allegation<sup>1</sup> has been referred to an interim orders panel<sup>2</sup> by the registrar<sup>3</sup> for consideration as to whether to make or review an interim order<sup>4</sup>, the following provisions apply<sup>5</sup>. Where an interim order has previously been made in respect of a practitioner<sup>6</sup>, the registrar must refer the case to a panel for the purposes of review<sup>7</sup>, or may refer the case to a panel where new information is received by the General Medical Council<sup>8</sup> which, in his opinion, suggests that the interim order imposed on the practitioner's registration ought to be reviewed<sup>9</sup>. Prior to the initial or any review hearing relating to an interim order, the registrar must serve on the practitioner, in such time before the hearing as is reasonable in the circumstances of the case<sup>10</sup>, a notice of hearing<sup>11</sup>, a copy of any written evidence obtained by the Council which is relevant to the question of whether or not an interim order should be made or reviewed<sup>12</sup> and, in relation to a review hearing, a copy of the order to be reviewed<sup>13</sup>. The notice of hearing must: (1) state the specified matters<sup>14</sup>; (2) inform the practitioner of the power of the interim orders panel to proceed in his absence<sup>15</sup>; (3) set out briefly the reasons why it is necessary to make or review an interim order<sup>16</sup>; (4) inform the practitioner of the panel's powers of disposal<sup>17</sup>; (5) request the practitioner to notify the registrar as soon as possible whether he intends to attend the hearing<sup>18</sup>; and (6) invite the practitioner, if he chooses not to attend the hearing, to submit any written<sup>19</sup> representations, within such period as is reasonable in the circumstances and as is specified in the notice, to the registrar<sup>20</sup>.

1 For the meaning of 'allegation' see PARA 160 note 1 ante.

2 'Interim orders panel' means an interim orders panel constituted under the Medical Act 1983 s 1(4), Sch 1 para 19A (as added) (see PARA 26 ante): General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 2. As to the constitution of interim orders panels see PARAS 138-140 ante. As to interim orders panels as statutory committees see PARA 26 ante.

3 For the meaning of 'the registrar' see PARA 23 note 1 ante. As to the power of the registrar to refer matters to an interim orders panel see PARA 160 text to notes 19-21 ante.

4 As to interim orders see PARA 148 ante.

5 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 25(1).

6 For the meaning of 'practitioner' for these purposes see PARA 160 note 4 ante.

7 See under the Medical Act 1983 s 41A(2)(a), (9) (as added) (see PARA 148 ante): General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 25(2)(a).

8 As to the General Medical Council see PARA 13 et seq ante.

9 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 25(2)(b).

10 Ibid r 26(1).

11 Ibid r 26(1)(a). As to the service of notices of hearings see PARA 169 note 5 ante.

12 Ibid r 26(1)(b).



- 13 Ibid r 26(1)(c).
- 14 Ie the matters set out at ibid r 15(2)(a)-(c) (see PARA 169 ante): r 26(2)(a).
- 15 Ie under ibid r 31 (see PARA 172 ante): r 26(2)(b).
- 16 Ibid r 26(2)(c).
- 17 Ie under the Medical Act 1983 s 41A (as added) (see PARA 148 ante): General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 26(2)(d).
- 18 Ibid r 26(2)(e).
- 19 For the meaning of 'written' see PARA 20 note 22 ante.
- 20 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 26(2)(f).

## **UPDATE**

### **138-189 Fitness to practise**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to have power to adjudicate in fitness to practice cases in relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: see s 98(2) (not yet in force). As to the OHPA generally, see further PARA 189A.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(4) FITNESS TO PRACTISE/(ii) Proceedings relating to Fitness to Practise/B. INVESTIGATION AND DETERMINATION OF ALLEGATIONS/ (D) Interim Orders/187. Procedure at an interim orders hearing.

### **187. Procedure at an interim orders hearing.**

At the hearing, the interim orders panel<sup>1</sup> may receive any evidence<sup>2</sup> which appears to it to be fair and relevant to its consideration of the application<sup>3</sup>. However, no person may give oral evidence at the hearing unless the panel considers such evidence is desirable to enable it to discharge its functions<sup>4</sup>. The panel may also, at any stage in the proceedings with the consent of the practitioner<sup>5</sup> or where, after consultation with the legal assessor<sup>6</sup>, it is satisfied that to do so would be desirable to enable it to discharge its functions<sup>7</sup>, allow a party<sup>8</sup> to produce at the hearing any written evidence, notwithstanding that a copy has not been provided to the other party before the hearing or that its author is not being called as a witness<sup>9</sup>.

At an interim orders hearing:

- 242 (1) the panel hears and considers any preliminary legal arguments<sup>10</sup>;
- 243 (2) the chairman of the panel announces that the hearing has commenced and:  
85
- 116. (a) where the practitioner is present, requires the practitioner to confirm his name and registration number<sup>11</sup>; or
- 117. (b) otherwise, requires the presenting officer<sup>12</sup> to confirm the practitioner's name and registration number<sup>13</sup>;
- 86
- 244 (3) the presenting officer addresses the panel regarding whether it is necessary to make or review an interim order<sup>14</sup> in respect of the practitioner and may<sup>15</sup> adduce evidence in this regard<sup>16</sup>;
- 245 (4) the practitioner may present his case and may<sup>17</sup> adduce evidence in support of it<sup>18</sup>;
- 246 (5) the parties and members of the panel may put questions to any witness<sup>19</sup>;
- 247 (6) where the practitioner gives oral evidence, the presenting officer and members of the panel may put questions to him<sup>20</sup>; and
- 248 (7) the panel announces its decision, and gives its reasons for that decision<sup>21</sup>.

The panel may vary this order of proceedings where it is in the interests of justice to do so<sup>22</sup>. Where an interim order is being reviewed by a panel<sup>23</sup> and the hearing is, or is likely to be, the last such hearing before the expiry of the order<sup>24</sup>, the panel may, after making its determination, notify the registrar<sup>25</sup> that an application should be made to the relevant court<sup>26</sup> for the interim order to be extended<sup>27</sup>.

1 For the meaning of 'interim orders panel' see PARA 186 note 2 ante.

2 As to evidence see PARA 173 ante.

3 Ie under the Medical Act 1983 s 41A(1)-(3) (as added) (see PARA 148 ante): General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 27(1).

4 Ibid r 27(2). As to witnesses see PARA 174 ante.

5 Ibid r 27(3)(a). For the meaning of 'practitioner' for these purposes see PARA 160 note 4 ante.

6 For the meaning of 'legal assessor' see PARA 172 note 4 ante.

- 7 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 27(3)(b).
- 8 For the meaning of 'party' see PARA 166 note 24 ante.
- 9 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 27(3).
- 10 Ibid r 27(4)(a). As to the determination of preliminary legal arguments see PARA 172 ante.
- 11 Ibid r 27(4)(b)(i). As to the registration of medical practitioners see PARA 99 et seq ante.
- 12 For the meaning of 'presenting officer' see PARA 166 note 21 ante.
- 13 General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 27(4)(b)(ii).
- 14 As to interim orders see PARA 148 ante.
- 15 le subject to the General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 27(1)-(3): see the text to notes 1-9 supra.
- 16 Ibid r 27(4)(c).
- 17 le subject to ibid r 27(1)-(3): see the text to notes 1-9 supra.
- 18 Ibid r 27(4)(d).
- 19 Ibid r 27(4)(e).
- 20 Ibid r 27(4)(f).
- 21 Ibid r 27(4)(g).
- 22 Ibid r 27(5).
- 23 Ibid r 27(6)(a).
- 24 Ibid r 27(6)(b).
- 25 For the meaning of 'the registrar' see PARA 23 note 1 ante.
- 26 For the meaning of 'the relevant court' see PARA 188 note 14 post.
- 27 le under the Medical Act 1983 s 41A(6) (as added) (see PARA 148 text to notes 20-22 ante): General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, r 27(6). For a case in which an interim order was extended see *R (on the application of the General Medical Council) v Walker* [2005] EWHC 122 (Admin).

## UPDATE

### 138-189 Fitness to practise

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to have power to adjudicate in fitness to practice cases in relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: see s 98(2) (not yet in force). As to the OHPA generally, see further PARA 189A.

### 187 Procedure at an interim orders hearing

TEXT AND NOTES 11, 13--For 'registration number' read 'GMC Reference Number': SI 2004/2608 r 27(b)(i), (ii) (amended by SI 2009/1913).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(4) FITNESS TO PRACTISE/ (iii) Appeals/188. Appealable decisions.

### **(iii) Appeals**

#### **188. Appealable decisions.**

The following decisions are appealable decisions: (1) a decision of a fitness to practise panel<sup>1</sup> giving a direction for erasure, for suspension<sup>2</sup> or for conditional registration<sup>3</sup> or varying the conditions imposed by a direction for conditional registration<sup>4</sup>; (2) a decision of a fitness to practise panel<sup>5</sup> giving a direction that the right to make further applications for the restoration of a name to the register<sup>6</sup> be suspended indefinitely<sup>7</sup>; or (3) a decision of the General Medical Council<sup>8</sup> giving a direction that the right to make further applications for the termination of a prohibition in respect of the rendering of medical services in the United Kingdom<sup>9</sup> be suspended indefinitely<sup>10</sup>; (4) a decision of the General Medical Council<sup>11</sup> giving a direction for erasure where an entry in the register is fraudulently procured or incorrectly made<sup>12</sup>.

A person in respect of whom an appealable decision falling within heads (1) to (3) above has been taken may, before the end of the period of 28 days beginning with the date on which notification of the decision was served<sup>13</sup>, appeal against the decision to the relevant court<sup>14</sup>. A person in respect of whom an appealable decision falling within head (4) above has been taken may, before the end of the period of 28 days beginning with the date on which notification of the decision was served<sup>15</sup>, appeal against the decision to a county court<sup>16</sup>.

On an appeal from a fitness to practise panel, the court may: (a) dismiss the appeal<sup>17</sup>; (b) allow the appeal and quash the direction or variation appealed against<sup>18</sup>; (c) substitute for the direction or variation appealed against any other direction or variation which could have been given or made by a fitness to practise panel<sup>19</sup>; or (d) remit the case to the registrar<sup>20</sup> for him to refer it to a fitness to practise panel to dispose of the case in accordance with the directions of the court<sup>21</sup>. The court may make such order as to costs as it thinks fit<sup>22</sup>.

On an appeal from the General Medical Council, the court may: (i) dismiss the appeal<sup>23</sup>; (ii) allow the appeal and quash the direction appealed against<sup>24</sup>; or (iii) remit the case to the General Medical Council to dispose of the case in accordance with the directions of the court<sup>25</sup>. The court may make such order as to costs as it thinks fit<sup>26</sup>.

1    Ie under the Medical Act 1983 s 35D (as added): see PARAS 144-145 ante. As to the constitution of fitness to practise panels see PARAS 138-140 ante. As to fitness to practise panels as statutory committees see PARA 26 ante. As to the functions of fitness to practise panels see PARA 144 et seq ante. As to proceedings relating to fitness to practise see PARA 151 et seq ante.

2    References to a direction for suspension include a reference to a direction extending a period of suspension: Medical Act 1983 s 40(3)(a) (s 40 substituted by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 13).

3    References to a direction for conditional registration include a reference to a direction extending a period of conditional registration: Medical Act 1983 s 40(3)(b) (as substituted: see note 2 supra).

4    Ibid s 40(1)(a) (as substituted: see note 2 supra).

5    Ie under ibid s 41(9) (as substituted): see PARA 149 ante.

6    For the meaning of 'the register' see PARA 34 note 3 ante.

7    Medical Act 1983 s 40(1)(b) (as substituted: see note 2 supra).

8 le under *ibid* s 45(6) (as substituted): see PARA 150 ante. As to the General Medical Council see PARA 13 et seq ante.

9 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

10 Medical Act 1983 s 40(1)(c) (as substituted: see note 2 supra).

11 le under *ibid* s 39 (as substituted): see PARA 189 post.

12 *Ibid* s 40(2) (as substituted: see note 2 supra).

13 le under *ibid* s 35E(1) (as added), s 41(10) (as substituted), or s 45(7) (as substituted): see PARAS 144, 149, 150 ante. As to the possible extension of time for appealing in the case of notices under s 35E(1) (as added) served by post see PARA 144 note 28 ante.

14 *Ibid* s 40(4) (as substituted: see note 2 supra). 'The relevant court': (1) in the case of a person whose address in the register is (or if he were registered would be) in Scotland, means the Court of Session (s 40(5)(a) (as so substituted)); (2) in the case of a person whose address in the register is (or if he were registered would be) in Northern Ireland, means the High Court of Justice in Northern Ireland (s 40(5)(b) (as so substituted)); and (3) in the case of any other person (including one appealing against a decision falling within head (3) in the text), means the High Court of Justice in England and Wales (s 40(5)(c) (as so substituted)). As to the registration of medical practitioners see PARA 99 et seq ante. As to the High Court of Justice in England and Wales see COURTS vol 10 (Reissue) PARA 602 et seq.

As to appeals generally see CPR Pt 52. An appeal is by way of re-hearing: Practice Direction--Appeals PD52 para 22.3.(1)(d), (2). The court's jurisdiction is appellate, not supervisory. The appeal is by way of a re-hearing in which the court is fully entitled to substitute its own decision for that of the disciplinary committee. The court will accord an appropriate measure of respect to the judgment of the disciplinary committee but will not defer to that judgment more than is warranted by the circumstances: *Ghosh v General Medical Council* [2001] UKPC 29, [2001] 1 WLR 1915; and see also *Carruthers v General Medical Council* [2003] UKPC 42, 75 BMLR 59. The court will be slow to interfere in the exercise by the disciplinary committee of its power to impose a penalty and it will need a strong case to justify setting aside such decision: *Hossain v General Medical Council* [2001] UKPC 40, 65 BMLR 1; and see also *Garfoot v General Medical Council* [2002] UKPC 35, [2002] All ER (D) 156 (Jun). Procedural defects before the committee may enable the court to reconsider the issue of penalty on a broader basis than it would otherwise have been able to: *Bevan v General Medical Council* [2005] All ER (D) 74 (Feb). As examples of cases in which the court overturned the committee's decision see: *Bijl v General Medical Council* [2001] UKPC 42, 65 BMLR 10; *Cullen v General Medical Council* [2005] EWHC 353 (Admin), [2005] All ER (D) 209 (Mar); *Bevan v General Medical Council* supra. The only circumstances in which an appeal court will reverse a view of the facts taken by a disciplinary committee is where it would appear that the body had misread the evidence to such an extent that it was not entitled to make a finding in the state of the evidence presented before it: *Libman v General Medical Council* [1972] AC 217, [1972] 1 All ER 798, PC; *Selvanathan v General Medical Council* 59 BMLR 95, PC. A committee must give reasons for preferring the evidence of one expert witness to that of another: *Cullen v General Medical Council* supra.

15 le under the Medical Act 1983 s 39(2) (as substituted): see PARA 189 post. As to the possible extension of time for appealing in the case of notices served by post see PARA 189 note 5 post.

16 *Ibid* s 40(6) (as substituted: see note 2 supra). See also the cases cited in note 14 supra. In Scotland, the appeal is to the sheriff in whose sheriffdom the address in the register is situated: see s 40(6) (as so substituted). As to county courts see COURTS.

17 *Ibid* s 40(7)(a) (as substituted: see note 2 supra).

18 *Ibid* s 40(7)(b) (as substituted: see note 2 supra). See eg *Nandi v General Medical Council* [2004] EWHC 2317 (Admin).

19 Medical Act 1983 s 40(7)(c) (as substituted: see note 2 supra).

20 For the meaning of 'the registrar' see PARA 23 note 1 ante.

21 Medical Act 1983 s 40(7)(d) (as substituted: see note 2 supra).

22 *Ibid* s 40(7) (as substituted: see note 2 supra). On an appeal from a fitness to practise panel, the General Medical Council may appear as respondent; and for the purpose of enabling directions to be given as to the costs of any such appeal the Council is deemed to be a party to it, whether it appears on the hearing of the appeal or not: s 40(9) (as so substituted).

23 *Ibid* s 40(8)(a) (as substituted: see note 2 supra).

24 Ibid s 40(8)(b) (as substituted: see note 2 supra).

25 Ibid s 40(8)(c) (as substituted: see note 2 supra).

26 Ibid s 40(8) (as substituted: see note 2 supra).

## **UPDATE**

### **138-189 Fitness to practise**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to have power to adjudicate in fitness to practice cases in relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: see s 98(2) (not yet in force). As to the OHPA generally, see further PARA 189A.

### **188 Appealable decisions**

NOTE 4--A decision to reprimand a practitioner is not appealable under the 1983 Act s 40: *Dutt v General Medical Council* [2005] All ER (D) 91 (Oct).

TEXT AND NOTES 10, 14--Medical Act 1983 s 40(1)(c) repealed, s 40(4), (5)(c) amended: SI 2007/3101.

NOTE 14--The court is concerned with the standards and reputation of the profession rather than with retributive justice: see *Raschid v General Medical Council*; *Fatnani v General Medical Council* [2007] EWCA Civ 46, [2007] 1 WLR 1460; *Mohammed v General Medical Council* [2007] EWHC 2728 (Admin), [2007] All ER (D) 317 (Nov).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(4) FITNESS TO PRACTISE/(iv) Fraud or Error/189. Erasure for fraud or error.

## **(iv) Fraud or Error**

### **189. Erasure for fraud or error.**

If the General Medical Council<sup>1</sup> is satisfied that any entry in the register<sup>2</sup> has been fraudulently procured or incorrectly made, it may direct that the entry be erased from the register<sup>3</sup>. Where the Council gives such a direction for the erasure of a person's name, the registrar<sup>4</sup> must forthwith serve on that person a notification of the direction and of his right to appeal against the decision<sup>5</sup>.

The Council must make rules with respect to the discharge by it of these functions<sup>6</sup>. If the Council delegates these functions to a fitness to practise panel<sup>7</sup> or other committee, rules must make provision with respect to the discharge of those functions by the panel or committee<sup>8</sup>.

1 As to the General Medical Council see PARA 13 et seq ante.

2 For the meaning of 'the register' see PARA 34 note 3 ante. As to the medical registers generally see PARA 34 et seq ante.

3 Medical Act 1983 s 39(1) (ss 39, 43, Sch 4 substituted by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 13, 14). As to appeals against such directions see PARA 188 ante.

4 For the meaning of 'the registrar' see PARA 23 note 1 ante.

5 In accordance with the Medical Act 1983 s 40 (as substituted) (see PARA 180 ante): s 39(2) (as substituted: see note 3 supra). As to the service of such notification see PARA 142 note 6 ante. Where any such notice is served on a person by the registrar by sending it by post and the registrar is satisfied, on an application of that person, that the person did not receive the notice within 14 days beginning with the day of the giving of the decision to which the notification relates, the registrar may, if he thinks fit, by authorisation in writing extend the time within which an appeal under s 40 (as substituted) may be brought against the decision: s 43, Sch 4 para 9 (both as so substituted).

6 Ibid Sch 4 para 6(1) (as substituted: see note 3 supra). The provisions of Sch 4 para 1(6), (7) (as substituted) (see PARA 152 ante) apply in relation to rules made under Sch 4 para 6 (as substituted) as they apply in relation to rules under Sch 4 para 1 (as substituted): Sch 4 para 6(3) (as so substituted). As to the rules that have been made see the General Medical Council (Fraud or Error in relation to Registration) Rules Order of Council 2005, SI 2005/401.

7 As to the constitution of fitness to practise panels see PARAS 138-140 ante. As to fitness to practise panels as statutory committees see PARA 26 ante. As to the functions of fitness to practise panels see PARA 144 et seq ante. As to proceedings relating to fitness to practise see PARA 151 et seq ante.

8 Medical Act 1983 Sch 4 para 6(2) (as substituted: see note 3 supra). See also note 6 supra. As to the delegation by the General Medical Council of its functions see PARA 25 ante.

## **UPDATE**

### **138-189 Fitness to practise**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to have power to adjudicate in fitness to practice cases in

relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: see s 98(2) (not yet in force). As to the OHPA generally, see further *PARA 189A*.



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## **(v) The Office of the Health Professions Adjudicator**

### **189A. The Office of the Health Professions Adjudicator.**

#### **1. Constitution, status and members**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). The OHPA is to have functions in relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: s 98(2) (not yet in force).

The OHPA is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown: Sch 6 para 2(1). The OHPA's property is not to be regarded as property of, or property held on behalf of, the Crown: Sch 6 para 2(2).

The OHPA may do anything which appears to it to be necessary or expedient for the purposes of, or in connection with, the exercise of its functions: Sch 6 para 3(1). This includes, in particular, the power to acquire and dispose of land and other property, and enter into contracts: Sch 6 para 3(2).

The OHPA is to consist of the following members (1) a chair appointed by the Privy Council; (2) non-executive members appointed by the Privy Council; and (3) executive members appointed in accordance with Sch 6 para 8 below: Sch 6 para 4. No person may be appointed as a member unless the person satisfies such requirements as may be prescribed in regulations made by the Privy Council: Sch 6 para 5. A person may be appointed as the chair only if the person (as well as satisfying any requirements prescribed under Sch 6 para 5 (a) has a 10 year general qualification within the meaning of the Courts and Legal Services Act 1990 s 71; (b) is an advocate or solicitor in Scotland of at least 10 years' standing; or (c) is a member of the Bar of Northern Ireland, or a solicitor of the Court of Judicature of Northern Ireland, of at least 10 years' standing: Sch 6 para 6. The Privy Council must by regulations make provision about the number of non-executive and executive members: Sch 6 para 7(1). the regulations must provide for there to be at least one but no more than three non-executive members, and at least one but no more than three executive members: Sch 6 para 7(2). The regulations may not provide for the number of executive members to be greater than the number of non-executive members: Sch 6 para 7(3). The first executive members are to be appointed by the Privy Council: Sch 6 para 8(1). Subsequent appointments of executive members are to be made by the OHPA: Sch 6 para 8(2). The executive members must be employees of the OHPA: Sch 6 para 8(3). This requirement is to be taken to be complied with in relation to the first executive members appointed under Sch 6 para 8(1) if they are employed by the OHPA as soon as practicable after being appointed: Sch 6 para 8(4). Each of the members mentioned in heads (1)-(3) above holds and vacates office in accordance with the terms of the member's appointment, and may be removed from office by the Privy Council on the grounds of incapacity or misbehaviour: Sch 6 para 9. The terms of a member's appointment are to be determined by the person making the appointment, save that the terms of appointment of an executive member appointed by the OHPA are to be determined by the Privy Council in so far as the terms relate to tenure of office or suspension from office: Sch 6 para 10.

The OHPA may regulate its own procedure, and the validity of proceedings of the OHPA is not affected by any vacancy in its membership, by any defect in the appointment of a member, or

by any person acting as a member even though ineligible for appointment when purportedly appointed, or acting as a member after having ceased to be a member: Sch 6 paras 11, 12.

For further provision as to members' interests, remuneration and allowances, see Sch 6 paras 13, 14. Provision is also made as to employees (Sch 6 para 17), payments and loans to the OHPA (Sch 6 para 18), accounts (Sch 6 para 19), reports (Sch 6 para 20), and seal and evidence (Sch 6 paras 21, 22).

## **2. Duty to inform the public and to consult**

For the purpose of ensuring that members of the public are informed about the Office of the Health Professions Adjudicator ('OHPA') and the exercise by it of its functions, the OHPA must publish or provide in such manner as it thinks fit information about the OHPA and the exercise of its functions: Health and Social Care Act 2008 s 107(1). Nothing in s 107(1) authorises or requires the publication or provision of information if the publication or provision of that information is prohibited by any enactment, or would constitute or be punishable as a contempt of court: s 107(4).

The OHPA must from time to time seek the views of members of the public, bodies which appear to the OHPA to represent the interests of patients, the General Medical Council and the General Optical Council, and any other bodies which appear to the OHPA to represent the professions regulated by the Medical Act 1983 or the Opticians Act 1989 on matters relevant to the exercise by it of its functions: s 108.

### **UPDATE**

#### **138-189 Fitness to practise**

There is to be a body corporate known as the Office of the Health Professions Adjudicator ('the OHPA'): Health and Social Care Act 2008 s 98(1). As from a day to be appointed the OHPA is to have power to adjudicate in fitness to practice cases in relation to the professions regulated by the Medical Act 1983 and the Opticians Act 1989: see s 98(2) (not yet in force). As to the OHPA generally, see further [PARA 189A](#).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(5) THE PRACTICE OF MEDICINE/(i) Use of Titles and Descriptions/190. Unlawful use of titles and descriptions.

## **(5) THE PRACTICE OF MEDICINE**

### **(i) Use of Titles and Descriptions**

#### **190. Unlawful use of titles and descriptions.**

The law does not prohibit any person from practising medicine or surgery, but the legislature has declared that it is expedient that persons requiring medical aid should be enabled to distinguish the qualified from the unqualified practitioner<sup>1</sup>. It is, therefore, provided that any person who wilfully and falsely<sup>2</sup> pretends to be or takes or uses the name or title of physician, doctor of medicine, licentiate in medicine and surgery, bachelor of medicine, surgeon, general practitioner or apothecary<sup>3</sup>, or any name, title, addition or description implying that he is registered under any provision of the Medical Act 1983<sup>4</sup> or that he is recognised by law as a physician or surgeon or licentiate in medicine and surgery or a practitioner in medicine or an apothecary, is liable on summary conviction to a fine<sup>5</sup>.

1 See the Medical Act (1858) preamble (repealed).

2 As to what constitutes a wilful and false pretending to be a qualified practitioner see the cases cited in PARA 191 note 3 post. The Trade Descriptions Act 1968 s 14(1), which prohibits the making of false or misleading statements as to services, may apply to professional men: see *R v Breeze* [1973] 2 All ER 1141, [1973] 1 WLR 994, CA; and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 495.

3 As to apothecaries see PARA 935 et seq post.

4 As to the registration of medical practitioners see PARA 99 et seq ante.

5 Medical Act 1983 s 49(1) (amended by the Fines and Penalties (Northern Ireland) Order 1984, SI 1984/703, art 19(2), Sch 7). The penalty is a fine not exceeding level 5 on the standard scale: see the Medical Act 1983 s 49(1) (as so amended). Proceedings may be instituted either by the General Medical Council or by a private person: *Clarke v M'Guire* [1909] 2 IR 681 (decided on corresponding provisions of earlier enactments). As to the standard scale see PARA 185 note 11 ante. As to the General Medical Council see PARA 13 et seq ante.

The Medical Act 1983 s 49(1) (as amended) does not apply to anything done by a person who is a national of any EEA state for the purposes of or in connection with the lawful rendering of medical services by him without first being registered under the Act if he has previously complied with the requirements of s 18(2) (see PARA 100 ante) or subsequently complies with its requirements as modified in respect of urgent cases by s 18(3) (see PARA 100 ante): s 49(2) (amended by the European Primary Medical Qualifications Regulations 1996, SI 1996/1591, reg 7, Sch 2 para 12). For the meanings of 'national', in relation to an EEA state, and 'EEA state' see PARA 3 note 2 ante.

### **UPDATE**

#### **190 Unlawful use of titles and descriptions**

NOTE 5--Medical Act 1983 s 49(1) amended, s 49(2) repealed: SI 2007/3101.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(5) THE PRACTICE OF MEDICINE/(i) Use of Titles and Descriptions/191. What constitutes an offence.

### 191. What constitutes an offence.

The provision prohibiting the use of certain titles and descriptions<sup>1</sup> is intended to guard the public against being imposed upon by a person pretending to have a qualification when in fact he has none, and applies to a person using a title falsely implying that he is registered or has a title to be registered<sup>2</sup>. No offence is committed, however, unless the defendant acts wilfully and falsely, and it is for the magistrates to decide whether he has done so<sup>3</sup>. A person commits no offence if he honestly believes that he is within his rights in describing himself as he does; but, in deciding whether he has this honest belief, the presence or absence of reasonable grounds for the belief must be taken into consideration<sup>4</sup>.

<sup>1</sup> ie the Medical Act 1983 s 49: see PARA 190 ante.

<sup>2</sup> *Ellis v Kelly* (1860) 6 H & N 222 at 226 per Lord Bramwell. As to the registration of medical practitioners see PARA 99 et seq ante.

<sup>3</sup> *R v Sheppard* [1981] AC 394, [1980] 3 All ER 899, HL (an act is wilful if it is done on purpose as distinct from accidentally or inadvertently); *Younghusband v Luftig* [1949] 2 KB 354, [1949] 2 All ER 72, DC (where the defendant, being a Doctor of Medicine of Berlin University, described himself as 'MD, BLN', and it was held that the justices' decision that no offence was committed could not be interfered with). In *Younghusband v Luftig* supra, the court reviewed most of the earlier cases on the subject, and those cases must now be considered in the light of that decision. The earlier cases are as follows: *Ladd v Gould* (1860) 1 LT 325 (description as 'surgeon and mechanical dentist'; justices found the word 'surgeon' was used to show what branch of the business of dentistry the defendant carried on, and the High Court refused to upset this finding of fact); *Ellis v Kelly* (1860) 6 H & N 222 (defendant, being registered as MRCS and LSA, and having a diploma from a German university which entitled him to practise in Germany, called himself 'Dr Kelly': no offence); *Steele v Hamilton* (1860) 3 LT 322 (defendant signed certificate 'Botanic Surgeon, Boston, US'; on his door he used a similar description, adding 'not registered in England' and 'anti-registered surgeon': no offence); *Andrews v Styrup* (1872) 26 LT 704 (druggist with degree bought from an American university used title MD: offence committed); *Carpenter v Hamilton* (1877) 37 LT 157, DC (defendant displayed diploma with the words 'John Hamilton, Doctor of Medicine of the Metropolitan Medical College of New York': no offence); *R v Baker etc, Justices and Clarke* (1891) 66 LT 416, 56 JP 406 (defendant being registered as LSA and also a Doctor of an American Medical Institute, used titles 'Dr', 'MD' and 'Physician and Surgeon', and signed certificates, required to be signed by a registered medical practitioner, 'MD, Registered Medical Practitioner': offence committed); *Steel v Ormsby* (1894) 10 TLR 483, DC (defendant who held a certificate from an American Botanic College of Medicine conferring the degree 'MD (BC)' signed certificates, required to be signed by a registered medical practitioner, 'MD', 'BC' and 'MD London': offence committed); *R v Lewis (Stipendiary Magistrate) and Frickhart, R v Lewis (Stipendiary Magistrate) and Bridgwater* (1896) 60 JP 392, DC (use of letters 'MD' and 'MD, USA'); *Hunter v Clare* [1899] 1 QB 635, DC (defendant, registered as LSA, described himself as 'physician and surgeon'; it was held that he was not entitled to do so, but that no offence was committed as he honestly believed he was within his rights); *Whitwell v Shakesby* (1932) 147 LT 157 (defendant, without degree or licence in medicine or surgery, practised osteopathy and had a plate bearing the words 'Prof A E Shakesby, DO (Lond), Bonesetter, Osteopathic Physician and Surgeon': offence committed); *Jutson v Barrow* [1936] 1 KB 236, DC (defendant, without any medical degree, used a plate bearing the words 'Captain Barrow, MM, Manipulative Surgeon': offence committed). See also *Pedgrift v Chevallier* (1860) 29 LJMC 225; *Davies v Makuna* (1885) 29 ChD 596, CA.

<sup>4</sup> *Younghusband v Luftig* [1949] 2 KB 354, [1949] 2 All ER 72, DC; *Wilson v Inyang* [1951] 2 KB 799, [1951] 2 All ER 237, DC. That the defendant has only a bogus qualification may lead to the inference that he does not honestly believe he is entitled to describe himself as qualified: see *Younghusband v Luftig* supra.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(5) THE PRACTICE OF MEDICINE/(i) Use of Titles and Descriptions/192. The title 'doctor'.

**192. The title 'doctor'.**

The courtesy title 'doctor' is commonly applied to all registered medical practitioners<sup>1</sup>, excepting consulting surgeons, whether or not they hold the degree of Doctor of Medicine.

<sup>1</sup> For the meaning of 'registered medical practitioner' see PARA 4 ante.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(5) THE PRACTICE OF MEDICINE/(i) Use of Titles and Descriptions/193. Penalty for pretending to hold a licence to practise.

### **193. Penalty for pretending to hold a licence to practise.**

As from a day to be appointed the following provision has effect<sup>1</sup>. If a person who does not hold a licence to practise<sup>2</sup> holds himself out as having such a licence<sup>3</sup> or engages in conduct calculated to suggest that he has such a licence<sup>4</sup>, he is liable on summary conviction to a fine<sup>5</sup>.

1 The Medical Act 1983 s 49A is added by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 12(7), and comes into force as from a day to be appointed: see art 1(2), (3). At the date at which this volume states the law no such day had been appointed.

2 For the meaning of 'licence to practise' see PARA 130 note 3 ante.

3 Medical Act 1983 s 49A(1)(a) (prospectively added: see note 1 supra).

4 Ibid s 49A(1)(b) (prospectively added: see note 1 supra).

5 Ibid s 49A(1) (prospectively added: see note 1 supra). The penalty is a fine not exceeding level 5 on the standard scale: see s 49A(1) (as so added). As to the standard scale see PARA 185 note 11 ante.

#### **UPDATE**

### **193 Penalty for pretending to hold a licence to practise**

NOTE 1--Appointed day is 16 November 2009: London Gazette, 21 August 2009.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(5) THE PRACTICE OF MEDICINE/(i) Use of Titles and Descriptions/194. Partnerships.

#### **194. Partnerships.**

It is open to medical practitioners to combine in partnership in the same manner as other professions. The general principles governing such arrangements are dealt with elsewhere in this work<sup>1</sup>. Where medical practitioners undertake to provide medical services under the national health service, provision is made for the allocation of patients<sup>2</sup>. It is unlawful to sell the goodwill of the medical practice of a person who has at any time provided medical services under the national health service<sup>3</sup>, and there are extensive provisions designed to prevent avoidance of this provision<sup>4</sup>. The goodwill is not extinguished by those provisions and there is nothing in them to render invalid restrictive covenants aimed at preserving the goodwill of a partnership<sup>5</sup>.

1 See generally the Partnership Act 1890; and PARTNERSHIP. The principles there set out will be applied to determine such questions as whether or not a medical partnership exists (see *Pratt v Strick (Inspector of Taxes)* (1932) 17 TC 459; *Rawlinson v Clarke* (1846) 15 M & W 292, Ex Ch), or may properly be dissolved (see *Snow v Milford* (1868) 18 LT 142; *Anon* (1856) 2 K & J 441).

2 See HEALTH SERVICES.

3 See the National Health Service Act 1977 s 54(1) (as substituted and amended); and HEALTH SERVICES vol 54 (2008) PARA 273 et seq.

4 See *ibid* s 54(3) (as substituted), Sch 10 (as amended); and HEALTH SERVICES vol 54 (2008) PARA 273 et seq.

5 See PARA 195 text to note 3 post.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(5) THE PRACTICE OF MEDICINE/(i) Use of Titles and Descriptions/195. Restrictive covenants.

### 195. Restrictive covenants.

The enforceability of restrictive covenants in cases concerned with medical practice is governed by the principles concerning the enforceability of such covenants generally which are discussed elsewhere in this work<sup>1</sup>. In particular the areas of practice and the categories of medical practice prohibited by the terms of the covenant must not be wider than is reasonably justified for the protection of the practice for which protection is sought<sup>2</sup>. There is nothing in the National Health Service Act 1977 which would render invalid an otherwise enforceable covenant for the protection of the goodwill of a practice which takes national health service patients<sup>3</sup>. Whether a particular act constitutes a breach of such a covenant depends upon the proper construction of the exact terms in which the covenant is framed<sup>4</sup>.

1 See COMPETITION vol 18 (2009) PARA 377 et seq. Such covenants are to be found in agreements for the sale of a medical practice, in medical partnerships and in employment agreements concerned with medical practice.

2 See *Davis v Mason* (1793) 5 Term Rep 118; *Atkyns v Kinnier* (1850) 4 Exch 776; *Palmer v Mallet* (1887) 36 ChD 411, CA; *Everton v Longmore* (1899) 15 TLR 356, CA; *Eastes v Russ* [1914] 1 Ch 468, CA (lifelong restriction too long); *Routh v Jones* [1947] 1 All ER 758, CA; *Jenkins v Reid* [1948] 1 All ER 471; *Whitehill v Bradford* [1952] Ch 236, [1952] 1 All ER 115, CA (21 year period upheld); *Macfarlane v Kent* [1965] 2 All ER 376, [1965] 1 WLR 1019; *Lyne-Pirkis v Jones* [1969] 3 All ER 738, [1969] 1 WLR 1293, CA; *Peyton v Mindham* [1971] 3 All ER 1215, [1972] 1 WLR 8. The following covenants have been held to be wider than was reasonably necessary to protect a general medical practice: a covenant restraining a medical assistant from practising in any department of medicine, surgery or midwifery and from practising or filling any professional appointment, whether whole-time or otherwise, within ten miles from a named town (*Routh v Jones* supra); a covenant restraining a partner from practice as a medical practitioner within a reasonable area (*Lyne-Pirkis v Jones* supra (this covenant prohibited practice as a consultant, which was unreasonable)); a covenant restraining a partner from 'professionally advising, attending, prescribing for or treating' patients of the partnerships resident within five miles of a practice in a named town for a five year period (*Peyton v Mindham* supra (this covenant also unreasonably prohibited practice as a consultant)).

3 *Whitehill v Bradford* [1952] Ch 236, [1952] 1 All ER 115, CA; *Macfarlane v Kent* [1965] 2 All ER 376, [1965] 1 WLR 1019. Both these cases were concerned with the possible applicability of what is now the National Health Service Act 1977 s 54 (as substituted and amended): see PARA 194 ante. See also *Kerr v Morris* [1987] Ch 90, [1986] 3 All ER 217, CA (overruling *Hensman v Traill* (1980) 124 Sol Jo 776).

4 See *Rogers v Drury* (1887) 57 LJCh 504; *Palmer v Mallet* (1887) 36 ChD 411, CA; *Robertson v Buchanan* (1904) 73 LJCh 408, CA.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(5) THE PRACTICE OF MEDICINE/(ii) Liabilities of Practitioners and Authorities/A. CIVIL LIABILITY/196. Negligence and duties owed to patients.

## **(ii) Liabilities of Practitioners and Authorities**

### **A. CIVIL LIABILITY**

#### **196. Negligence and duties owed to patients.**

A person<sup>1</sup> who holds himself out as ready to give medical<sup>2</sup> advice or treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose. Whether or not he is a registered medical practitioner<sup>3</sup>, such a person who is consulted by a patient owes him a duty to exercise reasonable care and skill in diagnosing, advising and treating the patient<sup>4</sup>. The duty is owed to the patient alone<sup>5</sup>. A breach of this duty causing personal injury will support a claim for negligence by the patient<sup>6</sup>. A practitioner may also be liable for financial loss where he is aware that the patient intends to rely on his advice for a particular purpose<sup>7</sup>.

No contractual relationship between the person undertaking the treatment and the patient is necessary to support a claim for negligence; nor is it necessary that the services should be rendered for reward<sup>8</sup>. If a contractual relationship exists, the liability at common law to exercise reasonable care exists independently of the liability expressed or implied in the contract<sup>9</sup>.

1 There is no concept of team negligence whereby a team standard of care must be owed by every member. The duty of care of each member is that of a reasonable and careful practitioner: see *Wilsher v Essex Area Health Authority* [1987] QB 730, [1986] 3 All ER 801, CA; revsd on different grounds [1988] AC 1074, [1988] 1 All ER 871, HL. See also *Simms v Birmingham Health Authority* 58 BMLR 66.

2 The word 'medical' is used here in its widest sense. The general principles set out in the text and in PARAS 197-205 post are applicable to all health care professionals.

3 For cases as to unregistered practitioners see *Ruddock v Lowe* (1865) 4 F & F 519; *Jones v Fay* (1865) 4 F & F 525; *Brogan v Bennett* [1955] IR 119.

4 *Bolam v Friern Hospital Management Committee* [1957] 2 All ER 118, [1957] 1 WLR 582; *Hills v Potter* [1983] 3 All ER 716, [1984] 1 WLR 641n; *Sidaway v Board of Governors of the Bethlem Royal Hospital and the Maudsley Hospital* [1985] AC 871, [1985] 1 All ER 643, HL; *Comber v Greater Glasgow Health Board* 1992 SLT 22n. This duty includes that of informing the patient of the risks of the treatment: see *Pearce v United Bristol Healthcare NHS Trust* (1998) 48 BMLR 118, CA; *Lybert v Warrington Health Authority* [1996] 7 Med LR 71, 25 BMLR 91, CA; *Williamson v East London and City Health Authority* (1997) 41 BMLR 85 (full extent of operation not explained); and PARA 198 post. As to the duty of care owed to an unborn child at common law see *Burton v Islington Health Authority*, *de Martell v Merton and Sutton Health Authority* [1993] QB 204, [1992] 3 All ER 833, CA. As to the degree of skill and care required see PARA 197 post.

5 *Powell v Boldaz* 39 BMLR 35, [1998] Lloyd's Rep Med 116, CA (no duty of care owed to parents of child patient). Cf *AB v Leeds Teaching Hospital NHS Trust* [2004] EWHC 644 (QB), [2004] 3 FLR 324, [2004] 2 FLR 365 (duty of care owed to mother after the death of her baby and in seeking consent for post mortem). As to post mortems see PARAS 225, 246, 255, 266 post.

6 The general principles of the law of negligence apply. The claimant must show that he was owed a duty of care by the practitioner, that the duty was breached and that he suffered damage as a result of that breach. As to negligence generally see NEGLIGENCE. As to professional indemnity insurance see INSURANCE vol 25 (2003 Reissue) PARA 363 et seq. As to criminal negligence see PARA 206 post.

7 The principle in the case of *Hedley Byrne & Co Ltd v Heller & Partners Ltd* [1964] AC 465, [1963] 2 All ER 575, HL: see NEGLIGENCE vol 78 (2010) PARA 14. For a case in which liability was held not to arise see *Kapfunde v Abbey National Plc* [1999] ICR 1, [1998] IRLR 583, CA.

8 *Pippin v Sheppard* (1822) 11 Price 400; *Gladwell v Steggall* (1839) 5 Bing NC 733; *R v Bateman* (1925) 94 LJKB 791 at 794, 19 Cr App Rep 8 at 11-12, CCA. See also *Slater v Baker* (1767) 2 Wils 359; *Edgar v Lamont* 1914 SC 277; and cf *Austin v Great Western Rly Co* (1867) LR 2 QB 442. The confidence induced by undertaking any service for another is a sufficient legal consideration to create a duty in the performance of it: *Coggs v Bernard* (1703) 2 Ld Raym 909 at 919. If a contractual relationship does in fact exist, the rights and liabilities of the parties will be governed by the terms of the contract (but see the text and note 9 infra). In the absence of any express terms dealing with the matter, the same duties and liabilities may be said to be implied into the contract as exist where no contract is made: see *Harmer v Cornelius* (1858) 5 CBNS 236; *Shiells v Blackburne* (1789) 1 Hy BI 158. Where a person employs a surgeon to attend someone else, if the patient suffers injury from the surgeon's negligence, he would have a claim in negligence for any damage he suffered, and the person employing the surgeon would have a claim in contract for any damage he suffered resulting from the breach of contract (see the cases cited supra).

9 See *Thake v Maurice* [1986] QB 644, [1986] 1 All ER 497, CA (there is no breach of contract if there is a failure to render a vasectomy patient absolutely sterile if reasonable skill and care is performed in the operation, but a failure to give the usual warning of a slight risk that the patient might become fertile amounts to a breach of the duty of care owed); *Eyre v Measday* [1986] 1 All ER 488, CA (no warranty as to success of sterilisation operation); *Batty v Metropolitan Property Realisations Ltd* [1978] QB 554, [1978] 2 All ER 445, CA, applying *Esso Petroleum Co Ltd v Mardon* [1976] QB 801, [1976] 2 All ER 5, CA. See also *Midland Bank Trust Co Ltd v Hett, Stubbs and Kemp (a firm)* [1979] Ch 384, [1978] 3 All ER 571. As to the duty to inform and warn patients of the risks of treatment see PARA 198 post.

## UPDATE

### 196 Negligence and duties owed to patients

NOTE 4--Where a patient is presented with a simple injury there is no requirement to ask about his medical or psychiatric history, unless there is something to suggest that the patient has a psychiatric history which may be relevant to his treatment or understanding: *Nathanson (executor of the estate of Nathanson) v Barnet & Chase Farm Hospitals NHS Trust* [2008] EWHC 460 (QB), [2008] All ER (D) 227 (Mar).

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### 197. Degree of skill and care required.

A medical practitioner is required to meet the standard of the ordinary skilled practitioner exercising and professing to have the special skill in question<sup>1</sup>. Thus a specialist has to exercise the skill of an ordinary competent member of his speciality<sup>2</sup>, and a practitioner of alternative medicine will be judged against the standards of similar practitioners<sup>3</sup>. An error of judgment will not amount to negligence unless it is one that would not have been made by a reasonably competent practitioner with the standard and type of skill of the defendant, acting with ordinary care<sup>4</sup>. The conduct is to be judged against the state of professional knowledge at the time of the matter concerned<sup>5</sup>. Where there are differing and well established professional schools of thought on an issue, a practitioner will not be regarded as negligent in following one rather than another even if the outcome suggests that the wrong choice was made<sup>6</sup>. However, in certain circumstances treatment will be held to be negligent if it cannot be demonstrated to the satisfaction of the court that the body of opinion relied on is reasonable or responsible<sup>7</sup>.

Deviation from normal practice is not necessarily evidence of negligence<sup>8</sup>. To establish liability on that basis it must be shown: (1) that there is a usual and normal practice; (2) that the defendant has not adopted it; and (3) that the course in fact adopted is one no professional man of ordinary skill would have taken had he been acting with ordinary care<sup>9</sup>.

It may be a defence for a practitioner that he acted on the specific instructions of a consultant who had taken over responsibility for the case<sup>10</sup>. There is no concept of team negligence whereby a team standard of care would be owed by every member; the duty of care of each member is that of a reasonable and careful practitioner of his grade or level of experience<sup>11</sup>. Inexperience is no defence, an inexperienced team member being able to seek help from an experienced member<sup>12</sup>.

1 'The test is the standard of the ordinary skilled man exercising and professing to have that special skill. A man need not possess the highest expert skill at the risk of being found negligent. It is well established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art': *Bolam v Friern Hospital Management Committee* [1957] 2 All ER 118 at 121, [1957] 1 WLR 582 at 586 per McNair J. This test was approved in *Whitehouse v Jordan* [1981] 1 All ER 267, [1981] 1 WLR 246, HL; *Maynard v West Midlands Regional Health Authority* [1985] 1 All ER 635, [1984] 1 WLR 634, HL; *Sidaway v Board of Governors of the Bethlem Royal Hospital and the Maudsley Hospital* [1985] AC 871, [1985] 1 All ER 643, HL; *Bolitho v City and Hackney Health Authority* [1998] AC 232, [1997] 4 All ER 771, HL. However, this test has no application to the court making findings of fact, and this is so even where those findings of fact are the subject of conflicting expert evidence: *Penney v East Kent Health Authority* 55 BMLR 63, [2000] Lloyd's Rep Med 41, CA.

2 See *Maynard v West Midlands Regional Health Authority* [1985] 1 All ER 635, [1984] 1 WLR 634, HL; *Sidaway v Board of Governors of the Bethlem Royal Hospital and the Maudsley Hospital* [1985] AC 871, [1985] 1 All ER 643, HL.

3 *Shakoor (administratrix of the estate of Shakoor) v Situ (t/a Eternal Health Co)* [2000] 4 All ER 181, [2001] 1 WLR 410.

4 *Whitehouse v Jordan* [1981] 1 All ER 267, [1981] 1 WLR 246, HL. As to negligence and the duty owed to patients see PARA 196 ante. As to the duty to inform and warn patients of the risks of treatment see PARA 198 post. As to negligence generally see NEGLIGENCE.

5 *Roe v Minister of Health* [1954] 2 QB 66, [1954] 2 All ER 131, CA; *Bolam v Friern Hospital Management Committee* [1957] 2 All ER 118, [1957] 1 WLR 582; *Sidaway v Board of Governors of the Bethlem Royal Hospital and the Maudsley Hospital* [1985] AC 871, [1985] 1 All ER 643, HL.

6 *Maynard v West Midlands Regional Health Authority* [1985] 1 All ER 635, [1984] 1 WLR 634, HL; applied in *Hughes v Waltham Forest Health Authority* [1991] 2 Med LR 155, (1990) Times, 9 November, CA. In *Defreitas v O'Brien* [1995] 6 Med LR 108, CA, it was held that in the professional context the question was whether there was a responsible body of opinion supporting the particular practice and that this was not to be measured in purely quantitative terms.

7 *Bolitho v City and Hackney Health Authority* [1998] AC 232, [1997] 4 All ER 771, HL; *Sidaway v Board of Governors of the Bethlem Royal Hospital and the Maudsley Hospital* [1985] AC 871, [1985] 1 All ER 643, HL; *Hucks v Cole* [1993] 4 Med LR 393, 112 Sol Jo 483, CA. As to the approach to be adopted by the court in making findings of fact where there is a conflict of expert evidence see *Penney v East Kent Health Authority* (1999) 55 BMLR 63, [2000] Lloyd's Rep Med 41, CA.

8 *Holland v Devitt and Moore Nautical College Ltd* (1960) Times, 4 March.

9 *Hunter v Hanley* 1955 SC 200; applied in *Fisher v McKenzie* (1994) 26 BMLR 98. See also *Landau v Werner* (1961) 105 Sol Jo 1008, CA. If as a result of departing from normal practice a patient suffers damage of the kind the treatment was intended to prevent, the medical practitioner must prove that he was justified in acting as he did and was not in breach of duty and, if he fails to prove that, that the damage suffered was not as a result of such breach: *Clark v MacLennan* [1983] 1 All ER 416.

10 *Junor v McNichol* (1959) Times, 26 March, HL.

11 *Wilsher v Essex Area Health Authority* [1987] QB 730, [1986] 3 All ER 801, CA; revsd on a different point [1988] AC 1074, [1988] All ER 871, HL.

12 *Wilsher v Essex Area Health Authority* [1987] QB 730, [1986] 3 All ER 801, CA; revsd on a different point [1988] AC 1074, [1988] All ER 871, HL. In such circumstances, the senior colleague and the employing authority may be liable in negligence where an inexperienced member of the team properly consulted the senior member.

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### 198. Patient's consent to treatment or operation.

A medical practitioner who examines a person against his will and without statutory authority to do so, and a surgeon who performs an operation or part of an operation without his patient's express or implied consent, are each liable in trespass<sup>1</sup>. However, as an exception to this rule, in the case of an otherwise competent patient rendered unable to consent (for example, because he is unconscious), a medical practitioner has a duty to preserve the life or health of his patient including operating where necessary<sup>2</sup>. A patient's consent is real and consequently a defence to a claim for trespass if he has been informed in broad terms of the nature of the procedure intended<sup>3</sup>.

Every competent adult has the right to make decisions about whether to undergo medical treatment<sup>4</sup>. In order to exercise this right the patient must be in possession of sufficient information to enable a decision to be made and it is the duty of a medical practitioner to provide the patient with that information<sup>5</sup>. The extent of the information to be given is that which the profession considers appropriate in the case in question<sup>6</sup>. If the patient having been so informed would not have consented to the treatment<sup>7</sup>, the practitioner will be held to be negligent<sup>8</sup> and there appears to be no cause of action in trespass to the person.

1 In the majority of cases there is doubtless an implied consent to do what the surgeon, without negligence, reasonably considers necessary or desirable, limited to emergency treatment within the scope of the surgery. This consent would be negated by express instructions not to do certain things, but if a surgeon found that it was necessary to do those things and did them against instructions it is difficult to see, apart from some special circumstances, what damage the patient would have suffered: see *Beatty v Cullingworth* (1896) 60 JP 740; *Slater v Baker* (1767) 2 Wils 359; *Marshall v Curry* [1933] 3 DLR 260, 60 CCC 136 (Nova Scotia); *Male v Hopmans* [1967] 2 OR 457, 64 DLR (2d) 105, Ont CA. See also *Chatterton v Gerson* [1981] QB 432, [1981] 1 All ER 257; *Devi v West Midlands Regional Health Authority* [1981] CA Transcript 491, CA. As to a prisoner's consent to administration of drugs by a prison medical officer see *Freeman v Home Office (No 2)* [1984] QB 524, [1984] 1 All ER 1036, CA. As to cases in which it was held that a patient was treated unlawfully see *St George's Healthcare NHS Trust v S, R v Collins, ex p S* [1998] 3 All ER 673, [1998] 2 FCR 685, CA; *Re B (Adult: Refusal of Medical Treatment)* [2002] EWHC 429 (Fam), [2002] 2 All ER 449, [2002] 1 FLR 1090. As to consent in the case of mentally incompetent patients see PARAS 199-200 post; and as to the withdrawal of life prolonging treatment see PARA 202 post. As to the treatment of children see PARA 201 post. As to trespass to the person see TORT vol 97 (2010) PARA 524.

2 *F v West Berkshire Health Authority (Mental Health Act Commission intervening)* [1990] 2 AC 1, [1989] 2 All ER 545, HL.

3 *Chatterton v Gerson* [1981] QB 432, [1981] 1 All ER 257.

4 A mentally competent patient has an absolute right to refuse to consent to medical treatment for any reason, rational or irrational, or for no reason at all, even where that decision may lead to his or her own death. In this context, irrationality connotes a decision which is so outrageous in its defiance of logic, or of accepted moral standards, that no sensible person, who had applied his mind to the question to be decided, could have arrived at it: *Re MB (An Adult: Medical Treatment)* (1997) 38 BMLR 175, [1997] 2 FCR 541, CA. See also *Re AK (Medical Treatment: Consent)* [2001] 1 FLR 129, [2001] 2 FCR 35. Treatment may be given to a patient who refuses treatment if the circumstances change such that the refusal can no longer be said to cover the new circumstances: *Re T (Adult: Refusal of Medical Treatment)* [1992] 4 All ER 649, 9 BMLR 46, CA. As to mental competence see PARA 199 post. As to the treatment of mentally incompetent patients see PARA 200 post. As to the withdrawal of life prolonging treatment see PARA 202 post.

5 'If there is a significant risk which would affect the judgment of a reasonable patient, then in the normal course it is the responsibility of a doctor to inform the patient of that significant risk, if the information is needed so that the patient can determine for him or herself as to what course he or she should adopt': *Pearce v*

*United Bristol Healthcare NHS Trust* (1998) 48 BMLR 118 at 124, CA, per Lord Woolf MR. See also *Sidaway v Board of Governors of the Bethlem Royal Hospital and the Maudsley Hospital* [1985] AC 871, [1985] 1 All ER 643, HL. The significance of the risk relates to the potential severity of the consequences of that risk not only to the likelihood of it occurring: see eg *Chester v Afshar* [2004] UKHL 41, [2005] 1 AC 134, [2004] 4 All ER 587 (in which the likelihood of occurrence of the risk was in the region of one to two per cent).

6 *Sidaway v Board of Governors of the Bethlem Royal Hospital and the Maudsley Hospital* [1985] AC 871, [1985] 1 All ER 643, HL, applying the test in *Bolam v Friern Hospital Management Committee* [1957] 2 All ER 118, [1957] 1 WLR 582. Thus the same considerations apply to the duty to inform patients as apply to the other aspects of a practitioner's duty to his patients: see PARA 197 ante.

7 The patient need not prove, for the purposes of establishing causation, that he would never have had the operation at any time if properly informed, but that, if properly informed, he would not have consented to the operation taking place at that time: *Chester v Afshar* [2004] UKHL 41, [2005] 1 AC 134, [2004] 4 All ER 587.

8 *Sidaway v Board of Governors of the Bethlem Royal Hospital and the Maudsley Hospital* [1985] AC 871, [1985] 1 All ER 643, HL; *Chester v Afshar* [2004] UKHL 41, [2005] 1 AC 134, [2004] 4 All ER 587. See also *Stobie v Central Birmingham Health Authority* (1995) 22 BMLR 135; *Gold v Haringey Health Authority* [1988] QB 481, [1987] 2 All ER 888, CA *Thake v Maurice* [1986] QB 644, [1986] 1 All ER 497, CA (vasectomy; failure to warn of possible natural reversal); *Eyre v Measday* [1986] 1 All ER 488, CA. As to negligence and duties owed to patients, and the degree of skill and care required, see PARAS 196-197 ante.

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### 199. Mental competence.

There is a presumption of capacity and every person is presumed to have the capacity to consent to or to refuse medical treatment unless and until that presumption is rebutted<sup>1</sup>. The graver the consequences of the decision, the greater the level of competence required to take the decision<sup>2</sup>. Unless the gravity of the illness has affected the patient's capacity, a seriously disabled patient has the same rights as the fit person with regard to consent to treatment<sup>3</sup>. A person lacks capacity if some impairment or disturbance of mental functioning renders him unable to make a decision whether to consent to, or to refuse, treatment<sup>4</sup>. That inability to make a decision will occur when the patient is unable to comprehend and retain the information which is material to the decision, especially as to the likely consequences of having, or not having, the treatment in question; or where the patient is unable to use the information and weigh it in the balance as part of the process of arriving at the decision<sup>5</sup>. Practitioners faced with a refusal of consent must consider whether, at the time when the patient made the decision, he had a capacity to decide which was commensurate with the gravity of the decision which he purported to make<sup>6</sup>. Concern about a patient's competence should be identified as soon as possible and if the capacity of the patient is seriously in doubt it should be assessed as a matter of priority<sup>7</sup>. In the case of a mentally competent pregnant woman who does not consent to treatment, practitioners may not intervene on behalf of the unborn child even if this puts its life at risk or it is likely to suffer severe handicap as a result, and the court has no jurisdiction to take the interests of the unborn child into account<sup>8</sup>.

1 *Re MB (An Adult: Medical Treatment)* 38 BMLR 175, [1997] 2 FCR 541, CA; *St George's Healthcare NHS Trust v S, R v Collins, ex p S* [1998] 3 All ER 673, [1998] 2 FCR 685, CA; *Re T (Adult: Refusal of Medical Treatment)* [1992] 4 All ER 649, 9 BMLR 46, CA. A mentally competent patient has an absolute right to refuse to consent to medical treatment for any reason, rational or irrational, or for no reason at all, even where that decision may lead to his or her own death. In this context, irrationality connotes a decision which is so outrageous in its defiance of logic, or of accepted moral standards, that no sensible person, who had applied his mind to the question to be decided, could have arrived at it: *Re MB (An Adult: Medical Treatment)* supra. As to patients consent to treatment see PARA 198 ante. As to the treatment of mentally incompetent patients see PARA 200 post. As to mental patients see also MENTAL HEALTH.

2 *Re MB (An Adult: Medical Treatment)* 38 BMLR 175, [1997] 2 FCR 541, CA; *Re T (Adult: Refusal of Medical Treatment)* [1992] 4 All ER 649, 9 BMLR 46, CA.

3 *Re B (Adult: Refusal of Medical Treatment)* [2002] EWHC 429 (Fam), [2002] 2 All ER 449, [2002] 1 FLR 1090, in which the court set out guidance to the medical profession and health authorities for dealing with cases where such patients refuse to accept life saving treatment.

4 *Re MB (An Adult: Medical Treatment)* 38 BMLR 175, [1997] 2 FCR 541, CA. Temporary factors such as confusion, shock, fatigue, pain or drugs may completely erode capacity but practitioners concerned must be satisfied that such factors are operating to such a degree that the ability to decide is absent. Another such influence may be panic induced by fear. Again, careful scrutiny of the evidence is necessary because fear of an operation may be a rational reason for refusal to undergo it. Fear may also, however, paralyse the will and thus destroy the capacity to make a decision: *Re MB (An Adult: Medical Treatment)* supra. See also *Re T (Adult: Refusal of Medical Treatment)* [1992] 4 All ER 649, 9 BMLR 46, CA; *Re L (Patient: Non-consensual Treatment)* [1997] 1 FCR 609, [1997] 2 FLR 837 (needle phobia rendering patient incompetent).

5 *Re MB (An Adult: Medical Treatment)* 38 BMLR 175, [1997] 2 FCR 541, CA. See also *Re C (Mental Patient: Medical Treatment)* [1994] 1 All ER 819, [1994] 1 WLR 290, CA.

6 *Re T (Adult: Refusal of Medical Treatment)* [1992] 4 All ER 649, 9 BMLR 46, CA. The decision-making process can be divided into three stages: first, comprehending and retaining treatment information; second, believing it; and, third, weighing it in the balance to arrive at choice: *Re C (Mental Patient: Medical Treatment)*

[1994] 1 All ER 819 at 824, [1994] 1 WLR 290 at 295, CA, per Thorpe J; approved in *Re MB (An Adult: Medical Treatment)* 38 BMLR 175, [1997] 2 FCR 541, CA. See also *Re T (Adult: Refusal of Medical Treatment)* supra. If the patient is competent and refuses consent to the treatment, the advice given to the patient should be recorded. Hospital authorities should seek unequivocal assurances from the patient (to be recorded in writing) that the refusal represents an informed decision, ie that he understands the nature of and reasons for the proposed treatment, and the risks and likely prognosis involved in the decision to refuse or accept it; if the patient is unwilling to sign a written indication of this refusal, this too should be noted in writing: *St George's Healthcare NHS Trust v S, R v Collins, ex p S* [1998] 3 All ER 673, [1998] 2 FCR 685, CA.

7 *St George's Healthcare NHS Trust v S, R v Collins, ex p S* [1998] 3 All ER 673, [1998] 2 FCR 685, CA, in which the court set out guidelines for the action to be taken in such cases including guidelines as to the making of applications to the court. Any application to the court should be made to the Family Division of the High Court: see *President's Direction--Declaratory Proceedings concerning Incapacitated Adults Medical and Welfare Decisions* (14 December 2001). As to the Family Division of the High Court see COURTS vol 10 (Reissue) PARA 603.

8 *Re MB (An Adult: Medical Treatment)* 38 BMLR 175, [1997] 2 FCR 541, CA, doubting the decision in *Re S (Adult: Refusal of Medical Treatment)* [1992] 4 All ER 671, [1992] 2 FCR 893; *St George's Healthcare NHS Trust v S, R v Collins, ex p S* [1998] 3 All ER 673, [1998] 2 FCR 685, CA. As to consent to treatment on the part of a child see PARA 201 post.



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## 200. Treatment of mentally incompetent patients.

A mentally incompetent patient is by definition unable to give consent to medical treatment<sup>1</sup>. In the case of such a patient, it is the duty of a medical practitioner to give such treatment as is in the best interests of the patient<sup>2</sup>. The test to be applied as to whether the treatment is in the best interests of the patient is the same as that for negligence<sup>3</sup>. Best interests are not limited to best medical interests<sup>4</sup>. Where there is a dispute or significant doubt as to whether treatment, or which choice of treatment, would be in the patient's best interests, application should be made to the court for a determination<sup>5</sup>. In administering or carrying out such treatment, it is lawful to use reasonable force or compulsion to do so, the extent of that force or compulsion being a matter to be judged in each individual case by the practitioners concerned<sup>6</sup>.

1 As to mental competence see PARA 199 ante. As to mental patients see also MENTAL HEALTH.

2 *F v West Berkshire Health Authority (Mental Health Act Commission intervening)* [1990] 2 AC 1, [1989] 2 All ER 545, HL. The sanctity of life is a fundamental principle and there is a very strong presumption in favour of a course of action which will prolong life: *Re B (A Minor) (Wardship: Medical Treatment)* [1990] 3 All ER 927, [1981] 1 WLR 1421, CA; *Airedale NHS Trust v Bland* [1993] AC 789, [1993] 1 All ER 821, HL. See also *R (on the application of Burke) v General Medical Council* [2004] EWHC 1879 (Admin), 79 BMLR 126. As to the withdrawal of life prolonging treatment see PARA 202 post. As to whether the interests of third parties may be taken into account see *Re A (Medical Treatment: Male Sterilisation)* [2000] 1 FLR 549, [2000] 1 FCR 193, CA (in which the matter was left open); *Simms v Simms, A v A* [2002] EWHC 2734 (Fam), [2003] 1 All ER 669, [2003] 1 FCR 361 (in which the interests of the patients' families were considered); *W Healthcare NHS Trust v KH* [2004] EWCA Civ 1324, (2004) Times, 9 December, [2005] All ER (D) 94 (Jan) (in which the court made a decision contrary to the unanimous wishes of the family); *Glass v United Kingdom (Application 61827/00)* [2004] 1 FCR 553, [2004] 1 FLR 1019, ECtHR; *Re Wyatt (A Child) (Medical Treatment: Parents' Consent)* [2004] EWHC 2247 (Fam), [2004] NLJR 1526, [2004] All ER (D) 89 (Oct); *Re Wyatt (No 3) (a child) (medical treatment: continuation of order)* [2005] EWHC 693 (Fam), [2005] All ER (D) 278 (Apr); and PARA 201 text to note 4 post. See also *A National Health Service Trust v D* [2000] 2 FCR 577, [2000] 2 FLR 677 (it was in the best interests of a severely ill child not to resuscitate by artificial ventilation but to initiate palliative care to ease his suffering and to permit him to die with dignity); *Re A (Children) (Conjoined Twins: Surgical Separation)* [2000] 4 All ER 961, [2000] 3 FCR 577, CA (determination of the best interests of conjoined twins in relation to an operation to separate them which would inevitably result in the death of one of them).

3 *F v West Berkshire Health Authority (Mental Health Act Commission intervening)* [1990] 2 AC 1, [1989] 2 All ER 545, HL (applying the test in *Bolam v Friern Hospital Management Committee* [1957] 2 All ER 118, [1957] 1 WLR 582; see PARA 197 ante); *Re S (Adult Patient: Sterilisation)* [2001] Fam 15, [2000] 2 FCR 452, CA; *Simms v Simms, A v A* [2002] EWHC 2734 (Fam), [2003] 1 All ER 669, [2003] 1 FCR 361. In cases where there is no alternative treatment available, experimental treatment may be justified: *Simms v Simms, A v A* supra.

4 *Re MB (An Adult: Medical Treatment)* 38 BMLR 175, [1997] 2 FCR 541, CA. Best interests encompasses medical, emotional and all other welfare issues: *Re A (Medical Treatment: Male Sterilisation)* [2000] 1 FLR 549, [2000] 1 FCR 193, CA; *Simms v Simms, A v A* [2002] EWHC 2734 (Fam), [2003] 1 All ER 669, [2003] 1 FCR 361. See also *Re S (Adult Patient: Sterilisation)* [2001] Fam 15, [2000] 2 FCR 452, CA; *R (on the application of Burke) v General Medical Council* [2004] EWHC 1879 (Admin), 79 BMLR 126.

5 *F v West Berkshire Health Authority (Mental Health Act Commission intervening)* [1990] 2 AC 1, [1989] 2 All ER 545, HL; *Re MB (An Adult: Medical Treatment)* 38 BMLR 175, [1997] 2 FCR 541, CA (in which guidelines were set out as to the reference of cases to the court); *Re Wyatt (No 3) (a child) (medical treatment: continuation of order)* [2005] EWHC 693 (Fam), [2005] All ER (D) 278 (Apr). See also *D v An NHS Trust (Medical Treatment: Consent: Termination)* [2003] EWHC 2793 (Fam), [2004] 1 FLR 1110, in which the court gave guidance as to when cases relating to the termination of pregnancy should be referred to the court. In a case where an application is made to the court, it is the judge, not the medical practitioner, who makes the decision whether the treatment is in the best interests of the patient: *Re S (Adult Patient: Sterilisation)* [2001] Fam 15, [2000] 2 FCR 452, CA; *Simms v Simms, A v A* [2002] EWHC 2734 (Fam), [2003] 1 All ER 669, [2003] 1 FCR 361.

Whilst the court will not grant a mandatory order requiring a practitioner to treat a patient where the practitioner does not consider this to be appropriate, this does not mean that he can decline to go on treating his patient; he must at least arrange for treatment to be taken over by someone else: *R (on the application of Burke) v General Medical Council* [2004] EWHC 1879 (Admin), 79 BMLR 126. Any application to the court should be made to the Family Division of the High Court: see *President's Direction--Declaratory Proceedings concerning Incapacitated Adults Medical and Welfare Decisions* (14 December 2001). As to the Family Division of the High Court see COURTS vol 10 (Reissue) PARA 603.

6 *Re MB (An Adult: Medical Treatment)* 38 BMLR 175, [1997] 2 FCR 541, CA.

## **UPDATE**

### **200 Treatment of mentally incompetent patients**

NOTES 2-5--*R (on the application of Burke)*, cited, reversed: [2005] EWCA Civ 1003, [2005] 3 WLR 1132. See also *Re H (adult patient) (medical treatment)* [2006] EWHC 1230 (Fam), [2006] All ER (D) 372 (May) (schizophrenic diagnosed with ovarian tumour).

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## 201. Children.

A child is not generally considered competent until he reaches the age of 18, until when his interests are in the hands of his parents<sup>1</sup> or of the court<sup>2</sup>. Where it considers it to be in the best interests of the child, a court may override the wishes of a parent<sup>3</sup>, but the wishes of the parent must be taken into account and the administration of treatment against those wishes may amount to an unlawful interference with the rights of the child<sup>4</sup>.

A child who has attained the age of 16 years may consent to any surgical, medical or dental treatment<sup>5</sup> and it is not necessary to obtain any consent for it from his parent or guardian<sup>6</sup>. Such consent cannot be overridden by those with parental responsibility for the child but it can be overridden by the court<sup>7</sup>. A younger child is capable of giving valid consent to treatment if he has achieved sufficient intelligence and understanding to make that decision<sup>8</sup>. Such consent can only be overridden by the court<sup>9</sup>.

1 See eg *Gillick v West Norfolk and Wisbech Area Health Authority* [1986] AC 112, [1985] 3 All ER 402, HL.

2 See eg *Re T (A Minor) (Wardship: Medical Treatment)* [1997] 1 All ER 906 CA, [1997] 1 WLR 242, CA.

3 *Re C (A Minor) (HIV Test)* [1999] 3 FLR 1004, [2000] Fam Law 16, CA; *Re Z (A Minor) (Freedom of Publication)* [1995] 4 All ER 961, [1996] 2 FCR 164, CA.

4 *Glass v United Kingdom (Application 61827/00)* [2004] 1 FCR 553, [2004] 1 FLR 1019, ECtHR. See also *Re Wyatt (A Child) (Medical Treatment: Parents' Consent)* [2004] EWHC 2247 (Fam), [2004] NLJR 1526, [2004] All ER (D) 89 (Oct); *Re Wyatt (No 3) (a child) (medical treatment: continuation of order)* [2005] EWHC 693 (Fam), [2005] All ER (D) 278 (Apr).

5 'Surgical, medical or dental treatment' includes any procedure undertaken for the purposes of diagnosis, and applies to any procedure (including, in particular, the administration of an anaesthetic) which is ancillary to any treatment as it applies to that treatment: Family Law Reform Act 1968 s 8(2). As to the profession of dentistry and dental practice see PARA 385 et seq post.

6 See *ibid* s 8(1); and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 4. Nothing in s 8(1) is to be construed as making ineffective any consent which would have been effective if the provision had not been enacted: s 8(3). This statutory right to consent does not extend to consent to the donation of blood or organs as so far as the donor is concerned these do not constitute either treatment or diagnosis: *Re W (A Minor) (Medical Treatment)* [1992] 4 All ER 627 at 635, CA, per Lord Donaldson MR.

7 *Re W (A Minor) (Medical Treatment)* [1992] 4 All ER 627, CA.

8 *Gillick v West Norfolk and Wisbech Area Health Authority* [1986] AC 112, [1985] 3 All ER 402, HL. What is required is a full understanding and appreciation of the consequences both of the treatment in terms of intended and possible side effects and, equally important, the anticipated consequences of a failure to treat: *Re R (A Minor) (Wardship: Consent To Treatment)* [1992] Fam 11 at 26, CA, per Lord Donaldson of Lymington MR.

9 *Gillick v West Norfolk and Wisbech Area Health Authority* [1986] AC 112, [1985] 3 All ER 402, HL. It has been suggested that in the case of a refusal to give consent, consent can be given by someone else who has parental rights or responsibilities: see *Re R (A Minor) (Wardship: Consent To Treatment)* [1992] Fam 11 at 24, CA, per Lord Donaldson of Lymington MR.

## UPDATE

### 201 Children

NOTE 2--See also *Re B (medical treatment)* [2008] EWHC 1996 (Fam), [2009] 1 FLR 1264.

NOTE 4--*Wyatt (No 3)*, cited, affirmed sub nom *Re Wyatt (a child) (medical treatment: continuation of order)* [2005] EWCA Civ 1181, [2006] 1 FLR 554. See also *Re Wyatt (a child) (medical treatment: continuation of order)* [2005] EWHC 2293 (Fam), [2005] All ER (D) 246 (Oct); *An NHS Trust v MB (a child represented by CAFCASS as guardian ad litem)* [2006] EWHC 507 (Fam), [2006] 2 FLR 319.

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## 202. Withdrawal of life-prolonging treatment.

The principle of the sanctity of human life and the presumption in favour of prolonging it<sup>1</sup> is not irrebuttable<sup>2</sup>, but English law, as it stands at present, places a very heavy burden on those who advocate a course which would lead inevitably to the cessation of a human life<sup>3</sup>. The mere prolongation of the life of a persistent vegetative state patient<sup>4</sup>, with no hope of any recovery, is not necessarily in his best interests; and where those treating him are of the opinion, on all the evidence, that his best interests lie in not artificially prolonging his life, they may discontinue such treatment<sup>5</sup>. In the context of life-prolonging treatment<sup>6</sup>, the touchstone of best interests is intolerability, and so if the treatment is providing some benefit, it should be provided unless the patient's life, if thus prolonged, would from the patient's point of view be intolerable<sup>7</sup>.

An advance declaration by a fully competent patient that treatment should cease on the happening of a particular event is effective and should be followed, provided it is clear that the declaration still represents the wishes of the patient and that at the time of making it the patient was fully aware of the consequences of his wishes<sup>8</sup>. Similarly, an advance declaration by a patient that treatment, which he believes is necessary to protect him from what he sees as acute mental and physical suffering once he has become unable to communicate his wishes, should be given is in principle determinative, at least until such time as the prolongation of the treatment would cease to be of any benefit at all to the patient<sup>9</sup>.

In all cases where the withholding or withdrawal of treatment is contemplated, because of the gravity of the decision, the likely possible variation in the facts of individual cases, the protection of patients and practitioners, and the reassurance of patients' families and the public, application should be made to the court for a declaration that it is proper to do so<sup>10</sup>.

1 See PARA 200 note 2 ante.

2 *Airedale National Health Service Trust v Bland* [1993] AC 789, [1993] 1 All ER 821, HL. See also *R v Bingley Magistrates' Court, ex p Morrow* (1994) Times, 28 April. There is no right to die: *Pretty v United Kingdom* (Application 2346/02) [2002] 2 FCR 97, [2002] FLR 45, ECtHR.

3 *W Healthcare NHS Trust v KH* [2004] EWCA Civ 1324, (2004) Times, 9 December, [2005] All ER (D) 94 (Jan).

4 In a patient in respect of whom all the evidence establishes that there is no evidence of any meaningful life whatsoever, who is suffering 'a living death', even though all the criteria of the guidelines prepared by the Royal College of Physicians for the identification of persistent vegetative state are not met: *Re D (Adult: Medical Treatment)* [1998] 1 FCR 498, [1998] 1 FLR 411. See also *NHS Trust A v H* [2002] 1 FCR 713, [2001] 2 FLR 501 (no evidence of a 'working mind'); *R (on the application of Burke) v General Medical Council* [2004] EWHC 1879 (Admin), 79 BMLR 126 (continuation of artificial nutrition and hydration).

5 *Airedale National Health Service Trust v Bland* [1993] AC 789, [1993] 1 All ER 821, HL. See also *Trust A v V* [2005] All ER (D) 198 (Apr). The discontinuance of treatment is not in breach of the patient's right to life under the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 2 nor does it amount to torture, inhuman or degrading treatment under art 3: *NHS Trust A v M, NHS Trust B v H* [2001] 1 All ER 801, [2001] 1 FCR 406. However, if the patient has become reliant on the medical care he is receiving, there will prima facie be a breach of the Convention for the Protection of Human Rights and Fundamental Freedoms art 3 if that care is removed in circumstances where this will subject him to acute mental and physical suffering and lead to him dying in avoidably distressing circumstances: *R (on the application of Burke) v General Medical Council* [2004] EWHC 1879 (Admin), 79 BMLR 126. The Convention for

the Protection of Human Rights and Fundamental Freedoms art 3 includes the right to die with dignity: *A National Health Service Trust v D* [2000] 2 FCR 577, [2000] 2 FLR 677; *R (on the application of Burke) v General Medical Council* [2004] EWHC 1879 (Admin), 79 BMLR 126. As to the Convention for the Protection of Human Rights and Fundamental Freedoms arts 2, 3 see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 106, 123-124. As to the determination of the best interests of a patient see PARA 200 ante.

6 In such cases there are three tests that have to be applied: first, is the patient capable of taking an informed decision for herself; next, is there a clear exposition of the patient's wishes before she became incapable; third, where do the patient's best interests lie: *W Healthcare NHS Trust v KH* [2004] EWCA Civ 1324, (2004) Times, 9 December, [2005] All ER (D) 94 (Jan).

7 *R (on the application of Burke) v General Medical Council* [2004] EWHC 1879 (Admin), 79 BMLR 126; *W Healthcare NHS Trust v KH* [2004] EWCA Civ 1324, (2004) Times, 9 December, [2005] All ER (D) 94 (Jan). As to the interpretation of the concept of private life under the Convention for the Protection of Human Rights and Fundamental Freedoms art 8 in relation to medical treatment see *Pretty v United Kingdom (Application 2346/02)* [2002] 2 FCR 97, [2002] FLR 45, ECtHR; *Mikulic v Croatia (Application 53176/99)* [2002] 1 FCR 720, ECtHR; *Odievre v France (Application 42326/98)* [2003] 1 FCR 621, ECtHR; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 149.

8 *Re AK (Medical Treatment: Consent)* [2001] 1 FLR 129, [2001] 2 FCR 35.

9 *R (on the application of Burke) v General Medical Council* [2004] EWHC 1879 (Admin), 79 BMLR 126.

10 *Airedale National Health Service Trust v Bland* [1993] AC 789, [1993] 1 All ER 821, HL; *R (on the application of Burke) v General Medical Council* [2004] EWHC 1879 (Admin), 79 BMLR 126. Such an application should be preceded by a full investigation with an opportunity for the Official Solicitor, as the representative of the patient, to explore the situation fully, to obtain independent medical opinions of his own, and to ensure that all proper material is before the court: *Frenchay Healthcare NHS Trust v S* [1994] 2 All ER 403, [1994] 1 WLR 601, CA. Such applications should be made to the Family Division: see *Practice Direction (declaratory proceedings: incapacitated adults)* [2002] 1 All ER 794. See also *Practice Note (Official Solicitor appointment in family proceedings)* [2001] 2 FCR 569. As to the Official Solicitor see COURTS vol 10 (Reissue) PARA 667.

## UPDATE

### 202 Withdrawal of life-prolonging treatment

NOTES--*R (on the application of Burke)*, cited, reversed: [2005] EWCA Civ 1003, [2005] 3 WLR 1132. See also *An NHS Trust v A (adult patient: withdrawal of medical treatment)* [2005] All ER (D) 07 (Sep), CA.

NOTE 5--*Trust A*, cited, [2005] EWHC 807 (Fam). See also *NHS Trust v J* [2006] All ER (D) 290 (Nov) (new treatment for patients in persistent vegetative state; expert considered treatment had outside chance of success and unlikely to cause suffering if consciousness restored; in patient's best interests to undergo short trial).

NOTE 10--*Practice Note* superseded by *Practice Note (Official Solicitor: Declaratory Proceedings: Medical and Welfare Decisions for Adults who Lack Capacity)* [2006] 2 FLR 373.

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### **203. Duty to mentally disordered patients.**

A medical practitioner who makes a recommendation for admission into a mental hospital under the Mental Health Act 1983<sup>1</sup> must exercise due care and skill in so acting; he owes a duty of care to the patient<sup>2</sup>. However, no civil or criminal liability will arise concerning acts done in pursuance of the Act unless done in bad faith or without reasonable care<sup>3</sup>. Before any civil proceedings are taken against any person so acting, the leave of the High Court must be obtained<sup>4</sup>.

1     le under the Mental Health Act 1983 Pt II (ss 2-34): see MENTAL HEALTH vol 30(2) (Reissue) PARA 460 et seq.

2     *De Freville v Dill* (1927) 96 LJB 1056; *Everett v Griffiths* [1921] 1 AC 631, HL, where it was assumed, but not decided, that there was a duty to use ordinary care in granting a medical certificate (see at 669-670 per Lord Finlay); *Harnett v Fisher* [1927] AC 573, HL; cf *Thompson v Schmidt* (1891) 8 TLR 120, CA. See also MENTAL HEALTH; NEGLIGENCE.

3     See the Mental Health Act 1983 s 139(1); and MENTAL HEALTH vol 30(2) (Reissue) PARA 407.

4     See *ibid* s 139(2); and MENTAL HEALTH vol 30(2) (Reissue) PARA 407.

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## **204. Negligence of other persons.**

The liability of a practitioner for the negligence of other persons depends upon the relationship between him and them<sup>1</sup>. The relationship between a practitioner and a nurse in a hospital is not, as a general rule, such that the practitioner is liable for the negligence of the nurse in carrying out, or failing to carry out, his instructions<sup>2</sup>. An employer's duty of care towards his employee may extend to responsibility for injuries to a doctor endeavouring to rescue the employee from imminent peril due to the employer's negligence<sup>3</sup>.

Where practitioners are practising in partnership<sup>4</sup>, the partnership will be liable for any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership or with the authority of his co-partners which causes loss or injury to any person not being a partner or which incurs any penalty<sup>5</sup>, and each partner will also be jointly and severally liable for any such act or omission<sup>6</sup>.

1 See *Hancke v Hooper* (1835) 7 C & P 81, where a surgeon was held liable for injury due to want of skill of his apprentice. As to the liability of an employer for the torts of his employee or of an independent contractor see TORT vol 97 (2010) PARA 710 et seq.

2 *Perionowsky v Freeman* (1866) 4 F & F 977, where surgeons ordering a hot bath for a patient were not liable for injuries caused by nurses giving too hot a bath; *Hall v Lees* [1904] 2 KB 602 at 617, CA, where the view was expressed by Mathew LJ that a medical practitioner in charge of a patient, and asked to select nurses for the purpose of an operation at the patient's own home, would not be liable for the negligence of nurses so chosen; *Morris v Winsbury-White* [1937] 4 All ER 494, where a specialist surgeon was not liable for the negligence of hospital staff. Nurses assisting at an operation in a hospital do not become the servants of the surgeon in charge, but remain the servants of the hospital authority: *Gold v Essex County Council* [1942] 2 KB 293, [1942] 2 All ER 237, CA (dissenting from *Hillyer v Governors of St Bartholomew's Hospital* [1909] 2 KB 820, CA); *Roe v Minister of Health* [1954] 2 QB 66 at 70 per McNair J (affd [1954] 2 QB 66, [1954] 2 All ER 131, CA). See also *Van Wyk v Lewis* [1924] App D 438 at 459, SA SC App Div; *Ingram v Fitzgerald* [1936] NZLR 905, NZ CA; *Fox v Glasgow South Western Hospitals* 1955 SLT 337; and see further PARA 205 post. See also *Crotch v Miles* (1930) 1 British Medical Journal 620; *James v Dunlop* (1931) Times, 21 April, CA (discussed in 181 LT Jo 247-248); *Cooper v Nevill* [1961] EA 63, PC. Cf also *Garner v Morrell* (1953) Times, 31 October, CA.

3 *Ward v TE Hopkins & Son Ltd, Baker v TE Hopkins & Son Ltd* [1959] 3 All ER 225, [1959] 1 WLR 966, CA. See NEGLIGENCE vol 78 (2010) PARA 9.

4 As to partnerships see PARA 194 ante.

5 See Partnership Act 1890 s 10; and PARTNERSHIP vol 79 (2008) PARA 65.

6 See *ibid* s 12; and PARTNERSHIP vol 79 (2008) PARA 65.



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## 205. Liability of hospital authorities.

A hospital authority<sup>1</sup> must use reasonable skill and care in carrying on the hospital<sup>2</sup> and is liable for the acts or omissions of its permanent staff, whether they are surgeons, physicians or nurses or fall into any other category, in the course of their employment<sup>3</sup>. A hospital authority is in principle liable for its failure to provide sufficient and properly qualified and competent medical staff for a specialist unit in a hospital<sup>4</sup>. In addition it seems that in principle a hospital authority is liable for the acts or omissions of any part-time or visiting consultants and specialists if they are employed as part of its organisation for providing treatment, whether they are in law the employees of the hospital authority or not; for in such circumstances the hospital authority undertakes the obligation of giving to any patients who require it treatment of the kind which the consultants and specialists are employed to provide<sup>5</sup>. Services provided at national health service hospitals are so provided pursuant to statutory obligation<sup>6</sup>, but the principle governing the responsibility of the authority, within the scope of the statutory obligation, is, it seems, the same<sup>7</sup>. A hospital authority is not, however, responsible for the acts or omissions of a consultant or specialist who is selected and employed by the patient<sup>8</sup>.

1 As to the liabilities of hospitals in non-medical matters see *Weigall v Westminster Hospital* [1936] 1 All ER 232, CA; *Slade v Battersea and Putney Group Hospital Management Committee* [1955] 1 All ER 429, [1955] 1 WLR 207 (hospital's liability as occupier of premises: see NEGLIGENCE vol 78 (2010) PARA 29 et seq); *Martin v LCC* [1947] KB 628, [1947] 1 All ER 783 (hospital's liability as bailee of patient's goods: see BAILMENT); *Edwards v West Herts Group Hospital Management Committee* [1957] 1 All ER 541, [1957] 1 WLR 415, CA (duty as to safe custody of house physician's property: see EMPLOYMENT vol 39 (2009) PARA 32). As to the exercise, in such a way that a nuisance is caused, of statutory powers to provide a hospital see *Metropolitan Asylum District Managers v Hill* (1881) 6 App Cas 193, HL; and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 191. As to the liability of hospital authorities for claims by the attendants at the hospital for compensation for injuries see EMPLOYMENT vol 39 (2009) PARAS 33-34; and cf *Parkes v Smethwick Corpn* (1957) 121 JP 415, CA (injury to ambulance driver). As to the liability of hospitals to arrange for the burial or cremation of deceased patients see CREMATION AND BURIAL vol 10 (Reissue) PARA 921.

2 As to liability for the communication of infection see *Chapman v Gillingham UDC* (1903) Times, 28 March; *Evans v Liverpool Corpn* [1906] 1 KB 160; *Sherwell v Alton UDC* (1909) 25 TLR 417; *Vancouver General Hospital v McDaniel* (1934) 152 LT 56, PC; *Lindsey County Council v Marshall* [1937] AC 97, [1936] 2 All ER 1076, HL. As to the duty of a hospital authority in relation to a casualty department see *Barnett v Chelsea and Kensington Hospital Management Committee* [1969] 1 QB 428, [1968] 1 All ER 1068.

3 *Gold v Essex County Council* [1942] 2 KB 293, [1942] 2 All ER 237, CA, where the court held the defendants liable for the negligence of a full-time radiographer and dissented from the views expressed in *Hillyer v Governors of St Bartholomew's Hospital* [1909] 2 KB 820, CA, and followed in *Strangways-Lesmere v Clayton* [1936] 2 KB 11, [1936] 1 All ER 484, and *Dryden v Surrey County Council and Stewart* [1936] 2 All ER 535; and see also *Evans v Liverpool Corpn* [1906] 1 KB 160; *Foote v Directors of Greenock Hospital* 1912 SC 69; *Reidford v Aberdeen Magistrates* 1933 SC 276; and cf *Davis v LCC* (1914) 30 TLR 275; *Collins v Hertfordshire County Council* [1947] KB 598, [1947] 1 All ER 633 (resident junior house surgeon); *Cassidy v Ministry of Health* [1951] 2 KB 343, [1951] 1 All ER 574, CA (whole-time assistant medical officer; house surgeon). See also *Lindsey County Council v Marshall* [1937] AC 97, [1936] 2 All ER 1076, HL; *Higgins v North West Metropolitan Regional Hospital Board* [1954] 1 All ER 414, [1954] 1 WLR 411; *Selfe v Ilford and District Hospital Management Committee* (1970) 114 Sol Jo 935 (hospital authority liable for failure adequately to guard a suicide risk); *Lybert v Warrington Health Authority* [1996] 7 Med LR 71, 25 BMLR 91, CA. As to claims for indemnity or contribution by a hospital authority against a negligent member of its staff see *Jones v Manchester Corpn* [1952] 2 QB 852, [1952] 2 All ER 125, CA. National health service hospitals are not protected from liability for negligence by the Public Health Act 1875 s 265, or the National Health Service Act 1977 s 125 (as amended), which applies the exemption from liability under the Public Health Act 1875 s 265 to members and officers of strategic health authorities, health authorities, special health authorities, primary care trusts, local health boards, NHS trusts, and NHS foundation trusts in respect of things done under the National Health Service Act 1977, the National Health Service and Community Care Act 1990 and the Health and Social Care (Community Health and

Standards) Act 2003 Pt 1 (ss 1-40) (see HEALTH SERVICES vol 54 (2008) PARAS 82, 656 et seq): see *Bullard v Croydon Hospital Group Management Committee* [1953] 1 QB 511, [1953] 1 All ER 596. As to nurses generally see PARA 691 et seq post. As to the liability of an employer for the acts or omissions of its employees see TORT vol 97 (2010) PARA 710 et seq.

4 *Wilsher v Essex Area Health Authority* [1987] QB 730, [1986] 3 All ER 801, CA; revsd on appeal on different point [1988] AC 1074, [1988] 1 All ER 871, HL.

5 The statement of law is supported by *Roe v Minister of Health* [1954] 2 QB 66, [1954] 2 All ER 131, CA (where the Court of Appeal held that a voluntary hospital would have been responsible for the negligence of a part-time visiting anaesthetist, if any such negligence had been established), and also by the reasoning of Lord Greene MR in *Gold v Essex County Council* [1942] 2 KB 293 at 301, [1942] 2 All ER 237 at 242, CA (the primary question is the scope of the obligation undertaken by the body providing the treatment), and of Denning LJ in *Cassidy v Ministry of Health* [1951] 2 KB 343 at 364, [1951] 1 All ER 574 at 587, CA, which reasoning was adopted in *MacDonald v Glasgow Western Hospitals Board of Management* 1954 SLT 226. Contrast, however, *Hillyer v Governors of St Bartholomew's Hospital* [1909] 2 KB 820, CA, where a voluntary hospital was not liable for the negligence of a consulting surgeon; *Collins v Hertfordshire County Council* [1947] KB 598, [1947] 1 All ER 633, where a local authority hospital was not liable for the negligence of a part-time consultant surgeon; *Gold v Essex County Council* supra at 302 and at 243 per Lord Greene MR, and at 310, 313 and at 248, 250 per Goddard LJ; *Cassidy v Ministry of Health* supra at 351 and at 579 per Somervell LJ. See also *Roe v Minister of Health* supra at 79 and at 135 per Somervell LJ. Moreover, in *MacDonald v Glasgow Western Hospital Board of Management* supra at 235, 238, there is reservation of the question of liability for a visiting consultant who is not part of the hospital's staff.

6 The treatment provided at national health service hospitals is provided pursuant to statutory obligation: see *Razzel v Snowball* [1954] 3 All ER 429, [1954] 1 WLR 1382, CA; *MacDonald v Glasgow Western Hospitals Board of Management* 1954 SLT 226 at 234-235, where, after an exhaustive review of English decisions, the Lord President, Lord Cooper, rejected the view that the duties of hospital boards were solely administrative. As to the duty of the Secretary of State to provide a comprehensive health service see the National Health Service Act 1977 s 1; and HEALTH SERVICES vol 54 (2008) PARA 10 et seq. As to local administration and control of hospitals see PARAS 6-7 ante. See also the National Health Service Act 1977 s 8 (as amended); and HEALTH SERVICES vol 54 (2008) PARA 75 et seq.

7 See the cases cited in note 5 supra.

8 See *Cassidy v Ministry of Health* [1951] 2 KB 343 at 362, [1951] 1 All ER 574 at 586, CA, per Denning LJ.

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## **B. CRIMINAL LIABILITY**

### **206. Manslaughter.**

The kind of negligence which brings criminal consequences in its train has frequently been the subject of consideration in the courts<sup>1</sup>, and, in particular, numerous cases have dealt with negligent medical treatment causing or accelerating<sup>2</sup> death<sup>3</sup>. The test to be applied in cases of manslaughter generally, and of so-called 'medical manslaughter' in particular, is one of gross negligence<sup>4</sup>. To establish gross negligence there must have been a breach of a duty of care<sup>5</sup> towards the victim which caused his death<sup>6</sup>. If so, it is for the members of the jury to decide whether, having regard to the risk of death involved, the conduct of the defendant was so bad in all the circumstances as to amount in their judgment to a criminal act or omission<sup>7</sup>.

A corporation<sup>8</sup> is capable of committing the offence of manslaughter<sup>9</sup>. However, the difficulty of establishing the necessary mens rea means that charges are rarely laid<sup>10</sup>. In general, an employer or principal is not criminally liable for an offence committed by his employee or agent, and there is no presumption that a crime committed by an employee or agent in the course of his duties has been authorised by the employer or principal<sup>11</sup>.

1 See generally CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARAS 99-100.

2 *R v Webb* (1834) 1 Mood & R 405.

3 See CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 100. As to the withdrawal of life-prolonging treatment see PARA 202 ante.

There is, in principle, no distinction in relation to their liability for manslaughter between a qualified or registered medical practitioner and an unqualified or unregistered practitioner; any person who professes to deal with the life or health of others is bound to use competent skill and sufficient attention: *R v Spiller* (1832) 5 C & P 333. See also *R v Webb* (1834) 1 Mood & R 405; *R v Simpson* (1829) 1 Lew CC 172. If a person ventures to prescribe medicines, being ignorant of their use and nature, with fatal results, he will be guilty of manslaughter: see *R v Markuss* (1864) 4 F & F 356 (herbalist); *R v Chamberlain* (1867) 10 Cox CC 486 (herbalist); *R v Webb* supra. As to qualified or registered medical practitioners see PARA 4 ante.

4 See *R v Bateman* (1925) 94 LJB 791, 19 Cr App Rep 8, CCA; *Andrews v DPP* [1937] AC 576, [1937] 2 All ER 552, HL; *R v Adomako* [1995] 1 AC 171, [1994] 3 All ER 79, HL; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARAS 99-100.

5 As to negligence and duties owed to patients see PARA 196 ante.

6 *R v Adomako* [1995] 1 AC 171, [1994] 3 All ER 79, HL.

7 *R v Adomako* [1995] 1 AC 171, [1994] 3 All ER 79, HL.

8 Every NHS trust and primary care trust is a body corporate: see HEALTH SERVICES vol 54 (2008) PARAS 111, 155. As to bodies corporate see COMPANIES; CORPORATIONS.

9 *R v P & O European Ferries (Dover) Ltd* (1991) 93 Cr App Rep 72, [1991] Crim LR 695.

10 As to the criminal capacity of corporations see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 38.

11 As to vicarious liability for criminal offences see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARAS 59-64.

## **UPDATE**

### **206 Manslaughter**

TEXT AND NOTES 8, 9--The common law offence of manslaughter by gross negligence is abolished in its application to corporations, and in any application it has to other organisations to which the Corporate Manslaughter and Corporate Homicide Act 2007 s 1 applies: s 20. As to corporate manslaughter see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 38A.

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## **207. Unlawful operations.**

It is an offence for any person unlawfully to administer or cause to be taken by any woman, whether she is with child or not, any poison or other noxious thing with intent to procure her miscarriage, or unlawfully to use any instrument or other means with that intent<sup>1</sup>.

The performance of an operation or the giving of medical treatment without the patient's consent amounts to a criminal battery<sup>2</sup>.

1 Offences against the Person Act 1861 s 58; Criminal Law Act 1967 s 12(5)(a). See further CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARAS 109-110. This does not apply if done in compliance with the Abortion Act 1967 (see PARA 209 post). As to the position at common law see *R v Bourne* [1939] 1 KB 687, [1938] 3 All ER 615, CCA.

2 See CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARAS 115-117, 147. An apparent consent may be vitiated by fraud: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 116. Consent may not provide a defence in some circumstances: see *R v Brown* [1992] QB 491, [1992] 2 All ER 552, CA. As to consent to treatment see PARA 198 ante.

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## **208. Prohibition of female circumcision.**

A person is guilty of an offence if: (1) he excises, infibulates or otherwise mutilates the whole or any part of a girl's<sup>1</sup> labia majora, labia minora or clitoris<sup>2</sup>; (2) he aids, abets, counsels or procures<sup>3</sup> a girl to excise, infibulate or otherwise mutilate the whole or any part of her own labia majora, labia minora or clitoris<sup>4</sup>; or (3) he aids, abets, counsels or procures a person who is not a United Kingdom national<sup>5</sup> or permanent United Kingdom resident<sup>6</sup> to do a relevant act of female genital mutilation<sup>7</sup> outside the United Kingdom<sup>8</sup>. These provisions extend to any act done outside the United Kingdom by a United Kingdom national or permanent United Kingdom resident<sup>9</sup>, and if an offence under heads (1) to (3) above is committed outside the United Kingdom proceedings may be taken<sup>10</sup>, and the offence may for incidental purposes be treated as having been committed<sup>11</sup>, in any place in England and Wales or Northern Ireland<sup>12</sup>.

A person guilty of any offence under heads (1) to (3) above is liable: (a) on conviction on indictment, to imprisonment for a term not exceeding 14 years or a fine, or both<sup>13</sup>; (b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both<sup>14</sup>. However, no offence is committed: (i) under head (1) above, if it is an approved person who performs a surgical operation on a girl which is necessary for her physical or mental health<sup>15</sup>, or a surgical operation on a girl who is in any stage of labour, or has just given birth, for purposes connected with the labour or birth<sup>16</sup>; (ii) under head (3) above, if the relevant act of female genital mutilation is a surgical operation<sup>17</sup>, and is performed by a person who, in relation to such an operation, is an approved person or exercises functions corresponding to those of an approved person<sup>18</sup>.

1 'Girl' includes woman: Female Genital Mutilation Act 2003 s 6(1), (4).

2 Ibid s 1(1).

3 As to aiding, abetting, counselling and procuring see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 49 et seq.

4 Female Genital Mutilation Act 2003 s 2.

5 A United Kingdom national is an individual who is: (1) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen; (2) a person who under the British Nationality Act 1981 is a British subject; (3) a British protected person within the meaning of that Act: Female Genital Mutilation Act 2003 s 6(2)(a)-(c), (4). As to British nationality and citizenship see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 5 et seq.

6 A permanent United Kingdom resident is an individual who is settled in the United Kingdom (within the meaning of the Immigration Act 1971: see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 83): Female Genital Mutilation Act 2003 s 6(3), (4).

7 An act is 'a relevant act of female genital mutilation' if it is done in relation to a United Kingdom national or permanent United Kingdom resident, and it would, if done by such a person, constitute an offence under ibid s 1 (see the text to notes 1, 2 supra): s 3(2).

8 Ibid s 3(1). For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

9 Ibid s 4(1).

10 Ibid s 4(2)(a).

11 Ibid s 4(2)(b).

12 Ibid s 4(2).

13 Ibid s 5(a). Nothing in the Act affects any criminal liability arising apart from the Act: s 8(5).

14 Ibid s 5(b). See also note 13 supra. The 'statutory maximum', with reference to a fine or penalty on summary conviction for an offence, is the prescribed sum within the meaning of the Magistrates' Courts Act 1980 s 32 (as amended): see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 140. As to the prescribed sum see PARA 8 note 14 ante.

15 Female Genital Mutilation Act 2003 s 1(2)(a). For the purpose of determining whether an operation is necessary for the mental health of a girl, it is immaterial whether she or any other person believes that the operation is required as a matter of custom or ritual: s 1(5). In relation to such an operation, an approved person is a registered medical practitioner: s 1(3)(a). There is no offence committed by a person who performs such a surgical operation outside the United Kingdom, and in relation to such an operation exercises functions corresponding to those of such an approved person: s 1(4). For the meaning of 'registered medical practitioner' see PARA 4 ante.

16 Ibid s 1(2)(b). In relation to such an operation, an approved person is a registered medical practitioner, a registered midwife or a person undergoing a course of training with a view to becoming such a practitioner or midwife: s 1(3)(b). There is no offence committed by a person who performs such a surgical operation outside the United Kingdom, and in relation to such an operation exercises functions corresponding to those of such an approved person: s 1(4). As to registered midwives see PARA 716 et seq post.

17 Ie falling within ibid s 1(2)(a), (b) (see the text to notes 15, 16 supra): s 3(3)(a).

18 Ibid s 3(3)(b).

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## **209. Medical termination of pregnancy.**

No offence is committed under the law relating to abortion<sup>1</sup> when a pregnancy is terminated by a registered medical practitioner or by a nurse carrying out a termination by induction under the instructions of a registered medical practitioner<sup>2</sup>, if two registered medical practitioners are of the opinion<sup>3</sup>, formed in good faith<sup>4</sup> that: (1) the pregnancy has not exceeded its twenty-fourth week and that the continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the pregnant woman or any existing children of her family<sup>5</sup>; or (2) the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman<sup>6</sup>; or (3) the continuance of the pregnancy would involve risk to the life of the pregnant woman, greater than if the pregnancy were terminated<sup>7</sup>; or (4) there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped<sup>8</sup>. No person is under any duty, whether by contract or by any statutory or other legal requirement, to participate<sup>9</sup> in any authorised treatment for the termination of pregnancy to which he has a conscientious objection<sup>10</sup>, but this provision does not affect any duty to participate in treatment which is necessary to save the life or to prevent grave permanent injury to the physical or mental health of a pregnant woman<sup>11</sup>.

Generally<sup>12</sup>, any treatment for the termination of pregnancy must be carried out in a hospital vested in the Secretary of State<sup>13</sup>, or in a hospital vested in a primary care trust, a NHS trust or an NHS foundation trust<sup>14</sup>, or in a place approved for these purposes by the Secretary of State<sup>15</sup>.

The Abortion Act 1967 applies, with modifications, to visiting forces<sup>16</sup> and international military headquarters<sup>17</sup>, so that, if the treatment for termination was carried out in a hospital controlled by the proper authorities of any such body<sup>18</sup> and the pregnant woman had at the time of the treatment a relevant association<sup>19</sup> with that body<sup>20</sup> and the treatment was carried out by a registered medical practitioner or a person who at that time was a member of that body<sup>21</sup> appointed as a medical practitioner for that body by the proper authorities of that body<sup>22</sup>, such registered medical practitioners and hospitals are included in the provisions relating to the medical termination of pregnancy<sup>23</sup>, although the provisions as to notification<sup>24</sup> do not apply<sup>25</sup>.

1 'The law relating to abortion' means the Offences against the Person Act 1861 ss 58, 59, and any rule of law relating to the procurement of abortion: Abortion Act 1967 s 6. For the purposes of the law relating to abortion, anything done with intent to procure a woman's miscarriage (or, in the case of a woman carrying more than one foetus, her miscarriage of any foetus) is unlawfully done unless authorised by s 1 and, in the case of a woman carrying more than one foetus, anything done with intent to procure her miscarriage of any foetus is authorised by s 1 if: (1) the ground for termination of the pregnancy specified in s 1(1)(d) (as added) (see head (4) in the text) applies in relation to any foetus and the thing is done for the purpose of procuring the miscarriage of that foetus; or (2) any of the other grounds for termination of the pregnancy specified in s 1 applies: s 5(2) (amended by the Human Fertilisation and Embryology Act 1990 s 37(5)). No offence under the Infant Life (Preservation) Act 1929 is committed by a registered medical practitioner who terminates a pregnancy in accordance with the Abortion Act 1967: s 5(1) (substituted by the Human Fertilisation and Embryology Act 1990 s 37(4)). The rebuttable presumption contained in the Infant Life (Preservation) Act 1929 s 1(2) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 108) of the viability of a foetus at 28 weeks continues to apply in the case of terminations not covered by the Abortion Act 1967. For offences relating to the unlawful procuring of an abortion see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARAS 109, 111.

Until it is born, a foetus is not recognised as a legal person and is therefore unable to apply to the court for an order preventing a lawful abortion: *Kelly v Kelly* [1997] 2 FLR 828, IH; *C v S* [1988] QB 135, [1987] 1 All ER 1230, CA. See also *Re MB (An Adult: Medical Treatment)* 38 BMLR 175, [1997] 2 FCR 541, CA. A husband has no enforceable legal right to stop his wife having, or a registered medical practitioner performing, a legal abortion:



*Paton v British Pregnancy Advisory Service Trustees* [1979] QB 276, [1978] 2 All ER 987. A father cannot obtain an injunction preventing a lawful abortion on the grounds that there is a threatened criminal act under the Infant Life (Preservation) Act 1929: *C v S* supra. As to the matters to be taken into account in respect of the termination of the pregnancy of a mentally incompetent woman see *D v An NHS Trust (Medical Treatment: Consent: Termination)* [2003] EWHC 2793 (Fam), [2004] 1 FLR 1110. As to the treatment of mentally incompetent patients generally see PARA 200 ante.

2 As to what constitutes termination by a registered medical practitioner, and as to the legality of participation in termination by nurses, see *Royal College of Nursing of the United Kingdom v Department of Health and Social Security* [1981] AC 800, [1981] 1 All ER 545, HL. For the meaning of 'registered medical practitioner' see PARA 4 ante.

3 Any such opinion must be certified either in the prescribed form (see the Abortion Regulations 1991, SI 1991/499, Sch 1 Pt I Certificate A), or in a certificate signed and dated by both practitioners jointly, or in separate certificates signed and dated by each practitioner, stating the full name and address of each practitioner, the full name and address of the pregnant woman, whether or not each practitioner has seen or examined, or seen and examined, the pregnant woman, and that each practitioner is of the opinion formed in good faith that at least one and the same ground mentioned in the Abortion Act 1967 s 1(1)(a)-(d) (see heads (1)-(4) in the text) is fulfilled: Abortion Regulations 1991, SI 1991/499, reg 3(1)(a) (reg 3(1) substituted by SI 2002/887; SI 2002/2879). Any such certificate of an opinion must be given before the commencement of the treatment for the termination of the pregnancy to which it relates, and must be preserved by the practitioner who terminated the pregnancy to which it relates for a period of not less than three years beginning with the date of the termination: Abortion Regulations 1991, SI 1991/499, reg 3(2), (4). A certificate which is no longer to be preserved must be destroyed by the person in whose custody it then is: reg 3(5). Any practitioner who terminates a pregnancy in England must give to the Chief Medical Officer of the Department of Health, or where the pregnancy was terminated in Wales to the Chief Medical Officer for Wales, notice of the termination, and such other information relating to the termination as is specified in Sch 2, and must do so by sending them to him within 14 days of the termination either in a sealed envelope or by an electronic communication transmitted by an electronic communications system used solely for the transfer of confidential information to him: reg 4(1), (2) (amended by SI 2002/887; SI 2002/2879). 'Electronic communication' has the same meaning as in the Electronic Communications Act 2000 s 15 (as amended) (see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 616): Abortion Regulations 1991, SI 1991/499, reg 2.

Any such notice given or information furnished to a Chief Medical Officer must not be disclosed except that disclosure may be made: (1) for the purposes of carrying out their duties, to an authorised officer of the Department of Health or of the National Assembly for Wales, as the case may be, or to the Registrar General or an authorised member of his staff, or to an individual authorised by the Chief Medical Officer who is engaged in setting up, maintaining and supporting a computer system used for the purpose of recording, processing and holding such notice or information (reg 5(a) (amended by SI 2002/887; SI 2002/2879)); or (2) for the purposes of carrying out his duties in relation to offences under the Abortion Act 1967 or the law relating to abortion, to the Director of Public Prosecutions or a member of his staff authorised by him (Abortion Regulations 1991, SI 1991/499, reg 5(b)); or (3) for the purposes of investigating whether an offence has been committed under the Abortion Act 1967 or the law relating to abortion, to a police officer not below the rank of superintendent or a person authorised by him (Abortion Regulations 1991, SI 1991/499, reg 5(c)); or (4) pursuant to a court order, for the purposes of proceedings which have begun (reg 5(d)); or (5) for the purposes of bona fide scientific research (reg 5(e)); or (6) to the practitioner who terminated the pregnancy (reg 5(f)); or (7) to a registered medical practitioner, with the consent in writing of the woman whose pregnancy was terminated (reg 5(g)); or (8) to the president of the General Medical Council or an authorised member of its staff, when requested by the president for the purpose of investigating whether the fitness to practise of the practitioner is impaired (reg 5(h) (amended by SI 2002/3135)); (9) to the woman whose pregnancy was terminated, on her supplying to the Chief Medical Officer written details of her date of birth, the date and place of the termination and a copy of the certificate of registration of her birth certified as a true copy of the original by a solicitor or a registered medical practitioner (reg 5(i) (added by SI 2002/887; SI 2002/2879)). As to the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to the Registrar General see REGISTRATION CONCERNING THE INDIVIDUAL vol 39(2) (Reissue) PARAS 605-608. As to the Director of Public Prosecutions see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARAS 1066, 1079 et seq. As to the president of the General Medical Council see PARA 22 ante. As to the General Medical Council see PARA 13 et seq ante. As to fitness to practise see PARA 138 et seq ante.

The Abortion Regulations 1991, SI 1991/499 (as amended) are made under the Abortion Act 1967 s 2. Any person who wilfully contravenes or wilfully fails to comply with any such regulations is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 2(3) (amended by virtue of the Criminal Justice Act 1982 s 46). As to the standard scale see PARA 185 note 11 ante. Any statutory instrument made under the Abortion Act 1967 s 2 is subject to annulment in pursuance of a resolution of either House of Parliament: s 2(4). As to the annulment of statutory instruments see STATUTES vol 44(1) (Reissue) PARA 1516.

4 The question of good faith is for the jury to decide on the totality of the evidence. Without evidence as to professional practice and the medical probabilities, a verdict against a medical practitioner is often likely to be unsafe, but such evidence does not determine the question: *R v Smith* [1974] QB 354, [1974] 1 All ER 632, CA.

5 Abortion Act 1967 s 1(1)(a) (s 1(1)(a), (b) substituted, and s 1(1)(c), (d) added, by the Human Fertilisation and Embryology Act 1990 s 37(1)). In determining whether the continuance of a pregnancy would involve risk of injury to health under head (1) or head (2) in the text, account may be taken of the pregnant woman's actual or reasonably foreseeable environment: Abortion Act 1967 s 1(2) (amended by the Human Fertilisation and Embryology Act 1990 s 37(2)). See also note 12 *infra*.

6 Abortion Act 1967 s 1(1)(b) (as substituted: see note 5 *supra*). See also notes 5 *supra*, 12 *infra*.

7 *Ibid* s 1(1)(c) (as added: see note 5 *supra*). See also note 12 *infra*.

8 *Ibid* s 1(1)(d) (as added: see note 5 *supra*). See also note 12 *infra*.

9 See *Janaway v Salford Area Health Authority* [1989] AC 537, [1988] 3 All ER 1079, HL (typing a referral for consultation is excluded from 'participating in treatment').

10 Abortion Act 1967 s 4(1). In any legal proceedings, the burden of proof of conscientious objection rests on the person claiming to rely on it: s 4(1). Once a termination of pregnancy is recognised as an option, the doctor invoking the conscientious objection clause should refer the patient to a colleague at once: *Barr v Matthews* (1999) 52 BMLR per Alliott J.

11 Abortion Act 1967 s 4(2).

12 *Ibid* s 1(3) (see the text to notes 13-15 *infra*), and so much of s 1(1) as relates to the opinion of two registered medical practitioners (see the text to notes 3-8 *supra*), do not apply to the termination of a pregnancy by a registered medical practitioner in a case where he is of the opinion, formed in good faith, that the termination is immediately necessary to save the life or to prevent grave permanent injury to the physical or mental health of the pregnant woman: s 1(4). Any such opinion must be certified either in the prescribed form (see the Abortion Regulations 1991, SI 1991/499, Sch 1 Pt II) or in a certificate giving the full name and address of the practitioner and containing the full name and address of the pregnant woman and stating that the practitioner is of the opinion formed in good faith that one of the grounds mentioned in the Abortion Act 1967 s 1(4) is fulfilled: Abortion Regulations 1991, SI 1991/499, reg 3(1)(b) (as substituted: see note 3 *supra*). Any such certificate must be given before the commencement of the treatment for the termination of the pregnancy to which it relates or, if that is not reasonably practicable, not later than 24 hours after such termination: reg 3(3). As to the retention and destruction of such certificates, and the penalty for failing to comply with the certification provisions, see note 3 *supra*. As to good faith see note 4 *supra*.

13 *Ie* for the purposes of his functions under the National Health Service Act 1977: see HEALTH SERVICES vol 54 (2008) PARA 10 *et seq*. As to the Secretary of State see PARA 5 *ante*.

14 As to primary care trusts, NHS trusts and NHS foundation trusts see HEALTH SERVICES vol 54 (2008) PARA 75 *et seq*.

15 Abortion Act s 1(3) (amended by the Health Services Act 1980 Sch 1 para 17; the National Health Service and Community Care Act 1990 s 66(1), Sch 9 para 8; the Health and Social Care (Community Health and Standards) Act 2003 s 34, Sch 4 paras 9, 10; and the Health Act 1999 (Supplementary, Consequential etc Provisions) Order 2000, SI 2000/90, art 3(1), Sch 1 para 6). The power to approve a place includes power, in relation to treatment consisting primarily in the use of such medicines as may be specified in the approval and carried out in such manner as may be so specified, to approve a class of places: Abortion Act 1967 s 1(3A) (added by the Human Fertilisation and Embryology Act 1990 s 37(3)). The functions of the Secretary of State under this provision, so far as exercisable in relation to Wales, have been transferred to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

16 *Ie* within the meaning of the Visiting Forces Act 1952 Pt I (ss 1-12) (see ARMED FORCES): Abortion Act 1967 s 3(2).

17 *Ie* within the meaning of the International Headquarters and Defence Organisations Act 1964 Schedule (see ARMED FORCES): Abortion Act 1967 s 3(2).

18 *Ibid* s 3(1)(a).

19 A woman is treated as having a relevant association at any time with a body to which *ibid* s 3 applies (see the text and notes 16, 17 *supra*) if at that time she had a relevant association within the meaning of the Visiting Forces Act 1952 Pt I (see ARMED FORCES), or she was a member of the headquarters or a dependant of such a member within the meaning of the International Headquarters and Defence Organisations Act 1964 Schedule (see ARMED FORCES): Abortion Act 1967 s 3(2)(a).

20 *Ibid* s 3(1)(b).

21 Any reference to a member of a body to which *ibid* s 3 applies is to be construed: (1) in the case of a force which is a visiting force, as a reference to a member of that force, or of a civilian component of it, within the meaning of the Visiting Forces Act 1952 Pt I (see *ARMED FORCES*) (Abortion Act 1967 s 3(2)(b)(i)); and (2) in the case of a headquarters, as a reference to a member of that headquarters within the meaning of the International Headquarters and Defence Organisations Act 1964 Schedule (see *ARMED FORCES*) (Abortion Act 1967 s 3(2)(b)(ii)).

22 *Ibid* s 3(1)(c).

23 *Ie* the provisions of *ibid* s 1 (as amended): see the text and notes 1-8, 12-15 *supra*.

24 *Ie* under *ibid* s 2: see notes 3, 12 *supra*.

25 *Ibid* s 3(1) (amended by the Health Services Act 1980 ss 1, 2, Sch 1 para 17 (2)).

## **UPDATE**

### **209 Medical termination of pregnancy**

NOTE 3--SI 1991/499 reg 5(a) amended:SI 2008/735 (England). SI 1991/499 regs 2, 4(2), 5(a) amended: SI 2008/1338 (Wales).

TEXT AND NOTE 15--1967 Act s 1(3) further amended: National Health Service (Consequential Provisions) Act 2006 Sch 1 para 30.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(5) THE PRACTICE OF MEDICINE/(iii) Privileges and Duties/210. Eligibility for appointments.

### (iii) Privileges and Duties

#### 210. Eligibility for appointments.

No person who is not fully registered<sup>1</sup> may perform any duties under an appointment<sup>2</sup> held as physician, surgeon or other medical officer<sup>3</sup>: (1) in the naval, military or air service<sup>4</sup>; (2) in any hospital or other place for the reception of persons suffering from mental disorder or in any other hospital, infirmary or dispensary not supported wholly by voluntary contributions<sup>5</sup>; (3) in any prison<sup>6</sup>; (4) in any other public establishment, body or institution<sup>7</sup>; or (5) to any friendly or other society for providing mutual relief in sickness, infirmity or old age<sup>8</sup>. However, a person who is not a Commonwealth citizen<sup>9</sup> may be and act as the resident physician or medical officer of any hospital established exclusively for the relief of foreigners in sickness, so long as he<sup>10</sup> has obtained from a foreign university a degree or diploma of doctor in medicine and has passed the regular examinations entitling him to practise medicine in his own country<sup>11</sup>, and is engaged in no medical practice except as such a resident physician or medical officer<sup>12</sup>.

Many other appointments are reserved to fully registered medical practitioners by statute<sup>13</sup>. In particular, only fully registered medical practitioners may be entered on the lists of practitioners undertaking to provide primary medical services in connection with the national health service<sup>14</sup>.

1 For the meaning of 'fully registered person' see PARA 3 ante.

2 None of the suspension events listed below terminates any appointment, but the person suspended must not perform the duties of such an appointment during the suspension: Medical Act 1983 s 47(3) (s 47(3) substituted, and s 47(4) added, by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 2, 15(2)). The suspension events are: (1) the suspension of registration of a person by a fitness to practise panel following a finding of impairment of fitness to practise by reason of deficient professional performance or adverse physical or mental health under the Medical Act 1983 s 35D (as added) (see PARAS 144-145 ante), or under rules made by virtue of Sch 4 para 5A(3) (as substituted) (see PARA 183 ante) (s 47(4)(a) (as so added)); (2) an order for immediate suspension by a fitness to practise panel under s 38(1) (see PARA 146 ante) (s 47(4)(b) (as so added)); or (3) an interim suspension order by an interim orders panel or a fitness to practise panel under s 41A (as added) (see PARA 148 ante) or such an order as extended under s 41A (as added) (s 47(4)(c) (as so added)). As to the constitution of fitness to practise panels see PARAS 138-140 ante. As to the functions of fitness to practise panels see PARA 144 et seq ante. As to fitness to practise panels and interim orders panels as statutory committees see PARA 26 ante. As to the constitution of interim orders panels see PARAS 138-140 ante.

The purpose behind s 47(3) is to preserve the position of the doctor in the knowledge that an order would be only temporary and it is therefore unlawful for an NHS trust to consider his dismissal from employment on the ground of the suspension alone: *R (on the application of George) v General Medical Council* [2003] EWHC 124 (Admin), [2003] All ER (D) 5 (May). As to unfair dismissal see EMPLOYMENT vol 40 (2009) PARA 719 et seq.

3 Medical Act 1983 s 47(1). As from a day to be appointed, s 47(1) is amended so as to provide that, subject to s 47(2) (see the text to notes 9-12 infra), only a person who is fully registered and who holds a licence to practise may hold an appointment as physician, surgeon or other medical officer: s 47(1) (prospectively amended by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 1(2), (3), 2, 12(5)(a)). At the date at which this volume states the law no such day had been appointed. For the meaning of 'licence to practise' see PARA 130 note 3 ante.

4 Medical Act 1983 s 47(1)(a). See ARMED FORCES.

5 Ibid s 47(1)(b). See MENTAL HEALTH vol 30(2) (Reissue) PARA 535; HEALTH SERVICES.

6 Ibid s 47(1)(c). See PRISONS.

7 Ibid s 47(1)(d).

8 Ibid s 47(1). See FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 2099.

9 As to Commonwealth citizens see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 11.

10 Medical Act 1983 s 47(2).

11 Ibid s 47(2)(a).

12 Ibid s 47(2)(b).

13 See eg the Health and Safety at Work etc Act 1974 s 56(2) (employment medical advisers); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 386. See also the Family Law Reform Act 1969 ss 20-22 (as amended) (the making of scientific tests in family proceedings); and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 113 et seq.

14 See the National Health Service Act 1977 s 28X (as added); the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, Pt II (regs 21-27); the National Health Service (Performers Lists) (Wales) Regulations 2004, SI 2004/1020, Pt 3 (regs 21-27); and HEALTH SERVICES vol 54 (2008) PARA 263 et seq.

## **UPDATE**

### **210 Eligibility for appointments**

NOTE 3--Appointed day is 16 November 2009: London Gazette, 21 August 2009.

NOTE 14--SI 2004/1020 Pt 3 amended: SI 2006/945, SI 2010/729.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(5) THE PRACTICE OF MEDICINE/(iii) Privileges and Duties/211. Giving of certificates.

## **211. Giving of certificates.**

A certificate required by any enactment<sup>1</sup> from any physician, surgeon, licentiate in medicine and surgery or other medical practitioner is not valid unless the person signing it is fully registered<sup>2</sup>.

1 This provision applies to any enactment, whether passed before or after 26 October 1983 (which was the date of commencement of the Medical Act 1983: see s 57(2)): s 48. For the meaning of 'enactment' see PARA 4 note 1 ante.

2 Ibid s 48. As from a day to be appointed, s 48 is amended so as to provide that a certificate required by any enactment, whether passed before or after the commencement of the Medical Act 1983, from any physician, surgeon, licentiate in medicine and surgery or other medical practitioner is not be valid unless the person signing it is fully registered and holds a licence to practise: s 48 (prospectively amended by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 1(2), (3), 2, 12(6)(a)). At the date at which this volume states the law no such day had been appointed. For the meaning of 'fully registered person' see PARA 3 ante. For the meaning of 'licence to practise' see PARA 130 note 3 ante. As to death certificates see PARA 212 post.

### **UPDATE**

## **211 Giving of certificates**

NOTE 2--Appointed day is 16 November 2009: London Gazette, 21 August 2009.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(5) THE PRACTICE OF MEDICINE/(iii) Privileges and Duties/212. Certificates of cause of death; post mortem examinations.

## **212. Certificates of cause of death; post mortem examinations.**

In the case of the death of a person who has been attended during his last illness by a registered medical practitioner<sup>1</sup>, that practitioner must sign a certificate in the prescribed form<sup>2</sup> stating to the best of his knowledge and belief the cause of death, and must forthwith deliver the certificate to the registrar of births and deaths for the sub-district in which the death took place<sup>3</sup>. On signing a certificate of the cause of death, the medical practitioner must give to some person who is required or qualified to give information concerning the death written notice in the prescribed form<sup>4</sup> of the signing of the certificate<sup>5</sup>.

No post mortem examination<sup>6</sup> may be carried out otherwise than by or in accordance with the instructions of a fully registered medical practitioner, and no post mortem examination which is not directed or required by the coroner or any other competent legal authority<sup>7</sup> may be carried out without the authority of the person lawfully in possession of the body<sup>8</sup>.

1 For the meaning of 'registered medical practitioner' see PARA 4 ante.

2 See the Registration of Births and Deaths Regulations 1987, SI 1987/2088, reg 40(1)(a), Sch 2 Form 14 (except for a child who dies within 28 days of birth), Sch 2 Form 15 (for such a child).

3 Births and Deaths Registration Act 1953 s 22(1). The form may be sent by post: s 40. As to certificates of receipt of the notice of death see s 24(1). See further REGISTRATION CONCERNING THE INDIVIDUAL vol 39(2) (Reissue) PARA 561 et seq. See also CORONERS vol 9(2) (2006 Reissue) PARA 951. As to references to service by post see PARA 20 note 22 ante.

4 See the Registration of Births and Deaths Regulations 1987, SI 1987/2088, reg 40(1)(b), Sch 2 Form 16.

5 Births and Deaths Registration Act 1953 ss 22(2), 41. Except where an inquest is held touching the death of the deceased person, the person to whom the notice is given must deliver the notice to the registrar: s 22(2) (amended by the Coroners Act 1980 s 1, Sch 2). As to the persons who are so required or qualified to give information see the Births and Deaths Registration Act 1953 ss 16(2), 17(2); and REGISTRATION CONCERNING THE INDIVIDUAL vol 39(2) (Reissue) PARAS 570-571.

6 As to post mortem examinations see CORONERS vol 9(2) (2006 Reissue) PARA 939.

7 The provisions of the Human Tissue Act 1961 s 1(2), (5)-(7) (see PARA 225 post) apply, with the necessary modifications, with respect to the giving of this authority: s 2(2). As from a day to be appointed, the Human Tissue Act 1961 is repealed by the Human Tissue Act 2004 s 57, Sch 7. At the date at which this volume states the law no such day had been appointed. As to the new regime under the Human Tissue Act 2004 see PARA 233 et seq post.

8 Human Tissue Act 1961 s 2(2) (prospectively repealed: see note 7 supra). As from a day to be appointed, the Human Tissue Act 2004 provides that where a person knows, or has reason to believe, that the body of a deceased person, or relevant material which has come from the body of a deceased person, is, or may be, required for purposes of functions of a coroner, he must not act in relation to the body, or material, except with the consent of the coroner: s 11(2) (not yet in force). At the date at which this volume states the law no such day had been appointed. See further CORONERS vol 9(2) (2006 Reissue) PARA 973.

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### **213. Miscellaneous duties.**

A medical practitioner has a variety of other statutory duties, considered elsewhere in this work, which include duties in respect of: the notification of infectious diseases or food poisoning<sup>1</sup>; the notification of births<sup>2</sup> and still-births<sup>3</sup>; the making of post mortem examinations at the request of a coroner<sup>4</sup>; mentally disordered persons<sup>5</sup>; the provision of medical services in schools<sup>6</sup>; the provision of the Employment Medical Advisory Service<sup>7</sup>; and the medical examination of immigrants<sup>8</sup>.

1 See the Public Health (Control of Disease) Act 1984 s 11 (as amended); and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARAS 893, 894.

2 See the National Health Service Act 1977 s 124(4), (5) (as amended); and REGISTRATION CONCERNING THE INDIVIDUAL vol 39(2) (Reissue) PARAS 545-546.

3 See the Births and Deaths Registration Act 1953 s 11(1A) (as added); and REGISTRATION CONCERNING THE INDIVIDUAL vol 39(2) (Reissue) PARA 550.

4 See CORONERS vol 9(2) (2006 Reissue) PARA 968.

5 These include duties relating to recommending the admission of patients for assessment (see the Mental Health Act 1983 ss 2(3), 4(3), 12 (as amended)) or treatment (see ss 3(3), 12), visiting and examining patients (see s 24 (as amended)), and advising criminal courts as to hospital orders and guardianship orders (see ss 37, 54 (both as amended)). See further MENTAL HEALTH vol 30(2) (Reissue) PARA 486 et seq.

6 See EDUCATION vol 15(1) (2006 Reissue) PARAS 553-554.

7 See the Health and Safety at Work etc Act 1974 ss 55, 56 (both as amended); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 384 et seq.

8 See BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 149.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(5) THE PRACTICE OF MEDICINE/(iii) Privileges and Duties/214. Obligation to give evidence.

## 214. Obligation to give evidence.

The relationship between a medical practitioner and his patient does not excuse the practitioner, whatever medical etiquette may require, from the obligation, if directed to do so, to give evidence in a court of law<sup>1</sup> or to disclose records or other documents in the course of legal proceedings<sup>2</sup>. He is in the same position as any other person who is not specially privileged in this respect by the law. He may be summoned to give evidence in civil or criminal causes, and may be liable to be punished for contempt of court if he neglects to attend<sup>3</sup>.

In civil cases, a judge has no discretion on grounds of confidentiality alone to direct a doctor that he need not disclose information which came to him through his professional relationship with a patient. Where, however, such disclosure would be in breach of some ethical or social value involving the public interest, the court has a discretion to uphold a refusal to disclose relevant evidence if it considers that on balance the public interest is better served by excluding such evidence<sup>4</sup>. A doctor may therefore be required to disclose on oath information which came to him through his professional relationship with a patient, and he may be committed for contempt of court if he refuses to answer<sup>5</sup>.

Similarly a practitioner's duty of confidentiality may be overridden by the public interest, for example in keeping the authority responsible for the patient's treatment fully informed about his condition<sup>6</sup>, or in the interests of child protection<sup>7</sup>.

1 *Duchess of Kingston's Case* (1776) 20 State Tr 355 at 537; *Wilson v Rastall* (1792) 4 Term Rep 753 at 760 per Buller J; *R v Gibbons* (1823) 1 C & P 97; *Broad v Pitt* (1828) 3 C & P 518 at 519 per Best CJ; *Greenough v Gaskell* (1833) 1 My & K 98 at 103 per Lord Brougham; *Wheeler v Le Marchant* (1881) 17 ChD 675 at 681, CA, per Jessel MR; *A-G v Mulholland* [1963] 2 QB 477 at 489-490, [1963] 1 All ER 767 at 771, CA, per Lord Denning MR; *Nuttall v Nuttall and Twyman* (1964) 108 Sol Jo 605; *Parry-Jones v Law Society* [1969] 1 Ch 1 at 9, [1968] 1 All ER 177 at 180, CA, per Diplock LJ; *Hunter v Mann* [1974] QB 767, [1974] 2 All ER 414, DC; *D v National Society for the Prevention of Cruelty to Children* [1978] AC 171, [1977] 1 All ER 589, HL. See further CIVIL PROCEDURE vol 11 (2009) PARA 972; CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1479. As to giving evidence at inquests see CORONERS vol 9(2) (2006 Reissue) PARA 1014. The evidence of a doctor giving medical testimony at a criminal trial should be treated, as regards admissibility and other matters of that kind, like that of any other independent witness; and, although a doctor may be regarded as giving independent expert evidence to assist the court, the jury should not be directed that his evidence ought, therefore, to be accepted in the absence of reasons for rejecting it: *R v Lanfear* [1968] 2 QB 77, [1968] 1 All ER 683, CA. A doctor acting within his professional capacity and carrying out his professional duty is a person who may be required to give evidence as to the identity of a driver pursuant to the Road Traffic Act 1988 s 172(2)-(4) (as substituted and amended), on pain of criminal penalties under s 172(3) (as substituted) if he refuses: *Hunter v Mann* supra; and see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 1026. For the meaning of 'doctor' see PARA 4 ante.

2 A court exercising its discretion to order a hospital or medical practitioner, not a party to a personal injuries claim, to disclose and produce documents in the High Court or the county court pursuant to the Supreme Court Act 1981 s 34(2) (as amended) or the County Courts Act 1984 s 53(2) (as amended), or before the commencement of such a claim pursuant to the Supreme Court Act 1981 s 33(2) (as amended) or the County Courts Act 1984 s 52(2) (as amended), must order the documents to be produced to the applicant himself: *McIvor v Southern Health and Social Services Board* [1978] 2 All ER 625, [1978] 1 WLR 757, HL (overruling *Dunning v Board of Governors of the United Liverpool Hospitals* [1973] 2 All ER 454, [1973] 1 WLR 586, CA; *Davidson v Lloyd Aircraft Services Ltd* [1974] 3 All ER 1, [1974] 1 WLR 1042, CA; *Deistung v South Western Metropolitan Regional Hospital Board* [1975] 1 All ER 573, [1975] 1 WLR 213, CA); and see CIVIL PROCEDURE vol 12 (2009) PARAS 111 et seq, 550.

3 See CONTEMPT OF COURT vol 9(1) (Reissue) PARA 476.

4 The relevant law is now authoritatively stated in *D v National Society for the Prevention of Cruelty to Children* [1978] AC 171, [1977] 1 All ER 589, HL, and all earlier decisions and dicta must be read in the light of that case. The House of Lords rejected the contention made in earlier cases (eg *A-G v Mulholland* [1963] 2 QB 477 at 492, [1963] 1 All ER 767 at 773, CA, per Donovan LJ) that a court has a discretion to exclude such evidence in appropriate cases on grounds of confidentiality alone. See also *W v Egdell* [1990] Ch 359, [1990] 1 All ER 835, CA (there is a public interest in protecting the public against possible violence), applying *X v Y* [1988] 2 All ER 648 and *A-G v Guardian Newspapers Ltd (No 2)* [1990] 1 AC 109, [1988] 3 All ER 545, HL; *R v Crozier* (1990) 8 BMLR 128, 12 Cr App Rep (S) 206, CA (public interest overrides psychiatrist's duty of confidence); *Re C (A Minor)* [1991] FCR 553, CA (doctor's evidence relating to the condition of the mother in adoption proceedings); *Re M (A Minor)* (1992) 136 Sol Jo LB 253, CA (evidence given in wardship proceedings (including medical reports) could be ordered to be disclosed in other legal proceedings where the public interest in confidentiality was outweighed by the public interest in the administration of justice and the interests of the child); *R v Central Criminal Court, ex p Brown* (1992) Times, 7 September, DC (in a murder inquiry, a judge does not have power under the Police and Criminal Evidence Act 1984 s 9, Sch 1 to make a production order relating to a medical report from the administrator of a hospital to the police). See further CIVIL PROCEDURE vol 11 (2009) PARA 576.

5 See CONTEMPT OF COURT vol 9(1) (Reissue) PARA 407. See also *Garner v Garner* (1920) 36 TLR 196; *Kitson v Playfair* (1896) Times, 28 March; *A B v C D* (1904) 7 F 72, Ct of Sess; *C v C* [1946] 1 All ER 562; *Nuttall v Nuttall and Twyman* (1964) 108 Sol Jo 605. The cases cited in this note were decided before *D v National Society for the Prevention of Cruelty to Children* [1978] AC 171, [1977] 1 All ER 589, HL (see note 4 supra), and should be read in the light of the speeches in that case.

6 *W v Egdell* [1990] Ch 359, [1989] 1 All ER 1089, CA. See also note 4 supra.

7 *A v General Medical Council* [2004] EWHC 880 (Admin), [2004] All ER (D) 246 (Apr).

## UPDATE

### 214 Obligation to give evidence

NOTE 2--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(5) THE PRACTICE OF MEDICINE/(iv) Medical Reports and Records/215. Access to medical reports.

#### **(iv) Medical Reports and Records**

##### **215. Access to medical reports.**

A person may have access to any medical report<sup>1</sup> relating to him which is to be, or has been, supplied by a medical practitioner<sup>2</sup> for employment<sup>3</sup> or insurance<sup>4</sup> purposes<sup>5</sup>. A person may not apply to a medical practitioner for a medical report to be supplied to him for employment or insurance purposes unless he has notified the individual to whom the report relates of his intention to make the application<sup>6</sup> and the individual has notified the applicant that he consents to the making of the application<sup>7</sup>. Upon giving his consent, the person to whom the report relates is entitled to state that he wishes to have access to the report<sup>8</sup> before it is supplied to the applicant, whereupon the applicant must notify the medical practitioner of that fact and notify the person to whom the report relates of the making of the application<sup>9</sup>. Where a medical practitioner has been so notified, he must not supply the report to the applicant unless either the person to whom it relates has been given access to it or a period of 21 days beginning with the date of the making of the application has elapsed without the medical practitioner having received any communication from the person to whom the report relates concerning arrangements for him to have access to it<sup>10</sup>. Where such access is given, the report must not be supplied to the applicant unless the medical practitioner has been notified of consent to its being supplied by the person to whom it relates<sup>11</sup>, who is entitled to request the amendment of any part of the report which he considers to be incorrect or misleading<sup>12</sup>. A medical practitioner who has supplied a medical report for employment or insurance purposes must retain a copy for at least six months from the date on which it was supplied<sup>13</sup> and must give access to such a copy to the person to whom it relates during that period if so requested<sup>14</sup>. A medical practitioner is exempt in certain circumstances<sup>15</sup> from giving access to a medical report, or any part of it, to the person to whom it relates<sup>16</sup>. If a county court is satisfied on the application of an individual that any person, in connection with a medical report relating to that individual, has failed or is likely to fail to comply with any of the requirements of the Access to Medical Reports Act 1988, the court may order that person to comply with that requirement<sup>17</sup>.

1     I.e. a report relating to the physical or mental health of an individual prepared by a medical practitioner who is or has been responsible for the clinical care of the individual: Access to Medical Reports Act 1988 s 2(1).

2     I.e. a person registered under the Medical Act 1983: Access to Medical Reports Act 1988 s 2(1). See PARAS 3-4 ante.

3     I.e. purposes, in relation to any individual, of any person by whom he is or has been, or is seeking to be, employed (whether under a contract of service or otherwise): *ibid* s 2(1).

4     'Insurance purposes', in a case of any individual who has entered into, or is seeking to enter into, a contract of insurance with an insurer, means the purposes of that insurer in relation to that individual; and 'insurer' means: (1) a person who has permission under the Financial Services and Markets Act 2000 Pt IV (ss 40-55) (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 100) to effect or carry out contracts of insurance; (2) an EEA firm of the kind mentioned in Sch 3 para 5(d), which has permission under Sch 3 para 15 (as a result of qualifying for authorisation under Sch 3 para 12) (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 315) to effect or carry out relevant contracts of insurance: Access to Medical Reports Act 1988 s 2(1) (amended by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order SI 2001/3649, art 311(1), (2)). The definitions of 'insurance purposes' and 'insurer' must be read with the Financial Services and Markets Act 2000 s 22, any relevant order made thereunder, and Sch 2: Access to Medical Reports Act 1988 s 2(1A) (added by the Financial Services and Markets Act 2000 (Consequential

Amendments and Repeals) Order SI 2001/3649, art 311(1), (3)); and see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 84.

5 Access to Medical Reports Act 1988 s 1. Any reference to the supply of a medical report for employment or insurance purposes is to be construed: (1) as a reference to the supply of such a report for employment or insurance purposes which are purposes of the person who is seeking to be supplied with it; or (2) in the case of a report that has already been supplied, as a reference to the supply of such a report for employment or insurance purposes which, at the time of its being supplied, were purposes of the person to whom it was supplied: s 2(2).

6 Ibid s 3(1)(a). Notification given by the applicant must inform the individual of his right to withhold his consent to the making of the application and of the rights under ss 4(1)-(3), 5(1), (2), 6(2) (see notes 8-12, 14 infra): s 3(2).

7 Ibid s 3(1)(b). All notifications given under the Act must be given in writing and may be given by post: s 9. As to references to service by post see PARA 20 note 22 ante.

8 References in ibid ss 4, 5 (see the text to note 11 infra) to giving an individual access to a medical report are references to making the report, or a copy of it, available for his inspection or supplying him with a copy of it; the practitioner may charge a reasonable fee to cover the costs of supplying such a copy: s 4(4).

9 Ibid s 4(1). Each such notification must contain a statement of the effect of s 4(2) (see the text to note 10 infra): s 4(1). See also note 7 supra.

10 Ibid s 4(2). See also note 8 supra. This also applies where a medical practitioner receives an application for a medical report to be supplied without being notified under s 4(1), but before supplying the report receives a notification from the person to whom it relates that he wishes to have access to the report before it is supplied: s 4(3).

11 Ibid s 5(1). See also notes 7, 8 supra.

12 Ibid s 5(2). Any such request must be made in writing: s 5(3). For the meaning of 'writing' see PARA 20 note 22 ante. If the medical practitioner is to any extent prepared to accede to such a request, he must amend the report accordingly: s 5(2)(a). If the medical practitioner is not to any extent prepared to accede to such a request, the person to whom the report relates may require him to attach to the report a statement of that person's views in respect of any part of the report which the practitioner is declining to amend: s 5(2)(b).

13 Ibid s 6(1).

14 See ibid s 6(2). The reference to giving an individual access to a medical report is a reference to making a copy of the report available for his inspection or supplying him with a copy of it; the practitioner may charge a reasonable fee to cover the costs of supplying such a copy: see s 6(3).

15 Ie where: (1) disclosure would in the opinion of the practitioner be likely to cause serious harm to the physical or mental health of the person to whom it relates or others or would indicate the intentions of the practitioner in respect of that person; or (2) disclosure would be likely to reveal information about another person, or to reveal the identity of another person who has supplied information to the practitioner about the person to whom the report relates, unless that other person has consented or that person is a health professional who has been involved in the care of the person to whom the report relates and the information relates to or has been provided by the professional in that capacity: see ibid s 7(1), (2). For these purposes, 'health professional' has the same meaning as in the Data Protection Act 1998 (see CONFIDENCE AND DATA PROTECTION vol 8(1) (2003 Reissue) PARA 450): Access to Medical Reports Act 1988 s 2(1) (definition amended by the Data Protection Act 1998 s 74(1), Sch 15 para 8). As to the procedure to be followed by the medical practitioner where exemptions apply to the whole, or any part, of a report see the Access to Medical Reports Act 1988 s 7(3), (4).

16 Ibid s 7(1), (2).

17 Ibid s 8. As to county courts see COURTS.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(5) THE PRACTICE OF MEDICINE/(iv) Medical Reports and Records/216. Access to health records.

## **216. Access to health records.**

An individual's right of access to his medical records is governed by the Data Protection Act 1998, which is dealt with elsewhere in this work<sup>1</sup>.

The Access to Health Records Act 1990 provides that, in the case of a patient<sup>2</sup> who has died, an application<sup>3</sup> for access to a health record<sup>4</sup>, or to any part of it, may be made to the holder<sup>5</sup> of the record by the personal representative of the patient, and by any person who may have a claim arising out of his death<sup>6</sup>. Access must be given within 21 days of the application in respect of records none of which was made within the previous 40 days, or 40 days in any other case<sup>7</sup>. Access may be given by allowing inspection of the record or by provision of an extract of the parts of it which are not excluded from disclosure<sup>8</sup>, and, if the applicant so requires, by supplying him with a copy of the record or extract<sup>9</sup>. Where information in the record or extract is expressed in terms which are unintelligible without explanation, an explanation of terms must be supplied<sup>10</sup>. However, access must not be given if the record includes a note, made at the patient's request, that he did not wish access to be given on such an application<sup>11</sup>.

Access must not be given to any part of a health record made before 1 November 1991<sup>12</sup>, but information recorded before that date must be disclosed if it is necessary for making intelligible any part of the record to which access must be given<sup>13</sup>. Where any part of a health record, in the opinion of the holder of the record, would disclose information likely to cause serious harm to the physical or mental health of any individual<sup>14</sup>, or information relating to or provided by an individual, other than the patient, who could be identified from the information, access must not be given to it<sup>15</sup>. Access must not be given to any part of a health record which, in the opinion of the holder of the record, would disclose information provided by the patient in the expectation that it would not be disclosed to the applicant<sup>16</sup>, or information obtained as a result of any examination or investigation to which the patient consented in the expectation that the information would not be so disclosed<sup>17</sup>. The Secretary of State<sup>18</sup> may by regulations<sup>19</sup> provide that, in such circumstances as may be prescribed by the regulations, access must not be given to any part of a health record which satisfies such conditions as may be so prescribed<sup>20</sup>.

Where a person considers that any information contained in a health record to which he has been given access, or any part of it, is inaccurate<sup>21</sup>, he may apply to the holder of the record for the necessary correction to be made<sup>22</sup>.

Any term or condition of a contract is void in so far as it purports to require an individual to supply any other person with a copy of a health record, or an extract from it, to which he has been given access<sup>23</sup>.

An application may be made to the High Court or a county court for an order requiring the holder of a health record to comply with any requirement of the Access to Health Records Act 1990 with which he has failed to comply<sup>24</sup>. For the purpose of determining whether an applicant is entitled to be given access to a health record, the court may require the record or part of it to be made available for its own inspection but, pending determination of that question in the applicant's favour, it must not require the record or part to be disclosed to the applicant or his representative<sup>25</sup>.

1 See CONFIDENCE AND DATA PROTECTION vol 8(1) (2003 Reissue) PARA 524 et seq.

2 'Patient' means the individual in connection with whose care the record has been made: Access to Health Records Act 1990 s 1(3).

3 An application must be made in writing: *ibid* s 11. For the meaning of 'writing' see PARA 20 note 22 ante.

4 A 'health record' is a record which consists of information relating to the physical or mental health of an individual who can be identified from that information or from that and other information in the possession of the holder of the record (see note 5 *infra*), and has been made by or on behalf of a health professional in connection with the care of that individual: *ibid* s 1(1) (amended by the Data Protection Act 1998 s 74(2), Sch 16 Pt I). 'Information' includes any expression of opinion about the patient; and 'care' includes examination, investigation, diagnosis and treatment: Access to Health Records Act 1990 s 11. For these purposes, 'health professional' has the same meaning as in the Data Protection Act 1998 (see CONFIDENCE AND DATA PROTECTION vol 8(1) (2003 Reissue) PARA 450): Access to Health Records Act 1990 s 2 (substituted by the Data Protection Act 1998 s 74(1), Sch 15 para 11).

5 The holder of a health record is: (1) in the case of a record made by a health professional performing primary medical services under a general medical services contract made with a primary care trust or local health board, the person or body who entered into the contract with the trust or board (or, in a case where more than one person so entered into the contract, any such person) (Access to Health Records Act 1990 s 1(2) (a) (s 1(2)(a) substituted, s 1(2)(aa) added, and s 1(2)(b) amended, by the Health and Social Care (Community Health and Standards) Act 2003 s 184, Sch 11 para 57)); (2) in the case of a record made by a health professional performing such services in accordance with arrangements under the National Health Service Act 1977 s 28C (as added) with a primary care trust, strategic health authority or local health board, the person or body which made the arrangements with the trust, authority or board (or, in a case where more than one person so made the arrangements, any such person) (Access to Health Records Act 1990 s 1(2)(aa) (as so added)); (3) in the case of a record made by a health professional for purposes connected with the provision of health services by a health service body (and not falling within head (2) *supra*), the health service body by which or on whose behalf the record is held (s 1(2)(b) (as so amended)); (4) in any other case, the health professional by whom or on whose behalf the record is held (s 1(2)(c)).

'General medical services contract' means a contract under the National Health Service Act 1977 s 28Q (as added); 'primary care trust' means a primary care trust established under the National Health Service Act 1977 s 16A (as added); 'strategic health authority' means a strategic health authority established under s 8; 'health service body' means: (a) a strategic health authority, health authority or special health authority, special health authority or primary care trust; (b) an NHS foundation trust; 'health authority' means a health authority established under s 8; 'special health authority' means a special health authority established under s 11; and 'make', in relation to such a record, includes compile: Access to Health Records Act 1990 s 11 (amended by the Health Act 1999 (Supplementary, Consequential etc Provisions) Order 2000, SI 2000/90, arts 2(1), 3(1), Sch 1 para 25(a), (b); the National Health Service Reform and Health Care Professions Act 2002 (Supplementary, Consequential etc Provisions) Order 2002, SI 2002/2469, reg 4, Sch 1 Pt 1 para 17(a), (b); and the Health and Social Care (Community Health and Standards) Act 2003 ss 34, 184, 196, Sch 4 paras 87, 88, Sch 11 para 57(1), (5)(a), (6), Sch 14 Pt 1). See HEALTH SERVICES.

6 Access to Health Records Act 1990 s 3(1)(f). As to personal representatives see EXECUTORS AND ADMINISTRATORS. As to testate succession see WILLS; and as to intestate succession see EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARA 583 et seq.

7 *Ibid* s 3(2), (5). Where an application does not contain sufficient information to enable the holder of the record to identify the patient or to satisfy himself that the applicant is entitled to make the application, and, within the period of 14 days beginning with the date of the application, the holder of the record requests the applicant to furnish him with such further information as he may reasonably require for that purpose, then s 3(5) has effect as if for any reference to that date there were substituted a reference to the date on which that further information is so furnished: s 3(6) (amended by the Data Protection Act 1998 s 74(2), Sch 16 Pt I). Payment of a fee may be required for giving access, but only where no part of the record was made within the 40 days preceding the application; and the amount must not exceed such maximum as may be prescribed for these purposes by regulations under the Data Protection Act 1998 s 7 (see CONFIDENCE AND DATA PROTECTION vol 8(1) (2003 Reissue) PARA 525): Access to Health Records Act 1990 s 3(4)(a) (amended by the Data Protection Act 1998 s 74(1), Sch 15 para 12). As to the regulations made see the Data Protection (Subject Access) (Fees and Miscellaneous Provisions) Regulations 2000, SI 2000/191.

8 Access to Health Records Act 1990 s 3(2)(a), (b). As to the total or partial exclusion of the right of access see ss 4, 5; and the text and notes 11-20 *infra*.

9 *Ibid* s 3(2)(c). The cost of making the copy and, if applicable, of posting it may be charged: see s 3(4)(b).

10 *Ibid* s 3(3).

11 *Ibid* s 4(3). Similarly, access must not be given to any part of the record which, in the opinion of the holder of the record, would disclose information which is not relevant to any claim which may arise out of the

patient's death: s 5(4). A health service body must take advice from the appropriate health professional before it decides whether it is satisfied as to any matter for the purposes of the Act, or forms an opinion as to any matter for those purposes: s 7(1) (amended by the Health Authorities Act 1995 s 5(1), Sch 3). 'The appropriate health professional', in relation to a health service body means, where one or more medical or dental practitioners are available who, for purposes connected with the provision of health services by the body, have been responsible for the clinical care of the patient, that practitioner or, as the case may be, such one of those practitioners as was most recently so responsible; and where no such practitioner is available, a health professional who has the necessary experience and qualifications to advise the body on the matter in question: see the Access to Health Records Act 1990 s 7(2)(b), (c) (s 7(2) amended by the Health and Social Care (Community Health and Standards) Act 2003 ss 184, 196, Sch 11 para 57(1), (4)(a), (6), Sch 14 Pt 4).

12 le the commencement of the Access to Health Records Act 1990 (see s 12(2)): s 5(1)(b).

13 Ibid s 5(2).

14 Ibid s 5(1)(a)(i) (amended by the Data Protection Act 1998 s 74(2), Sch 16 Pt I). See also note 11 supra.

15 Access to Health Records Act 1990 s 5(1)(a)(ii). However, this provision does not apply where the individual concerned has consented to the application, or where that individual is a health professional who has been involved in the care of the patient: s 5(2)(a), (b).

16 Ibid s 5(3)(a) (s 5(3) amended by the Data Protection Act 1998 s 74(1), Sch 15 para 13). See also note 11 supra.

17 Access to Health Records Act 1990 s 5(3)(b) (as amended: see note 16 supra). See also note 11 supra.

18 As to the Secretary of State see PARA 5 ante. In so far as exercisable in relation to Wales, these functions of the Secretary of State have been transferred to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1. As to the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

19 Any regulations made under the Access to Health Records Act 1990 may make different provision for different cases or classes of cases including, in particular, different provision for different health records or classes of health records: s 10(1). Any power to make such regulations is exercisable by statutory instrument and any such statutory instrument is subject to annulment in pursuance of a resolution of either House of Parliament: s 10(2), (3) (amended by the Data Protection Act 1998 s 74(2), Sch 16 Pt I). As to the annulment of statutory instruments see STATUTES vol 44(1) (Reissue) PARA 1516.

20 Access to Health Records Act 1990 s 5(5). Access must not be given to any part of a health record which would disclose information showing that an identifiable individual was, or may have been, born in consequence of treatment services within the meaning of the Human Fertilisation and Embryology Act 1990 (see PARA 278 note 14 post): Access to Health Records (Control of Access) Regulations 1993, SI 1993/746, reg 2.

21 'Inaccurate' means incorrect, misleading or incomplete: Access to Health Records Act 1990 s 6(3).

22 See ibid s 6(1). The holder of the record, if satisfied that the information is inaccurate, must correct it or, if not so satisfied, must make a note of the inaccuracy alleged by the applicant: s 6(2)(a), (b). The applicant must be supplied with a copy of the correction or note without any fee: s 6(2)(c).

23 Ibid s 9.

24 Ibid s 8(1), (5). The court must not entertain an application unless it is satisfied that the applicant has taken all such steps to secure compliance with the requirement as may be prescribed by regulations: s 8(2). The Secretary of State may by regulations prescribe arrangements to be made by the holders of health records for dealing with complaints that they have failed to comply with any requirements of the Act: s 8(3). See note 19 supra. An application must be made within such period as may be prescribed by rules of court: s 8(1). At the date at which this volume states the law, no such regulations or rules had been made. In so far as they are exercisable in relation to Wales, these functions of the Secretary of State have been transferred to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1. As to the High Court of Justice in England and Wales see COURTS vol 10 (Reissue) PARA 602 et seq. As to county courts see COURTS.

25 Access to Health Records Act 1990 s 8(4).

## UPDATE

### 216 Access to health records

NOTE 5--1990 Act s 1(2)(aa) amended: National Health Service (Consequential Provisions) Act 2006 Sch 1 para 135. Definitions of 'general medical services contract', 'primary care trust', 'strategic health authority', 'health service body' and 'special health authority' in 1990 Act s 11 amended, definition of 'health authority' repealed: 2006 Act Sch 1 para 136, Sch 4; References to Health Authorities Order 2007, SI 2007/961.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(5) THE PRACTICE OF MEDICINE/(iv) Medical Reports and Records/217. Processing of patient information.

## **217. Processing of patient information.**

The Secretary of State<sup>1</sup> may by regulations make such provision for and in connection with requiring or regulating the processing<sup>2</sup> of prescribed patient information<sup>3</sup> for medical purposes<sup>4</sup> as he considers necessary or expedient in the interests of improving patient care<sup>5</sup>, or in the public interest<sup>6</sup>.

1 As to the Secretary of State see PARA 5 ante.

2 'Processing', in relation to information, means the use, disclosure or obtaining of the information or the doing of such other things in relation to it as may be prescribed; and 'prescribed' means specified in, or determined in accordance with, regulations: Health and Social Care Act 2001 s 60(10). As to the regulations made see note 6 infra.

3 'Patient information' means:

50 (1) information (however recorded) which relates to the physical or mental health or condition of an individual, to the diagnosis of his condition or to his care or treatment; and

51 (2) information (however recorded) which is to any extent derived, directly or indirectly, from such information,

whether the identity of the individual in question is ascertainable from the information or not: *ibid* s 60(8).

4 'Medical purposes' means the purposes of any of the following: (1) preventative medicine, medical diagnosis, medical research, the provision of care and treatment and the management of health and social care services; and (2) informing individuals about their physical or mental health or condition, the diagnosis of their condition or their care or treatment: *ibid* s 60(10).

5 *Ibid* s 60(1)(a).

6 *Ibid* s 60(1)(b). As to the regulations that have been made see the Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438. See further CONFIDENCE AND DATA PROTECTION vol 8(1) (2003 Reissue) PARA 577.

## **UPDATE**

### **217 Processing of patient information**

TEXT AND NOTES--2001 Act s 60 repealed: National Health Service (Consequential Provisions) Act 2006 Sch 4. See now National Health Service Act 2006 s 251.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(5) THE PRACTICE OF MEDICINE/(iv) Medical Reports and Records/218. Freedom of Information Act 2000.

## **218. Freedom of Information Act 2000.**

Under the Freedom of Information Act 2000, any person may make a request for information to a public authority, and is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request, and if that is the case, to have that information communicated to him<sup>1</sup>. Public authorities include the Council for the Regulation of Health Care Professionals<sup>2</sup>, the General Chiropractic Council<sup>3</sup>, the General Dental Council<sup>4</sup>, the General Medical Council<sup>5</sup>, the General Osteopathic Council<sup>6</sup>, the Health Professions Council<sup>7</sup>, the Postgraduate Medical Education and Training Board<sup>8</sup>, the Human Fertilisation and Embryology Authority<sup>9</sup> and the Human Tissue Authority<sup>10</sup>.

1 See the Freedom of Information Act 2000 s 1(1). The right is subject to the provisions of ss 1, 2, 9, 12, 14. See further CONFIDENCE AND DATA PROTECTION vol 8(1) (2003 Reissue) PARA 583 et seq.

2 As to the Council for the Regulation of Health Care Professionals see PARA 294 et seq post.

3 As to the General Chiropractic Council see PARA 591 et seq post.

4 As to the General Dental Council see PARA 389 et seq post.

5 As to the General Medical Council see PARA 13 et seq ante.

6 As to the General Osteopathic Council see PARA 499 et seq post.

7 As to the Health Professions Council see PARA 308 et seq post.

8 As to the Postgraduate Medical Education and Training Board see PARA 71 ante.

9 As to the Human Fertilisation and Embryology Authority see PARA 280 post.

10 See the Freedom of Information Act 2000 s 3, Sch 1 Pt VI (amended by the National Health Service Reform and Health Care Professions Act 2002 s 25(4), Sch 7 para 24; the Health Professions Order 2001, SI 2002/254, art 48(3), Sch 4 para 9; the Freedom of Information (Additional Public Authorities) Order 2004, SI 2004/938, art 3, Sch 2; and the Human Tissue Act 2004 s 13(2), Sch 2 para 27). As to the Human Tissue Authority see PARA 239 post.

## **UPDATE**

## **218 Freedom of Information Act 2000**

NOTE 10--For further amendments to the Freedom of Information Act 2000 Sch 1 see CONFIDENCE AND DATA PROTECTION vol 8(1) (2003 Reissue) PARA 583 NOTE 2.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(5) THE PRACTICE OF MEDICINE/(v) Restrictions on Advertising/219. Prohibition of advertisements relating to cancer.

## **(v) Restrictions on Advertising**

### **219. Prohibition of advertisements relating to cancer.**

No person may take part in the publication of any advertisement<sup>1</sup> which contains an offer to treat any person for cancer, to prescribe any remedy for cancer<sup>2</sup> or to give any advice in connection with its treatment<sup>3</sup>.

This does not apply to any advertisement published by a local authority, or by the governing body of a voluntary<sup>4</sup> hospital<sup>5</sup> or by any person acting with the sanction of the Secretary of State<sup>6</sup>.

1 'Advertisement' includes any notice, circular, label, wrapper or other document, and any announcement made orally or by any means of producing or transmitting sounds: Cancer Act 1939 s 4(8). Where an advertisement in a periodical stated that the article contained 'the only antiseptic both harmless and efficient in every form of disease' and that full information would be given on application, and the defendant in reply to a request for information sent a letter stating that the article was a cure for tuberculosis, and enclosed a circular, it was held that the advertisement, letter and circular, itself an advertisement, together amounted to an advertisement within the meaning of the Act: *Earp v Roberts* [1947] 1 All ER 136 (a case brought under the similar provisions of the Pharmacy and Medicines Act 1941 s 8(1) (repealed)).

2 References to persons suffering from cancer are to be construed as including persons suspected to be so suffering: Cancer Act 1939 s 5(2).

3 Ibid s 4(1)(a). For the penalty see PARA 220 post.

4 With certain exceptions, these hospitals were transferred to the Minister of Health by the National Health Service Act 1946 s 6 (repealed). Responsibilities of the Minister of Health now belong to the Secretary of State for Health: see PARA 5 ante.

5 'Hospital' includes a clinic, dispensary or other institution for the reception of the sick, whether as in-patients or as out-patients: Cancer Act 1939 s 5(1).

6 Ibid ss 4(5), 5(1). As to the Secretary of State see PARA 5 ante.

## **UPDATE**

### **219-220 Prohibition of advertisements relating to cancer, Proceedings relating to cancer advertisements**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(5) THE PRACTICE OF MEDICINE/(v) Restrictions on Advertising/220. Proceedings relating to cancer advertisements.

## **220. Proceedings relating to cancer advertisements.**

Proceedings for a contravention of the prohibition of advertisements for the treatment of cancer<sup>1</sup> must be instituted by the appropriate county or London borough council or the Common Council of the City of London<sup>2</sup>, but a prosecution for such an offence requires the consent of the Attorney General<sup>3</sup>. Any person who contravenes the prohibition is liable on summary conviction to a penalty<sup>4</sup>.

In any such proceedings, it is a defence for the person charged to prove: (1) that the advertisement<sup>5</sup> was published in such circumstances that he did not know and had no reason to believe that he was taking part in its publication<sup>6</sup>; or (2) that the advertisement was published only so far as was reasonably necessary to bring it to the notice of persons of the following classes, or of one or some of them: members of either House of Parliament, of a local authority or of the governing body of a voluntary<sup>7</sup> hospital<sup>8</sup>, registered medical practitioners<sup>9</sup>, registered nurses<sup>10</sup>, registered pharmacists<sup>11</sup>, persons undergoing training with a view to becoming registered in any of the three last-named professions<sup>12</sup>, and persons lawfully conducting<sup>13</sup> a retail pharmacy business<sup>14</sup>; or (3) that the advertisement was published only in a publication of a technical character intended for circulation mainly among persons of the classes mentioned in head (2) above or one or some of them<sup>15</sup>.

1    Ie under the Cancer Act 1939 s 4(1): see PARA 219 ante.

2    Ibid s 4(7); London Government Act 1963 s 4(2)(b); Local Government Act 1972 s 1(10). As to local government areas and authorities in England and Wales see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq. As to the London boroughs and their councils see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 30, 35-39, 59 et seq. As to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 51-55.

3    See the Cancer Act 1939 s 4(6) (amended by the Law Officers Act 1997 s 3(2), Schedule). Any function of the Attorney General may be exercised by the Solicitor General: Law Officers Act 1997 s 1(1). As to the Attorney General and the Solicitor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 529.

4    Cancer Act 1939 s 4(2) (amended by virtue of the Criminal Justice Act 1982 ss 35, 46). The penalty is a fine not exceeding level 3 on the standard scale or imprisonment for a term not exceeding three months, or both: see the Cancer Act 1939 s 4(2) (as so amended). As from a day to be appointed, the Cancer Act 1939 s 4(2) is further amended so as to restrict the penalty to a fine not exceeding level 3 on the standard scale: s 4(2) (as so amended; and prospectively amended by the Criminal Justice Act 2003 s 332, Sch 37 Pt 9). At the date at which this volume states the law no such day had been appointed. As to the standard scale see PARA 185 note 11 ante.

5    For the meaning of 'advertisement' see PARA 219 note 1 ante.

6    Cancer Act 1939 s 4(4)(c).

7    See PARA 219 note 4 ante.

8    Cancer Act 1939 s 4(4)(a)(i). For the meaning of 'hospital' see PARA 219 note 5 ante.

9    Ibid s 4 (4)(a)(iii). For the meaning of 'registered medical practitioner' see PARA 4 ante.

10   Ibid s 4(4)(a)(iv). For the meaning of 'registered' in relation to nurses see PARA 717 note 2 post.

11   Ibid s 4(4)(a)(v). For the meaning of 'registered pharmacist' see PARA 889 note 1 post.

12   Ibid s 4(4)(a)(vi).

13   Ie in accordance with the Medicines Act 1968 s 69: see PARA 909 post.

14 Cancer Act 1939 s 4(4)(a)(v) (amended by the Medicines Act 1968 s 135(1), Sch 5 para 10).

15 Cancer Act 1939 s 4(4)(b).

## **UPDATE**

### **219-220 Prohibition of advertisements relating to cancer, Proceedings relating to cancer advertisements**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **220 Proceedings relating to cancer advertisements**

TEXT AND NOTES 1, 2--A county council in England, a non-metropolitan district council for an area in England for which there is no county council, a London borough council, the Common Council of the City of London, or a county council or county borough council in Wales now have a discretionary power to institute such proceedings: Cancer Act 1939 s 4(7) (substituted by SI 2008/2840).

TEXT AND NOTE 3--Cancer Act 1939 s 4(6) repealed: SI 2008/2840.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(5) THE PRACTICE OF MEDICINE/(v) Restrictions on Advertising/221. Prohibition of advertisements etc relating to HIV testing kits and services.

## **221. Prohibition of advertisements etc relating to HIV testing kits and services.**

The Secretary of State<sup>1</sup> may provide by regulations that a person: (1) who sells or supplies to another an HIV testing kit<sup>2</sup> or any component part of such a kit<sup>3</sup>; (2) who provides another with HIV testing services<sup>4</sup>; or (3) who advertises such kits or component parts or such services<sup>5</sup>, is guilty of an offence<sup>6</sup>.

It is an offence to sell or supply an HIV testing kit or component to a member of the public<sup>7</sup>, or to sell or supply, otherwise than to a member of the public, an HIV testing kit which is not accompanied by the prescribed notice<sup>8</sup>. It is also an offence to provide HIV testing services unless the person providing them is a registered medical practitioner<sup>9</sup>, or provides them in accordance with the directions of a registered medical practitioner<sup>10</sup>, or provides them as technical services, such as testing a sample of blood, in accordance with a request made by a registered medical practitioner or for the purpose of detecting the presence of HIV or HIV antibodies in blood given for blood transfusions<sup>11</sup>. It is an offence to advertise HIV testing kits or components for sale or supply to members of the public, or to advertise the provision of HIV testing services<sup>12</sup> without stating in the advertisement that the services will be provided only by or in accordance with the directions of a registered medical practitioner<sup>13</sup>.

A person convicted of any of these offences is liable to a penalty<sup>14</sup>.

1 As to the Secretary of State see PARA 5 ante. Functions under these provisions, in so far as they relate to Wales, have been transferred to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1. As to the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

2 'HIV testing kit means a diagnostic kit the purpose of which is to detect the presence of HIV or HIV antibodies; and 'HIV' means Human Immunodeficiency Virus of any type: Health and Medicines Act 1988 s 23(6).

3 Ibid s 23(1)(a).

4 Ibid s 23(1)(b). 'HIV testing services' means diagnostic services the purpose of which is to detect the presence of HIV or HIV antibodies in identifiable individuals: s 23(6).

5 Ibid s 23(1)(c).

6 Ibid s 23(1). The power to make regulations is exercisable by statutory instrument, and a statutory instrument made by virtue of this provision is subject to annulment in pursuance of a resolution of either House of Parliament: s 23(2). As to the exercise of the power see s 23(3). As to the regulations made see the HIV Testing Kits and Services Regulations 1992, SI 1992/460. As to the annulment of statutory instruments see STATUTES vol 44(1) (Reissue) PARA 1516.

7 HIV Testing Kits and Services Regulations 1992, SI 1992/460, reg 2(1). Reference to a sale or supply to a member of the public is a reference to a sale or supply to a person otherwise than in the course of a business carried on by that person; and 'business' includes a professional practice and any activity carried on by a body of persons, whether corporate or unincorporate, and the provision of services under the National Health Service Act 1977 (see HEALTH SERVICES) or the Health and Personal Social Services (Northern Ireland) Order 1972, SI 1972/1265: HIV Testing Kits and Services Regulations 1992, SI 1992/460, reg 1(2). It is a defence for a person to prove that, after having exercised all due diligence, he had a reasonable belief that the person to whom he was supplying the kit or component was acting in the course of a business carried on by that person: reg 2(2).

8 Ibid reg 3(1). The notice must indicate that the kit must not be sold or supplied to a member of the public and must include specified warnings: see reg 3(2).

9 Ibid reg 4(1)(a). For the meaning of 'registered medical practitioner' see PARA 4 ante.

10 Ibid reg 4(1)(b). See also note 11 infra.

11 See ibid reg 4(1)(c). It is a defence for a person to prove that, after having exercised all due diligence, he had a reasonable belief that he was providing the services in the circumstances mentioned in reg 4(1)(b) (see the text to note 10 supra), reg 4(1)(c): reg 4(2).

12 This does not include the advertising of technical services the provision of which would meet the requirements set out in reg 4(1)(c) (see the text to note 11 supra): ibid reg 5(5).

13 Ibid reg 5(1), (2). A person whose business it is to publish or arrange for the publication of advertisements is not guilty of an offence if he proves that he received the advertisement in the ordinary course of his business, that the content of the advertisement was not (wholly or in part) devised or selected by him or by any person under his direction or control, and that he did not know and had no reason for believing that the publication of the advertisement would constitute an offence: reg 5(3). It is a defence for any person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself or any person under his control: reg 5(4).

14 See the Health and Medicines Act 1988 s 23(4). The penalty on summary conviction is a fine not exceeding the statutory maximum (s 23(4)(a)); and on conviction on indictment is a fine or imprisonment for a term not exceeding two years, or both (s 23(4)(b)). As to the statutory maximum see PARA 208 note 14 ante. Where an offence is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and is liable to be proceeded against accordingly: s 23(5).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(5) THE PRACTICE OF MEDICINE/(vi) Recovery of Charges/222. Unregistered persons.

## (vi) Recovery of Charges

### 222. Unregistered persons.

No person is entitled to recover any charge in any court of law for any medical advice or attendance, or for the performance of any operation, or for any medicine which he has both prescribed and supplied, unless he proves that he is fully registered<sup>1</sup> and also that he was fully registered at the time when the services were rendered<sup>2</sup>. However, an unregistered person may recover charges in respect of treatment which does not amount to the performance of an operation<sup>3</sup>.

Where a practitioner is a fellow of a college of physicians, fellows of which are prohibited by byelaw from recovering by law their expenses, charges or fees, then, notwithstanding that he is fully registered, the prohibitory byelaw, so long as it is in force, may be pleaded in bar of any legal proceedings instituted by him for the recovery of expenses, charges or fees<sup>4</sup>.

1 Medical Act 1983 s 46(1). Section 46(1) does not apply to fees in respect of medical services lawfully rendered in the United Kingdom by a person who is a national of any EEA state without first being registered under the Act if he has previously complied with the requirements of s 18(2) (see PARA 100 ante) or subsequently complies with those requirements as modified in respect of urgent cases by s 18(3) (see PARA 100 ante): s 46(2) (amended by the European Primary Medical Qualifications Regulations 1996, SI 1996/1591, reg 7, Sch 2 para 11). For the meaning of 'fully registered' see PARA 3 ante. For the meanings of 'national', in relation to an EEA state, and of 'EEA state' see PARA 3 note 2 ante.

As from a day to be appointed, the Medical Act 1983 s 46(1) is amended so as to provide that no person is entitled to recover any charge in any court of law for any medical advice or attendance, or for the performance of any operation, or for any medicine which he has both prescribed and supplied unless he proves that he is fully registered and holds a licence to practise: s 46(1) (prospectively amended by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 1(2), (3), 2, 12(4)). At the date at which this volume states the law no such day had been appointed. For the meaning of 'licence to practise' see PARA 130 note 3 ante.

2 *Leman v Houseley* (1874) LR 10 QB 66. A registered practitioner cannot recover for medical services rendered by an unregistered person in his employment if it is shown that those services were rendered by the unregistered person without in any way consulting or referring to his employer: *Howarth v Brearley* (1887) 19 QBD 303, DC. See also *De la Rosa v Prieto* (1864) 16 CBNS 578.

3 *Hall v Trotter* (1921) 38 TLR 30, DC; *Macnaghten v Douglas* [1927] 2 KB 292, DC. In the former case an osteopath recovered charges for treatment by manipulation, no advice having been given. In the latter case a new trial was ordered where a county court judge had decided that an osteopath who, after carrying out an examination and informing the patient of his conclusions, performed manipulative treatment (which he described to the patient as remedial) of the bones in the neck and lumbar regions, was precluded from recovering any charges. It would appear that the county court judge was invited by the appellate court to split the claim into: (1) treatment; and (2) advice, if it was capable of being so split up (as to which no opinion was expressed), and to give judgment for the amount referable to treatment. There appears to be no authority as to the meaning of 'operation'. As to the regulation of the profession of osteopathy see PARA 499 et seq post.

4 Medical Act 1983 s 46(3). As from a day to be appointed, s 46(3) is amended so as to provide that where a practitioner is a fellow of a college of physicians, fellows of which are prohibited by byelaw from recovering by law their expenses, charges or fees, then, notwithstanding that he is fully registered and holds a licence to practise, the prohibitory byelaw, so long as it is in force, may be pleaded in bar of any legal proceedings instituted by him for the recovery of expenses, charges or fees: s 46(3) (prospectively amended by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, arts 1(2), (3), 2, 12(4)). At the date at which this volume states the law no such day had been appointed. As to the Royal College of Physicians see PARA 64 ante.

## UPDATE



## **222 Unregistered persons**

NOTES 1, 4--Appointed day is 16 November 2009: London Gazette, 21 August 2009.

NOTE 1--Medical Act 1983 s 46(1) amended, s 46(2) repealed: SI 2007/3101.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(5) THE PRACTICE OF MEDICINE/(vi) Recovery of Charges/223. Liability to pay charges.

### **223. Liability to pay charges.**

Where a registered medical practitioner renders services to a patient, other than services under the national health service legislation<sup>1</sup> there is a presumption that it is for reward<sup>2</sup>. The onus is therefore upon the patient to show that in fact it was agreed that services in a particular case should be gratuitous<sup>3</sup>.

In the absence of a contract to pay a specified sum, a medical practitioner can recover a reasonable sum<sup>4</sup>. A medical practitioner cannot, however, recover charges for work which is substantially useless owing to his negligence<sup>5</sup>.

<sup>1</sup> As to the provision of medical services under the national health service see PARAS 6-7 ante; and HEALTH SERVICES.

<sup>2</sup> *Gibbon v Budd* (1863) 2 H & C 92; *Corbin v Stewart* (1911) 28 TLR 99 at 101. Formerly, a physician, although not a surgeon, was presumed to act for an honorarium and could not sue for his fees. A surgeon, however, could not recover his charges for medical treatment unless he was also an apothecary: *Allison v Haydon* (1828) 4 Bing 619, the judgments in which define what were then thought to be the respective provinces of physician, surgeon, apothecary and chemist.

<sup>3</sup> See *Gibbon v Budd* (1863) 2 H & C 92. As to tax liability in respect of payments received in recognition of voluntary services see *Temperley (Inspector of Taxes) v Smith* [1956] 3 All ER 92, [1956] 1 WLR 931; and INCOME TAXATION vol 23(1) (Reissue) PARA 609.

<sup>4</sup> *Tuson v Batting* (1800) 3 Esp 192, where a surgeon claimed, as a customary charge, one guinea a mile for each attendance in addition to his fee, but Lord Kenyon left it to the jury to say whether the sum paid into court was sufficient to satisfy the whole of the plaintiff's claim, ie what was a reasonable sum. See also *Handey v Henson* (1830) 4 C & P 110.

<sup>5</sup> *Kannen v M'Mullen* (1791) Peake 59; *Hupe v Phelps* (1819) 2 Stark 480; *Hill v Featherstonhaugh* (1831) 7 Bing 569 at 574. It is submitted that the principle is the same as in any other case of work and labour: see *Bracey v Carter* (1840) 12 Ad & El 373; *Shaw v Arden* (1832) 9 Bing 287; and BAILMENT. Where the work consists of a number of separate acts, some of which are useless owing to negligence and some not, the first question to decide is whether the contract was one entire contract or a number of independent contracts. If the former, nothing can be recovered: see *Vigers v Cook* [1919] 2 KB 475, CA; and CONTRACT vol 9(1) (Reissue) PARA 667 et seq. A claim to recover charges is subject to the ordinary rules of set-off: see CIVIL PROCEDURE vol 11 (2009) PARA 634 et seq.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(5) THE PRACTICE OF MEDICINE/(vi) Recovery of Charges/224. Payment for emergency treatment of traffic casualties.

## **224. Payment for emergency treatment of traffic casualties.**

Where medical or surgical treatment or examination is immediately required as a result of bodily injury, including fatal injury, to any person caused by, or arising out of the use of a motor vehicle on a road<sup>1</sup>, and the treatment or examination so required is effected by a legally qualified medical practitioner<sup>2</sup>, the person who was using the vehicle at the time of the event out of which the bodily injury arose must, on a claim being made in the proper manner<sup>3</sup>, pay to the practitioner<sup>4</sup> specified fees<sup>5</sup>. A payment duly made under these provisions operates as a discharge, to the extent of the amount paid, of any liability of the person who was using the vehicle, or of any other person, to pay any sum in respect of the expenses or remuneration of the practitioner or hospital concerned of or for effecting the emergency treatment<sup>6</sup>.

1 For the meaning of 'road' see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 206; and for the meaning of 'motor vehicle' see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 210.

2 Road Traffic Act 1988 s 158(1). See also ROAD TRAFFIC vol 40(2) (2007 Reissue) PARAS 958-959. For the meaning of 'legally qualified medical practitioner' see PARA 4 ante.

3 A claim for payment may be made at the time when the emergency treatment is effected by oral request to the person who was using the vehicle, and if not so made must be made by request in writing served on him within seven days from the day on which the emergency treatment was effected: *ibid* s 159(2). A request in writing must be signed by the claimant or, in the case of a hospital, by an executive officer of the hospital claiming the payment (s 159(3)(a) (amended by the Road Traffic (NHS Charges) Act 1999 s 18(2)(b))), and must state the name and address of the claimant, the circumstances in which the emergency treatment was effected and that it was first effected by the claimant (Road Traffic Act 1988 s 159(3)(b)). A request in writing may be served by delivering it to the person who was using the vehicle, or by sending it in a pre-paid registered letter or by the recorded delivery service addressed to him at his usual or last known address: s 159(3)(c). A chief officer of police must, if so requested by a person who alleges that he is entitled to claim a payment under s 158, furnish to that person any information at his disposal as to the identification marks of any motor vehicle which that person alleges to be a vehicle out of the use of which the bodily injury arose, and as to the identity and address of the person who was using the vehicle at the time of the event out of which it arose: s 159(5). For the meaning of 'writing' see PARA 20 note 22 ante.

4 Where emergency treatment is effected by more than one practitioner, the payment must be made to the practitioner by whom it is first effected: see *ibid* s 158(2). Where emergency treatment is first effected in a hospital, the payment must be paid to the hospital and not to the practitioner: see s 158(3).

5 *Ibid* s 158(2). As to the fees payable see s 158(2) (amended by the Road Traffic Accidents (Payments for Treatment) Order 1995, SI 1995/889, art 3). As to the requirement for compulsory insurance against liability to make such payments see INSURANCE vol 25 (2003 Reissue) PARA 733; and as to insurers' direct responsibility to hospitals for the expenses of treatment see INSURANCE vol 25 (2003 Reissue) PARA 741. As to road traffic accidents and national health service charges see HEALTH SERVICES vol 54 (2008) PARA 486 et seq.

6 Road traffic Act 1988 s 159(4). The liability incurred under s 158 (as amended) by a person using a vehicle where the event out of which it arose was caused by the wrongful act of another person must be treated for the purposes of any claim to recover damage by reason of that wrongful act as damage sustained by the person using the vehicle: s 158(4).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(6) HUMAN TISSUE, TRANSPLANTS AND THE PRACTICE OF ANATOMY/(i) The Human Tissue Act 1961; The Human Organ Transplants Act 1989/225. Removal of parts of the body for medical purposes; human organ transplants.

## **(6) HUMAN TISSUE, TRANSPLANTS AND THE PRACTICE OF ANATOMY**

### **(i) The Human Tissue Act 1961; The Human Organ Transplants Act 1989**

#### **225. Removal of parts of the body for medical purposes; human organ transplants.**

If any person, either in writing<sup>1</sup> at any time or orally in the presence of two or more witnesses during his last illness, has expressed a request that his body or any specified part of his body be used after his death for therapeutic purposes or for purposes of medical education or research, the person lawfully in possession of his body after his death<sup>2</sup> may, unless he has reason to believe that the request was subsequently withdrawn, authorise the removal from the body of any part or, as the case may be, the specified part, for use in accordance with the request<sup>3</sup>. Even if no such request has been made, the person lawfully in possession of the body of a deceased person may authorise the removal of any part from the body for these purposes if, having made such reasonable inquiry as may be practicable, he has no reason to believe either that the deceased had expressed an objection to his body being so dealt with after his death which had not been withdrawn<sup>4</sup>, or that the surviving spouse or any surviving relative of the deceased so objects<sup>5</sup>. Generally<sup>6</sup>, the removal and use of any part of a body in accordance with an authority given under these provisions is lawful<sup>7</sup>.

No removal, except of eyes or parts of eyes, may be effected except by a registered medical practitioner<sup>8</sup>, who must have satisfied himself by personal examination that life is extinct<sup>9</sup>. No removal of an eye or part of an eye may be effected except by a registered medical practitioner, who must have satisfied himself that life is extinct<sup>10</sup>, or by a person in the employment of a health authority<sup>11</sup>, primary care trust<sup>12</sup>, NHS trust<sup>13</sup> or NHS foundation trust acting on the instructions of a registered medical practitioner who, before giving such instructions, must be satisfied: (1) that the person in question is sufficiently qualified and trained to perform the removal competently; and (2) on the basis of his own examination of the body, or that of another registered medical practitioner, that life is extinct<sup>14</sup>.

Where a person has reason to believe that an inquest may be required to be held on any body or that a post mortem examination of any body may be required by the coroner<sup>15</sup>, he must not, except with the coroner's consent, give authority under these provisions in respect of the body<sup>16</sup>, or act on such an authority given by any other person<sup>17</sup>.

No authority may be given under these provisions in respect of any body by a person entrusted with the body for the purpose only of its interment or cremation<sup>18</sup>.

In the case of a body lying in a hospital, nursing home or other institution, any authority may be given on behalf of the person having the control and management of the institution by any officer or persons designated for that purpose<sup>19</sup>.

Where an authority is given under these provisions, the Anatomy Act 1984 does not apply to the removal and use of the part or parts of the body<sup>20</sup>.

It is an offence in Great Britain<sup>21</sup>: (a) to make or receive any payment<sup>22</sup> for the supply or offer to supply of an organ<sup>23</sup> to be removed from a person, whether living or dead, and intended for transplant into another person in Great Britain or elsewhere<sup>24</sup>; (b) to seek to find a person

willing to supply an organ for payment<sup>25</sup>; (c) to offer to supply an organ for payment<sup>26</sup>; (d) to initiate or negotiate any arrangement involving the making of payment for such supply or offer<sup>27</sup>; (e) to take part in the management or control of a body whose activities include the initiation or negotiation of such arrangements<sup>28</sup>; (f) to cause to be published or distributed or knowingly to publish or distribute an advertisement<sup>29</sup>: (i) inviting persons to supply organs for payment; (ii) offering to supply organs for payment; or (iii) indicating that the advertiser is willing to initiate or negotiate arrangements involving the making of payment for such supply or offer<sup>30</sup>; (g) to remove from a living person an organ intended for transplant, or to transplant an organ from one living person into another, unless the two persons are genetically related<sup>31</sup>; (h) to fail to comply with regulations concerning the provision of information about transplant operations<sup>32</sup>; or (i) knowingly or recklessly to supply information in purported compliance with such regulations which is false or misleading in a material particular<sup>33</sup>.

1 For the meaning of 'writing' see PARA 20 note 22 ante.

2 As to the right to possession of a dead body see CREMATION AND BURIAL vol 10 (Reissue) PARAS 903, 905. As to wrongful interference with a dead body see TORT vol 45(2) (Reissue) PARA 547.

3 Human Tissue Act 1961 s 1(1). As from a day to be appointed, the Human Tissue Act 1961, the Anatomy Act 1984 and the Human Organ Transplants Act 1989 are repealed by the Human Tissue Act 2004 ss 57, 60, Sch 7 Pt 1. At the date at which this volume states the law no such day had been appointed. As to the new regime under the Human Tissue Act 2004 see PARA 233 et seq post.

Nothing in the Human Tissue Act 1961 s 1 is to be construed as rendering unlawful any dealing with, or with any part of, the body of a deceased person which is lawful apart from the Act: s 1(8) (prospectively repealed).

4 Ibid s 1(2)(a) (prospectively repealed).

5 Ibid s 1(2)(b) (prospectively repealed).

6 Ie subject to ibid s 1(4), (4A), (5): see the text and notes 9-17 infra.

7 Ibid s 1(3) (amended by the Corneal Tissue Act 1986 s 1; prospectively repealed).

8 For the meaning of 'registered medical practitioner' see PARA 4 ante.

9 Human Tissue Act 1961 s 1(4) (substituted by the Corneal Tissue Act 1986 s 1; prospectively repealed).

10 Human Tissue Act 1961 s 1(4A)(a) (s 1(4A) added by the Corneal Tissue Act 1986 s 1; prospectively repealed).

11 'Health authority' means a health authority established under the National Health Service Act 1977 s 8 (as substituted) (see HEALTH SERVICES vol 54 (2008) PARA 94 et seq) or a special health authority established under s 11 (as amended) (see HEALTH SERVICES vol 54 (2008) PARA 136 et seq): Human Tissue Act 1961 s 1(10) (definition added by the Corneal Tissue Act 1986 s 1(4); amended by the Health Authorities Act 1995 s 2(1), Sch 1 para 92; prospectively repealed).

12 'Primary care trust' means a primary care trust established under the National Health Service Act 1977 s 16A (as added) (see HEALTH SERVICES vol 54 (2008) PARA 111 et seq): Human Tissue Act 1961 s 1(10) (definition added by the Health Act 1999 (Supplementary, Consequential etc Provisions) Order 2000, SI 2000/90, arts 2(1), 3(1), Sch 1 para 4(b); prospectively repealed).

13 'NHS trust' means a national health service trust established under the National Health Service and Community Care Act 1990 (see HEALTH SERVICES vol 54 (2008) PARA 155 et seq): Human Tissue Act 1961 s 1(10) (definition added by the National Health Service and Community Care Act 1990 s 66(1), Sch 9 para 7(b); prospectively repealed).

14 Human Tissue Act 1961 s 1(4A)(b) (as added (see note 10 supra); amended by the National Health Service and Community Care Act 1990 s 66(1), Sch 9 para 7(a); the Health Act 1999 (Supplementary, Consequential etc Provisions) Order 2000, SI 2000/90, arts 2(1), 3(1), Sch 1 para 4(a); and the Health and Social Care (Community Health and Standards) Act 2003 s 34, Sch 4 paras 7, 8; prospectively repealed).

15 As to when an inquest or a post mortem examination is required see CORONERS vol 9(2) (2006 Reissue) PARA 963 et seq.

- 16 Human Tissue Act 1961 s 1(5)(a) (prospectively repealed).
- 17 Ibid s 1(5)(b) (prospectively repealed).
- 18 Ibid s 1(6) (prospectively repealed).
- 19 Ibid s 1(7) (prospectively repealed). The designation is made by the person having the control and management of the institution: s 1(7) (prospectively repealed).
- 20 Anatomy Act 1984 s 1(5) (prospectively repealed). As to the Anatomy Act 1984 see PARA 226 et seq post.
- 21 For the meaning of 'Great Britain' see PARA 1 note 3 ante.
- 22 'Payment' means payment in money or money's worth, not including payment for defraying or reimbursing expenses or loss of earnings to the person supplying the organ, or the cost of removing, transporting or preserving the organ: Human Organ Transplants Act 1989 s 1(3) (prospectively repealed).
- 23 'Organ' means any part of a human body consisting of a structured arrangement of tissues which, if wholly removed, cannot be replicated by the body: ibid s 7(2) (prospectively repealed).
- 24 Ibid s 1(1)(a) (prospectively repealed). This offence is punishable on summary conviction by imprisonment for up to three months or a fine not exceeding level 5 on the standard scale, or both: s 1(5) (prospectively repealed). As to the standard scale see PARA 185 note 11 ante.
- 25 Ibid s 1(1)(b) (prospectively repealed). For the penalty for this offence see note 24 supra.
- 26 Ibid s 1(1)(b) (prospectively repealed). For the penalty for this offence see note 24 supra.
- 27 Ibid s 1(1)(c) (prospectively repealed). For the penalty for this offence see note 24 supra.
- 28 Ibid s 1(1)(d) (prospectively repealed). For the penalty for this offence see note 24 supra.
- 29 'Advertisement' includes any form of advertising whether to the public generally, to any section of the public, or individually to selected persons: ibid s 1(4) (prospectively repealed).
- 30 Ibid s 1(2) (prospectively repealed). This offence is punishable on summary conviction by a fine not exceeding level 5 on the standard scale: s 1(5) (prospectively repealed).
- 31 Ibid s 2(1) (prospectively repealed). This offence is punishable on summary conviction by imprisonment for up to three months or a fine not exceeding level 5 on the standard scale, or both: s 2(5) (prospectively repealed). For these purposes, a person is genetically related to his parents, children, brothers and sisters of the whole or half blood, his parents' brothers and sisters of the whole or half blood and their natural children, but not unless the fact of the relationship has been established: s 2(2) (prospectively repealed).
- 32 Ibid s 3(1), (3) (prospectively repealed). This offence is punishable on summary conviction by a fine not exceeding level 3 on the standard scale: s 3(3) (prospectively repealed). AS to the regulations that have been made see the Human Organ Transplants (Supply of Information) Regulations 1989, SI 1989/2108.
- 33 Human Organ Transplants Act 1989 s 3(1), (3) (prospectively repealed). This offence is punishable on summary conviction by a fine not exceeding level 3 on the standard scale: s 3(3) (prospectively repealed).

## UPDATE

### **225 Removal of parts of the body for medical purposes; human organ transplants**

NOTE 3--Day appointed for repeal of Human Organ Transplants Act 1989: SI 2005/2792.

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## **(ii) The Anatomy Act 1984**

### **226. Lawful examinations.**

A person lawfully in possession of a body<sup>1</sup> after death may authorise its use for anatomical examination<sup>2</sup> if the deceased, either in writing at any time, or orally in the presence of two or more witnesses during his last illness, expressed a request that his body be used for anatomical examination, provided that he has no reason to believe that the request was withdrawn<sup>3</sup>. Alternatively, such use may be authorised by the person lawfully in possession of the body if, having made such reasonable inquiry as may be practicable, he has no reason to believe that the deceased, either in writing at any time, or orally in the presence of two or more witnesses during his last illness, had expressed an objection to his body being so used which had not been withdrawn, or that any surviving spouse or relative objects to the body being so used<sup>4</sup>. The anatomical examination of a body in accordance with such an authority is deemed lawful<sup>5</sup>. Authority granted in accordance with these provisions expires at the end of the statutory period<sup>6</sup>. The Secretary of State may make regulations in relation to bodies subject to lawful anatomical examination, to secure their efficient and orderly examination and the decent subsequent disposal of the bodies and parts<sup>7</sup>.

A person who holds a licence to carry out anatomical examinations or to have possession of anatomical specimens<sup>8</sup> must ensure that: (1) a body undergoes a suitable process for preservation as soon as practicable after it is received at the place where the examination is to be carried out; (2) it is held in possession only for so long as the body remains adequately preserved; (3) all bodies are stored in an orderly and hygienic manner in suitably designed rooms equipped with adequate facilities for regulating temperatures; (4) where applicable<sup>9</sup> the authorised person carrying out the examination is adequately supervised; and (5) the disposal of the body and separated parts after examination, as far as practicable, is in accordance with the wishes of the deceased or of the surviving spouse or a surviving relative<sup>10</sup>.

1 'Body' means the body of a deceased person: Anatomy Act 1984 s 1(3). As from a day to be appointed, the Anatomy Act 1984 is repealed by the Human Tissue Act 2004 ss 57, 60, Sch 7 Pt 1. At the date at which this volume states the law no such day had been appointed. As to the new regime under the Human Tissue Act 2004 see PARA 233 et seq post. As to the right to possession of a dead body see CREMATION AND BURIAL vol 10 (Reissue) PARAS 903, 905. As to wrongful interference with a dead body see TORT vol 45(2) (Reissue) PARA 547.

2 'Anatomical examination' means the examination by dissection of a body or its parts for purposes of teaching or studying or researching into, morphology: Anatomy Act 1984 s 1(1) (prospectively repealed).

3 Ibid s 4(1), (2) (prospectively repealed).

4 Ibid s 4(3) (prospectively repealed).

5 Ibid s 4(4) (prospectively repealed). However, where an inquest or post mortem may be required, no authority relating to a body may be given or acted upon without the coroner's consent: s 4(5) (prospectively repealed). The Act does not apply to anything done for the purposes of a lawful post mortem examination: s 1(4) (prospectively repealed). No authority may be given by a person entrusted with a body for the purpose only of its interment or cremation: s 4(7) (prospectively repealed). Authority in relation to a body lying in a hospital, nursing home or other institution may be given on behalf of the controller or manager by a designated officer or person: s 4(9) (prospectively repealed).

6 Ibid s 4(8) (prospectively repealed). 'Statutory period' means the period of three years (which may be altered by order of the Secretary of State) from the date of death: s 4(10), (11) (prospectively repealed). As to the Secretary of State see PARA 5 ante.

7 Ibid s 8(1)(a) (prospectively repealed). See the Anatomy Regulations 1988, SI 1988/44, reg 4; and the text and notes 8-10 infra. As to offences and penalties see PARA 232 post.

8 Ie a person who holds a licence under the Anatomy Act 1984 s 3(2) (prospectively repealed): see PARA 227 post.

9 Ie where the person is authorised under ibid s 3(3)(b) (prospectively repealed) (see PARA 227 text to note 4 post), unless he is sufficiently qualified or trained to carry out the examination without supervision: Anatomy Regulations 1988, SI 1998/44, reg 4(1)(d).

10 Ibid reg 4(1)(a)-(e). Head (5) in the text does not apply where the body or parts are to be held after examination (see PARA 229 post): reg 4(1)(e).



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## 227. Licences.

The Secretary of State may grant a licence for the use of premises for carrying out anatomical examinations<sup>1</sup>; and licences may be granted to a person to carry out anatomical examinations and to have possession of anatomical specimens<sup>2</sup>. A person is authorised to carry out anatomical examinations or to have possession of an anatomical specimen if: (1) he holds such a licence<sup>3</sup>; or (2) in the case of examinations, he carries out such examinations in the course of teaching, studying or researching into morphology, and has general or particular permission to carry out such examinations from a licence holder<sup>4</sup>; or (3) in the case of possession of an anatomical specimen, he has general or particular permission to have such possession from a licence holder<sup>5</sup>. A person granted a licence under these provisions must compile such records regarding anatomical examinations and specimens, and retain them for such period, as may be specified by regulations made by the Secretary of State<sup>6</sup>.

Applications for licences must be made in such manner as the Secretary of State decides<sup>7</sup>, and licences may be granted to such persons, and regarding such premises, as he thinks suitable<sup>8</sup>, upon payment of such fee as he thinks fit<sup>9</sup>. Licences may be conditional<sup>10</sup>. Where an application for a licence is refused, the Secretary of State must take reasonable steps to notify the applicant, stating reasons for the refusal<sup>11</sup>. A licence is effective for such period as the Secretary of State stipulates when he grants it<sup>12</sup>. He may accept surrender of a licence at any time<sup>13</sup>, and may revoke a licence if he thinks it reasonable to do so<sup>14</sup>, but such revocation is ineffective unless he gives at least 28 days' written notice to the licence holder, stating the reasons for his decision<sup>15</sup>. A licence expires when the licence holder dies<sup>16</sup>.

1 Anatomy Act 1984 s 3(1). As from a day to be appointed, the Anatomy Act 1984 is repealed by the Human Tissue Act 2004 ss 57, 60, Sch 7 Pt 1. At the date at which this volume states the law no such day had been appointed. As to the new regime under the Human Tissue Act 2004 see PARA 233 et seq post. For the meaning of 'anatomical examination' see PARA 226 note 2 ante. As to the Secretary of State see PARA 5 ante.

2 Anatomy Act 1984 s 3(2) (prospectively repealed). 'Anatomical specimen' means a body to be used for, or a body or parts in the course of being used for, anatomical examination: s 1(2) (prospectively repealed). For the meaning of 'body' see PARA 226 note 1 ante.

3 Ibid s 3(3)(a), (4)(a) (prospectively repealed).

4 Ibid s 3(3)(b) (prospectively repealed).

5 Ibid s 3(4)(b) (prospectively repealed).

6 Ibid s 3(5) (prospectively repealed). The power to make regulations under s 3(5) (prospectively repealed) is exercisable by statutory instrument, subject to annulment by resolution of either House of Parliament: s 3(6) (prospectively repealed). Failure to compile such a record is an offence, as is the compilation or alteration of such a record by a person so that it is to his knowledge false in a material particular: see PARA 232 post.

The records must be in a permanent form and contain the following particulars: (1) the name and sex of the deceased, his age at death, and the date and cause of death; (2) the date and time of receipt of the body at the premises where the examination is to be carried out; (3) whether authority for the examination was given (ie in pursuance s 4(2) (prospectively repealed) or s 4(3) (prospectively repealed): see PARA 226 ante), and the name and address of the person lawfully in possession of the body; (4) the name and address of any person who has been given permission (ie under s 3(4)(b) (prospectively repealed): see the text to note 5 supra) to have possession of the body and who retains such permission for more than one month; (5) the wishes of the deceased or the surviving spouse or a surviving relative in relation to disposal of the body after examination; and (6) the date and method of disposal after examination: Anatomy Regulations 1988, SI 1988/44, reg 2(1), (2) (reg 2(1) substituted by SI 1988/198). The records must be retained for five years: Anatomy Regulations 1988,

SI 1988/44, reg 2(3). Where a person licensed under the Anatomy Act 1984 s 3(2) (prospectively repealed) (see the text to note 2 supra) is also licensed under s 5(5) (prospectively repealed) (licence to have possession of parts of bodies after examination: see PARA 230 post), the records compiled for the former purpose must be retained so far as they are needed for the latter: Anatomy Regulations 1988, SI 1988/44, reg 2(4).

7 Anatomy Act 1984 s 7(1) (prospectively repealed).

8 Ibid s 7(2) (prospectively repealed).

9 Ibid s 7(3) (prospectively repealed).

10 Ibid s 7(5) (prospectively repealed). However, no condition may be imposed in relation to a matter dealt with by regulations under s 8 (prospectively repealed) (see PARAS 226 text to note 7 ante, 229 note 9 post): s 7(5) (prospectively repealed). Contravention of a condition attached to a licence is an offence: see PARA 232 post.

11 Ibid s 7(4) (prospectively repealed).

12 Ibid s 7(6) (prospectively repealed).

13 Ibid s 7(6)(b) (prospectively repealed).

14 Ibid s 7(6)(a) (prospectively repealed).

15 Ibid s 7(7) (prospectively repealed). Such notice may be given by post: s 7(8) (prospectively repealed). As to references to service by post see PARA 20 note 22 ante.

16 Ibid s 7(6)(c) (prospectively repealed). However, any permission given under s 3(3)(b), (4)(b), or s 5(5) (all prospectively repealed) (see the text to notes 4-5 supra; and PARA 230 post), which is effective immediately before the licence holder's death, continues to be effective for 21 days from the date of death, or, if earlier, the date of expiry of the licence: s 7(9) (prospectively repealed).

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## **228. Control of examinations and possession.**

No person may carry out an anatomical examination<sup>1</sup> unless: (1) he carries it out on premises which are licensed at the time of the examination<sup>2</sup>; (2) he is authorised to carry it out<sup>3</sup>; (3) the examination is lawful<sup>4</sup>; and (4) the death has been registered<sup>5</sup> in relation to the body concerned<sup>6</sup>.

No person may have an anatomical specimen<sup>7</sup> in his possession unless: (a) he is authorised to have such possession<sup>8</sup>; (b) anatomical examination of the specimen is at the time of possession lawful<sup>9</sup>; and (c) a certificate of cause of death has been signed<sup>10</sup> in relation to the body concerned<sup>11</sup>. These restrictions on possession do not apply where a person comes into lawful possession of a body immediately after death and retains possession prior to its removal to a place for anatomical examination<sup>12</sup>.

1 For the meaning of 'anatomical examination' see PARA 226 note 2 ante.

2 Ie under the Anatomy Act 1984 s 3(1) (prospectively repealed): see PARA 227 ante.

3 Ie under ibid s 3(3) (prospectively repealed): see PARA 227 ante.

4 Ie by virtue of ibid s 4 (prospectively repealed): see PARA 226 ante. For the meaning of 'body' see PARA 226 note 1 ante.

5 Ie under the Births and Deaths Registration Act 1953 s 15: see further REGISTRATION CONCERNING THE INDIVIDUAL vol 39(2) (Reissue) PARA 561.

6 Anatomy Act 1984 s 2(1), (4). As from a day to be appointed, the Anatomy Act 1984 is repealed by the Human Tissue Act 2004 ss 57, 60, Sch 7 Pt 1. At the date at which this volume states the law no such day had been appointed. As to the new regime under the Human Tissue Act 2004 see PARA 233 et seq post.

Contravention of the Anatomy Act 1984 s 2(1) (prospectively repealed) is an offence: see PARA 232 post.

7 For the meaning of 'anatomical specimen' see PARA 227 note 2 ante.

8 Ie under the Anatomy Act 1984 s 3(4) (prospectively repealed): see PARA 227 ante.

9 Ie by virtue of ibid s 4 (prospectively repealed): see PARA 226 ante.

10 Ie under the Births and Deaths Registration Act 1953 s 22(1): see further REGISTRATION CONCERNING THE INDIVIDUAL vol 39(2) (Reissue) PARA 563.

11 Anatomy Act 1984 s 2(2) (prospectively repealed). Contravention of s 2(2) (prospectively repealed) is an offence: see PARA 232 post.

12 Ibid s 2(3) (prospectively repealed). As to the right to possession of a dead body see CREMATION AND BURIAL vol 10 (Reissue) PARAS 903, 905. As to wrongful interference with a dead body see TORT vol 45(2) (Reissue) PARA 547.

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## **229. Lawful possession after examination.**

In expressing a request that his body be used after his death for anatomical examination<sup>1</sup>, a person may give permission for possession of any, or any specified, parts of his body to be held after its anatomical examination is concluded<sup>2</sup>. Where such permission is given, the person lawfully in possession of the body after death, in giving authority for the use of the body for anatomical examination<sup>3</sup>, may give authority for possession to be held in accordance with the permission, provided that he has no reason to believe that the permission was withdrawn<sup>4</sup>. Alternatively, the person lawfully in possession of a body, in authorising its use for anatomical examination in the absence of objections<sup>5</sup>, may give authority for possession of parts, or any specified parts, of the body to be held after its anatomical examination if, having made such reasonable inquiry as may be practicable, he has no reason to believe: (1) that the deceased, either in writing at any time, or orally in the presence of two or more witnesses during his last illness, expressed an objection to such possession being held which had not been withdrawn; or (2) that the surviving spouse or any surviving relative objects to such possession being held<sup>6</sup>. The possession of part of a body in accordance with such an authority is deemed lawful<sup>7</sup>. Parts of bodies the possession of which is lawful under these provisions must be stored in an orderly and hygienic manner in suitably designed rooms equipped with adequate facilities for regulating temperatures<sup>8</sup>. The Secretary of State may make regulations in relation to parts of bodies subject to such lawful possession to ensure that they are decently cared for<sup>9</sup>.

1    Ie under the Anatomy Act 1984 s 4(1) (prospectively repealed): see PARA 226 ante. For the meaning of 'body' see PARA 226 note 1 ante; and for the meaning of 'anatomical examination' see PARA 226 note 2 ante.

2    Ibid s 6(1). As from a day to be appointed, the Anatomy Act 1984 is repealed by the Human Tissue Act 2004 ss 57, 60, Sch 7 Pt 1. At the date at which this volume states the law no such day had been appointed. As to the new regime under the Human Tissue Act 2004 see PARA 233 et seq post.

3    Ie under the Anatomy Act 1984 s 4(2) (prospectively repealed): see PARA 226 ante. As to the right to possession of a dead body see CREMATION AND BURIAL vol 10 (Reissue) PARAS 903, 905. As to wrongful interference with a dead body see TORT vol 45(2) (Reissue) PARA 547.

4    Ibid s 6(2) (prospectively repealed).

5    Ie under ibid s 4(3) (prospectively repealed): see PARA 226 ante.

6    Ibid s 6(3) (prospectively repealed).

7    Ibid s 6(4) (prospectively repealed).

8    Anatomy Regulations 1988, SI 1988/44, reg 4(2). Contravention of this provision is an offence: see PARA 232 post.

9    Anatomy Act 1984 s 8(1)(b) (prospectively repealed). See also the text to note 8 supra. As to the Secretary of State see PARA 5 ante.

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### **230. Control of possession after examination.**

Subject to two exceptions<sup>1</sup>, no person may have a body or part of a body in his possession where authority to use the body for anatomical examination<sup>2</sup> has expired, or where the anatomical examination of a body has been concluded before the expiry of such authority<sup>3</sup>. However, a person may have such possession of a body or part of a body for the purpose only of its decent disposal<sup>4</sup>. Alternatively, a person may have such possession of a part of a body where<sup>5</sup>: (1) the possession is of a part of a body, the anatomical examination of which has been concluded before the expiry of authority<sup>6</sup> for such examination; (2) the part is such that the person from whose body it came cannot be recognised simply by examination of the part; (3) the person with possession is authorised to have such possession<sup>7</sup>; and (4) possession of the part is lawful<sup>8</sup>. If the Secretary of State thinks it desirable in the interests of education or research, he may grant a licence to a person to have possession of parts of bodies<sup>9</sup>. A person is authorised to have possession of a part of a body if, when he has such possession, he is licensed to do so, or he has general or particular permission to have such possession from a licence holder<sup>10</sup>. Licence holders must compile and retain such records in relation to parts of bodies as may be specified by regulations made by the Secretary of State<sup>11</sup>.

1 See the text and notes 4-8 *infra*.

2 I.e. authority under the Anatomy Act 1984 s 4: see PARA 226 *ante*. For the meaning of 'body' see PARA 226 note 1 *ante*; and for the meaning of 'anatomical examination' see PARA 226 note 2 *ante*.

3 *Ibid* s 5(1), (2). As from a day to be appointed, the Anatomy Act 1984 is repealed by the Human Tissue Act 2004 ss 57, 60, Sch 7 Pt 1. At the date at which this volume states the law no such day had been appointed. As to the new regime under the Human Tissue Act 2004 see PARA 233 *et seq post*.

Contravention of this provision is an offence: see PARA 232 *post*.

4 Anatomy Act 1984 s 5(3) (prospectively repealed).

5 *Ibid* s 5(4) (prospectively repealed).

6 See note 2 *supra*.

7 I.e. under the Anatomy Act 1984 s 5(5) (prospectively repealed): see the text to note 9 *infra*.

8 I.e. under *ibid* s 6 (prospectively repealed) (see PARA 229 *ante*): s 5(4)(a)-(d) (prospectively repealed).

9 *Ibid* s 5(5) (prospectively repealed). As to general provisions concerning licences see s 7 (prospectively repealed); and PARA 227 *ante*. As to the Secretary of State see PARA 5 *ante*.

10 *Ibid* s 5(5)(a), (b) (prospectively repealed).

11 *Ibid* s 5(6) (prospectively repealed). The power to make regulations under this provision is exercisable by statutory instrument, subject to annulment by resolution of either House of Parliament: s 5(7) (prospectively repealed). Failure to compile such a record is an offence, as is the compilation or alteration of such a record by a person so that it is to his knowledge false in a material particular: see PARA 232 *post*.

The records must be in permanent form and contain the following particulars: (1) a description of the parts of bodies which the licence holder has in his possession, identifying the bodies from which they were separated; (2) whether statutory authority has been given for possession (i.e. in pursuance of s 6(2) (prospectively repealed) or s 6(3) (prospectively repealed): see PARA 229 *ante*), and the name and address of the person who gave authority for possession to be held; and (3) the name and address of any person to whom he has given

permission under s 5(5)(b) (prospectively repealed: see the text to note 10 supra) and who retains possession of a part of a body for more than one month: Anatomy Regulations 1988, SI 1988/44, reg 3(1), (2) (reg 3(1) substituted by SI 1988/198). Records relating to the parts separated from any body must be retained until the latest date of disposal of any part of the body from which the parts were separated: Anatomy Regulations 1988, SI 1988/44, reg 3(3). Where the licence holder is also licensed in relation to the carrying out of anatomical examinations or the possession of anatomical specimens, records compiled for that purpose must be retained in so far as they are necessary for licences for possession after examination: reg 3(3). See also PARA 227 note 6 ante.

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### **231. Inspectors.**

The Secretary of State may appoint such persons as he thinks fit to be Her Majesty's Inspectors of Anatomy<sup>1</sup>. The functions of such inspectors are: (1) to advise the Secretary of State on the exercise of his functions; (2) for that purpose, to inspect premises in respect of which licences are sought; (3) for the same purpose, to examine applications for licences in order to ascertain the suitability of applicants; and (4) to inspect premises to ascertain whether certain offences have been, or are being, committed<sup>2</sup>.

An inspector authorised in writing by the Secretary of State may require the production of, and inspect and take copies of, any records which a person is required to retain<sup>3</sup>, and may enter and inspect licensed<sup>4</sup> premises if he has reasonable cause to believe that certain offences have been or are being committed and he is duly authorised in writing by the Secretary of State<sup>5</sup>. Any information obtained by any person in pursuance of these provisions may not be disclosed, except in specified circumstances<sup>6</sup>.

1 Anatomy Act 1984 s 9(1). As from a day to be appointed, the Anatomy Act 1984 is repealed by the Human Tissue Act 2004 ss 57, 60, Sch 7 Pt 1. At the date at which this volume states the law no such day had been appointed. As to the new regime under the Human Tissue Act 2004 see PARA 233 et seq post.

The Secretary of State may pay inspectors such remuneration as he may decide, determine the terms and conditions of appointment, and make provisions for payment of or towards pensions, allowances or gratuities: see the Anatomy Act 1984 s 9(3)-(5) (prospectively repealed). As to the Secretary of State see PARA 5 ante.

2 Ibid s 9(2)(a)-(d) (prospectively repealed). The offences referred to in the text are those mentioned in s 11(1), (2) (prospectively repealed), or under the Anatomy Regulations 1988, SI 1988/44, reg 4: see PARA 232 post.

3 As to such records see PARAS 227 text and note 6, 230 text and note 11 ante.

4 This power may only be exercised if the licence is in force both at the time of the suspected offence and at the time of the entry: Anatomy Act 1984 s 10(5) (prospectively repealed). As to licences see PARA 227 ante.

5 Ibid s 10(1), (2) (prospectively repealed). These powers may only be exercised at a reasonable time: s 10(4) (prospectively repealed). An inspector must produce evidence of his authority, if requested, before exercising his powers: s 10(3) (prospectively repealed). The offences are those under s 11(1)(a), (2) (prospectively repealed) or against regulations under s 8 (prospectively repealed), as mentioned in s 11(4) (prospectively repealed): s 10(2)(a) (prospectively repealed). For the meaning of 'writing' see PARA 20 note 22 ante.

6 Ibid s 10(6) (prospectively repealed). The circumstances are: (1) with the written consent of the person who provided the information; (2) to any Minister of the Crown; (3) in the form of a summary or similar information obtained from a number of persons, so framed as not to enable particulars relating to any one person or undertaking to be ascertained; (4) for the institution, or otherwise for the purposes of, criminal proceedings; or (5) for the report of criminal proceedings: s 10 (6)(a)-(e) (prospectively repealed).

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## 232. Offences.

It is an offence for a person to:

- 249 (1) carry out an anatomical examination in contravention of the statutory provisions<sup>1</sup>;
- 250 (2) have possession of an anatomical specimen in contravention of the statutory provisions<sup>2</sup>;
- 251 (3) have possession of a body, or part of a body, in contravention of the statutory provisions<sup>3</sup>;
- 252 (4) contravene a condition attached to a licence<sup>4</sup>.

It is a defence for a person charged with any of the above offences to prove that he took all reasonable precautions and exercised all due diligence to avoid commission of the offence<sup>5</sup>.

Regulations<sup>6</sup> may provide that a person who without reasonable excuse contravenes any specified provision of the regulations, commits an offence<sup>7</sup>.

If a person carries out an anatomical examination or has possession of an anatomical specimen or body<sup>8</sup> or part, and the circumstances are such that he commits no offence under the above provisions (including regulations)<sup>9</sup>, then he is guilty of no other offence of carrying out such examination or having such possession<sup>10</sup>.

It is an offence for a person, without reasonable excuse, to:

- 253 (a) fail to compile and retain records relating to anatomical examinations and specimens<sup>11</sup>;
- 254 (b) compile such a record which he knows is false in a material particular<sup>12</sup>;
- 255 (c) alter such a record so that it becomes, to his knowledge, false in a material particular<sup>13</sup>;
- 256 (d) fail to comply with a request to produce such records for inspection<sup>14</sup>;
- 257 (e) intentionally obstruct an inspector in the exercise of his powers<sup>15</sup>;
- 258 (f) disclose information contrary to the statutory restriction<sup>16</sup>.

Where an offence is committed by a body corporate and it is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer, or any person purporting to act in such capacity, that person is also guilty of the offence and liable to be proceeded against and punished accordingly<sup>17</sup>.

1 In the contrary to the Anatomy Act 1984 s 2(1) (prospectively repealed) (see PARA 228 ante): s 11(1)(a). As from a day to be appointed, the Anatomy Act 1984 is repealed by the Human Tissue Act 2004 ss 57, 60, Sch 7 Pt 1. At the date at which this volume states the law no such day had been appointed. As to the new regime under the Human Tissue Act 2004 see PARA 233 et seq post. For the meaning of 'anatomical examination' see PARA 226 note 2 ante.

The penalty on summary conviction is a fine not exceeding level 3 on the standard scale or imprisonment for a term not exceeding three months: Anatomy Act 1984 s 11(6) (amended by the Statute Law (Repeals) Act 1993; prospectively repealed). As to the standard scale see PARA 185 note 11 ante.



2     le contrary to the Anatomy Act 1984 s 2(2) (prospectively repealed) (see PARA 228 ante): s 11(1)(b) (prospectively repealed). For the penalty see note 1 supra. For the meaning of 'anatomical specimen' see PARA 227 note 2 ante.

3     le contrary to ibid s 5(2) (prospectively repealed) (see PARA 230 ante): s 11(1)(c) (prospectively repealed). For the penalty see note 1 supra. For the meaning of 'body' see PARA 226 note 1 ante.

4     Ibid s 11(2) (prospectively repealed). As to licences see PARAS 227, 230 ante. For the penalty see note 1 supra.

5     Ibid s 11(3) (prospectively repealed).

6     le regulations under ibid s 8 (prospectively repealed).

7     Ibid s 11(4) (prospectively repealed). The regulations may provide for a penalty on summary conviction of a fine not exceeding level 3 on the standard scale, or imprisonment for a term not exceeding three months: see s 11(7) (amended by the Statute Law (Repeals) Act 1993; prospectively repealed). A person who without reasonable excuse contravenes any provision of the Anatomy Regulations 1988, SI 1988/44, reg 4 (examination and disposal of bodies and care of parts of bodies: see PARAS 226 text to notes 8-10, 229 text to note 8 ante) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale: reg 5 (amended by virtue of the Criminal Justice Act 1988 s 52).

8     le falling within the Anatomy Act 1984 s 5(1) (prospectively repealed): see PARA 230 ante.

9     le against ibid s 11(1), (2) (prospectively repealed) (see the text to notes 1-4 supra) or regulations made under s 8 (prospectively repealed) (see PARAS 226 text to note 7, 229 text to note 9 ante).

10    Ibid s 11(10) (prospectively repealed).

11    Ibid s 11(5)(a) (prospectively repealed). Such records are required to be compiled under ss 3(5), 5(6) (prospectively repealed): see PARAS 227 text to note 6, 230 text to note 11 ante. The penalty on summary conviction of an offence under s 11(5) (prospectively repealed) is a fine not exceeding level 3 on the standard scale: s 11(8) (amended by the Statute Law (Repeals) Act 1993; prospectively repealed).

12    Anatomy Act 1984 s 11(5)(b) (prospectively repealed). For the penalty see note 11 supra.

13    Ibid s 11(5)(c) (prospectively repealed). For the penalty see note 11 supra.

14    Ibid s 11(5)(d) (prospectively repealed). Such a request is made by an inspector under s 10(1) (prospectively repealed): see PARA 231 text and notes 3-5 ante. For the penalty see note 11 supra.

15    Ibid s 11(5)(e) (prospectively repealed). As to the powers of inspectors see PARA 231 ante. For the penalty see note 11 supra.

16    Ibid s 11(5)(f) (prospectively repealed). The statutory restriction on disclosure of information is made by s 10(6) (prospectively repealed): see PARA 231 ante. For the penalty see note 11 supra.

17    Ibid s 11(9) (prospectively repealed).

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### **(iii) The Human Tissue Act 2004**

#### **A. INTRODUCTION**

##### **233. In general.**

As from a day to be appointed<sup>1</sup>, the law relating to the removal, storage and use of human organs and tissue is to be regulated by the Human Tissue Act 2004, which will repeal and replace earlier legislation, including the Human Tissue Act 1961, the Anatomy Act 1984, the Corneal Tissue Act 1986 and the Human Organ Transplants Act 1989<sup>2</sup>.

The Human Tissue Act 2004 provides for the establishment of the Human Tissue Authority, which is to have regulatory and licensing functions<sup>3</sup>. The Act authorises certain activities relating to human bodies and body parts if they are carried out with consent<sup>4</sup>; and it imposes licensing requirements for certain activities<sup>5</sup>. Provision is also made for the de-accession of human remains<sup>6</sup>. The Act creates various offences<sup>7</sup>.

1 At the date at which this volume states the law, only certain provisions of the Human Tissue Act had been brought into force, and no day had been appointed for the commencement of the remaining provisions. As to the commencement of the Human Tissue Act 2004 see PARA 234 post.

2 The Human Tissue Act 2004 repeals and revokes specified enactments and instruments (see s 57, Sch 7) and makes consequential amendments (see s 56, Sch 6). As to the earlier legislation see PARAS 225-232 ante.

3 See PARA 239 et seq post.

4 See PARA 250 et seq post.

5 See PARA 255 et seq post.

6 See PARA 267 post.

7 See PARA 268 et seq post.

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### 234. The legislation.

The Human Tissue Act 2004<sup>1</sup>, when fully in force, will replace the earlier legislation<sup>2</sup>. Certain provisions of the Act<sup>3</sup> came into force on the day on which it was passed<sup>4</sup> but most of the provisions are to come into force on such day as the Secretary of State<sup>5</sup> may appoint by order made by statutory instrument, and different days may be so appointed for different purposes<sup>6</sup>. The Act mainly extends to England, Wales and Northern Ireland<sup>7</sup>.

1 As to the short title see the Human Tissue Act 2004 s 61.

2 See PARA 233 ante. As to the earlier legislation see PARAS 225-232 ante.

3 Ie the Human Tissue Act 2004 s 58(3)-(7) (see PARA 236 post) and ss 59-61.

4 Ibid s 60(1). The date on which the Human Tissue Act 2004 was passed (ie the date of royal assent) was 15 November 2004.

5 As to the Secretary of State see PARA 5 ante.

6 Human Tissue Act 2004 s 60(2). At the date at which this volume states the law, only certain provisions of the Human Tissue Act had been brought into force under s 60(2), and no day had been appointed for the commencement of the remaining provisions. Section 13 (see PARA 239 post), s 14 (see PARA 246 post), s 15 (see PARA 247 post), s 26 (see PARA 266 post), s 27 (see PARA 251 post), ss 28, 29 (see PARA 266 post), s 35 (see PARA 243 post), s 36 (see PARA 245 post), s 38 (see PARA 247 post), s 42 (see PARA 249 post), s 55 (see PARA 238 post), Sch 1 (see PARA 246 post), Sch 2 (see PARAS 239-241, 244, 247 post), Sch 6 para 6 came into force on 1 April 2005, as did ss 39, 40 (so far as they relate to s 14: see PARA 246 post), and ss 41, 52, 53, 54 (so far as relevant to the provisions brought into force by the Human Tissue Act 2004 (Commencement No 1) Order 2005, SI 2005/919): see art 3, Schedule. As to the general power to make orders under the Human Tissue Act 2004 see PARA 235 post.

Before exercising the power under s 60(2) in relation to the coming into force in England and Wales of any provision of the Human Tissue Act 2004, except s 47 (see PARA 267 post), the Secretary of State must consult the National Assembly for Wales: s 60(3). Before exercising the power under s 60(2) in relation to the coming into force in Northern Ireland of any provision of the Human Tissue Act 2004, except s 47, the Secretary of State must consult the relevant Northern Ireland department: s 60(4). 'Relevant Northern Ireland department' means the Department of Health, Social Services and Public Safety: s 54(1). Before exercising the power under s 60(2) in relation to the coming into force in Scotland of any provision of the Human Tissue Act 2004, except s 47, the Secretary of State must consult the Scottish Ministers: s 60(5). As to the National Assembly for Wales and the Scottish Ministers see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

No day may be appointed under s 60(2) for the coming into force of s 5 (see PARA 268 post) or s 8 (see PARA 269 post) which is earlier than the end of the period of three months beginning with the day on which the Human Tissue Authority first issues a code of practice dealing with the matters mentioned in s 26(2)(h) and s 26(2)(i) (see PARA 266 post): s 60(6). If the Authority first issues a code of practice dealing with one of the matters mentioned in s 60(6) before it first issues a code of practice dealing with the other, that provision has effect as if the three month period were one beginning with the later of the day on which the Authority first issues a code of practice dealing with the matter mentioned in s 26(2)(h) and the day on which the Authority first issues a code of practice dealing with the matter mentioned in s 26(2)(i): s 60(7). As to the establishment of the Human Tissue Authority see PARA 239 post.

7 See ibid s 59(1). The provisions of s 58(1), (2) (see PARA 272 notes 2, 8 post), s 58(5) (see PARA 236 post) and s 60(3) extend to England and Wales only: s 59(2). The provisions of s 51(1)-(3) (see PARA 272 post), s 58(6) (see PARA 236 post) and s 60(4) extend to Northern Ireland only: s 59(3). Certain provisions also extend to Scotland (see s 59(4)), and some extend to Scotland only (see s 59(5)). Subject to s 59(5), any amendment made by the Human Tissue Act 2004 has the same extent as the enactment to which it relates: s 59(6). Generally, any repeal or revocation made by this Act has the same extent as the enactment or instrument to which it relates (see s 59(7)), although certain repeals do not extend to Scotland (see s 59(8), (9)).

**UPDATE**

**234 The legislation**

NOTE 6--All provisions of Human Tissue Act 2004 now in force: SI 2005/2632, SI 2005/2792, SI 2006/404, SI 2006/1997, SI 2006/2169.

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### **235. Orders and regulations.**

The Human Tissue Act 2004<sup>1</sup> provides various powers to make orders and regulations<sup>2</sup>. Any such power includes power to make different provision for different cases and to make incidental, supplementary, consequential or transitional provision or savings<sup>3</sup>, and is exercisable by statutory instrument<sup>4</sup>.

1 At the date at which this volume states the law, the Human Tissue Act 2004 s 52 had been brought into force only so far as relevant to the provisions brought into force by the Human Tissue Act 2004 (Commencement No 1) Order 2005, SI 2005/919: see art 3, Schedule. As to the commencement of the Human Tissue Act 2004 see PARA 234 ante.

2 The Statutory Instruments Act 1946 (see STATUTES vol 44(1) (Reissue) PARA 1501 et seq) applies to any power to make orders or regulations conferred by an Act on the Human Tissue Authority as if the Authority were a Minister of the Crown: Human Tissue Act 2004 s 13(2), Sch 2 para 22. As to the establishment of the Human Tissue Authority see PARA 239 post.

3 Ibid s 52(1). Section 52(1) does not apply to: (1) any power of court (s 52(5)); or (2) orders under s 58 (see PARA 236 post) or s 60 (see PARA 234 ante) (s 52(6)).

4 Ibid s 52(2). Section 52(2) does not apply to: (1) any power of a court (s 52(5)); or (2) orders under s 58 (see PARA 236 post) or s 60 (see PARA 234 ante) (s 52(6)).

A statutory instrument containing an order or regulations under the Human Tissue Act 2004, except s 1(11) (see PARA 250 post), ss 6, 7(4) (see PARA 253 post), s 10(9) (see PARA 254 post), s 14(4) (see PARA 246 post), s 16(5) (see PARA 255 post), s 27(9) (see PARA 251 post), s 33(3), (7) (see PARA 273 post), s 46(1) (see PARA 237 post), s 54(10) (see PARA 251 post) and Sch 4 paras 6(2), 12(2), 13 (see PARA 274 post), made by the Secretary of State is subject to annulment in pursuance of a resolution of either House of Parliament: s 52(3). Section 52(3) does not apply to orders under s 58 (see PARA 236 post) or s 60 (see PARA 234 ante): s 52(6). As to the Secretary of State see PARA 5 ante.

No order under s 1(11) (see PARA 250 post), s 10(9) (see PARA 254 post), s 14(4) (see PARA 246 post), ss 27(9), 54(10) (see PARA 251 post), or Sch 4 para 13 (see PARA 274 post), and no regulations under ss 6, 7(4) (see PARA 253 post), s 16(5) (see PARA 255 post), s 33(3), (7) (see PARA 273 post), s 46(1) (see PARA 237 post), or Sch 4 paras 6(2), 12(2) (see PARA 274 post), may be made unless a draft of the statutory instrument containing it, or them, has been laid before and approved by a resolution of each House of Parliament: s 52(4).

The power under s 14(4) (see PARA 246 post) or s 16(5) (see PARA 255 post), so far as relating to museums in Wales, may only be exercised with the consent of the National Assembly for Wales and, so far as relating to museums in Northern Ireland, may only be exercised with the consent of the Department of Culture, Arts and Leisure: s 52(7). As to the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

The Secretary of State must consult the National Assembly for Wales and the relevant Northern Ireland department before acting under s 1(9)(a), (11) (see PARA 250 post), s 4(10)(b) (see PARA 252 post), ss 6, 7(4) (see PARA 253 post), s 8(4)(d) (see PARA 269 post), s 10(9) (see PARA 254 post), s 14(4) (see PARA 246 post), s 16(3), (5) (see PARA 255 post), s 27(9) (see PARA 251 post), s 33(3), (7) (see PARA 273 post), s 34(1) (see PARA 273 post), s 46(1) (see PARA 237 post), s 54(10) (see PARA 251 post), Sch 4 paras 6(2), 10(b), 12(2), 13 (see PARA 274 post) and Sch 5 para 4(5) (see PARA 275 post): s 52(8). For the meaning of 'relevant Northern Ireland department' see PARA 234 note 4 ante.

The Secretary of State must consult the Scottish Ministers before making orders under s 54(10) (see PARA 251 post) in order to amend s 54(9) so far as having effect for the purposes of Sch 4, or under Sch 4 para 6(2), 10(b), 12(2) or 13 (see PARA 274 post): see s 52(9).

Before acting under s 1(11) (see PARA 250 post), ss 6, 7(4) (see PARA 253 post), s 10(9) (see PARA 254 post), s 14(4) (see PARA 246 post), s 16(5) (see PARA 255 post), s 27(9) (see PARA 251 post), s 33(3), (7) (see PARA 273 post), s 46(1) (see PARA 237 post), s 54(10) (see PARA 251 post) and Sch 4 paras 6(2), 12(2), 13 (see PARA 274 post), the Secretary of State must also consult such other persons as he considers appropriate: see s 52(10).

**UPDATE**

**235 Orders and regulations**

NOTE 1--Human Tissue Act 2004 s 52 now in force for all purposes: SI 2005/2792, SI 2006/404, SI 2006/1997.

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### **236. Power to make transitional provision.**

The Secretary of State<sup>1</sup> may by order<sup>2</sup> made by statutory instrument make in connection with the coming into force of any provision of the Human Tissue Act 2004<sup>3</sup> such transitional provision or savings as he considers necessary or expedient<sup>4</sup>. This power includes power to make different provision for different cases<sup>5</sup>.

1 As to the Secretary of State see PARA 5 ante.

2 At the date at which this volume states the law no such orders had been made. As to the general power to make orders under the Human Tissue Act 2004 see PARA 235 ante.

3 As to the commencement of the Human Tissue Act 2004 see PARA 234 ante.

4 Ibid s 58(3). Before making provision under s 58(3) in connection with the coming into force in England and Wales of any provision of the Human Tissue Act 2004, except s 47 (see PARA 267 post), the Secretary of State must consult the National Assembly for Wales: s 58(5). As to the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS. Before making provision under s 58(3) in connection with the coming into force in Northern Ireland of any provision of the Human Tissue Act 2004, except s 47, the Secretary of State must consult the relevant Northern Ireland department: s 58(6). For the meaning of 'relevant Northern Ireland department' see PARA 234 note 4 ante. Before making provision under s 58(3) in connection with the coming into force in Scotland of any provision of the Human Tissue Act 2004, except s 47, the Secretary of State must consult the Scottish Ministers: s 58(7).

5 Ibid s 58(4).

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### **237. Power to amend the legislation to give effect to Community obligations.**

As from a day to be appointed<sup>1</sup>, the Secretary of State<sup>2</sup> may by regulations amend the Human Tissue Act 2004 for the purpose of implementing a relevant obligation or enabling a relevant obligation to be implemented or for the purpose of dealing with matters arising out of or related to a relevant obligation<sup>3</sup>. For these purposes, 'relevant obligation' means a Community obligation of the United Kingdom relating to material which consists of, includes or is derived from human cells<sup>4</sup>.

This power includes, in particular, power to add or omit provisions, and also includes power consequentially to amend or repeal any other enactment and any instrument made under an enactment<sup>5</sup>.

1 At the date at which this volume states the law no such day had been appointed. As to the commencement of the Human Tissue Act 2004 see PARA 234 ante.

2 As to the Secretary of State see PARA 5 ante.

3 Human Tissue Act 2004 s 46(1). At the date at which this volume states the law no such regulations had been made. As to the general power to make regulations under the Human Tissue Act 2004 see PARA 235 ante.

4 Ibid s 46(3). For the meaning of 'Community obligation' see the European Communities Act 1972 s 1, Sch 1 Pt II; and the Interpretation Act 1978 s 5, Sch 1. For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

5 Human Tissue Act 2004 s 46(2).

### **UPDATE**

### **237 Power to amend the legislation to give effect to Community obligations**

TEXT AND NOTE 1--Day now appointed: SI 2005/2792, SI 2006/1997.



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### **238. Financial provisions.**

The Human Tissue Act 2004<sup>1</sup> provides that there is to be paid out of money provided by Parliament any expenditure incurred by the Secretary of State<sup>2</sup> in consequence of the Human Tissue Act 2004 and any increase attributable to that Act in the sums payable out of money so provided under any other enactment<sup>3</sup>.

1 As to the commencement of the Human Tissue Act 2004 see PARA 234 ante.

2 As to the Secretary of State see PARA 5 ante.

3 Human Tissue Act 2004 s 55.

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## **B. THE HUMAN TISSUE AUTHORITY**

### **(A) CONSTITUTION AND PROCEDURE OF THE AUTHORITY**

#### **239. The Authority.**

The Human Tissue Act 2004<sup>1</sup> provides that there is to be a body corporate known as the Human Tissue Authority<sup>2</sup>. The Authority is to consist of a chairman appointed by the Secretary of State<sup>3</sup>, such number of other members appointed by the Secretary of State as he thinks fit, a member appointed by the National Assembly for Wales<sup>4</sup>, and a member appointed by the relevant Northern Ireland department<sup>5</sup>. The Secretary of State must exercise his power to appoint members of the Authority to secure that at all times not less than half of the members are persons who do not have, and have not had, a professional interest in any of the kinds of activity within the remit of the Authority<sup>6</sup>.

A person is disqualified for being appointed as chairman of the Authority if he has, or has had, a professional interest in any of the kinds of activity within the remit of the Authority<sup>7</sup>. A person is disqualified for being appointed as chairman or other member of the Authority if: (1) he is the subject of a bankruptcy restrictions order or interim order<sup>8</sup>; (2) a bankruptcy order has been made against him by a court in Northern Ireland, his estate has been sequestrated by a court in Scotland or, under the law of Northern Ireland or Scotland, he has made a composition or arrangement with, or granted a trust deed for, his creditors<sup>9</sup>; or (3) in the last five years he has been convicted<sup>10</sup> in the United Kingdom<sup>11</sup>, the Channel Islands or the Isle of Man of an offence and has had a qualifying sentence passed on him<sup>12</sup>.

The chairman and other members of the Authority hold and vacate office in accordance with the terms of their respective appointments<sup>13</sup>. The terms of appointment of the chairman and other members of the Authority are such as the Secretary of State may determine<sup>14</sup>; and appointment as chairman or other member is for a term not exceeding three years<sup>15</sup>. Previous service as chairman or other member of the Authority does not affect a person's eligibility for appointment to either office<sup>16</sup>. A person holding office as chairman or other member of the Authority ceases to hold that office if he ceases to be qualified for appointment to it<sup>17</sup>. A person may be removed from office as chairman or other member of the Authority by the person who appointed him if that person is satisfied that he has been absent from meetings of the Authority for six consecutive months, or longer, without the permission of the Authority, or that he is unable or unfit to carry out his functions as chairman or other member<sup>18</sup>. A person holding office as chairman or other member of the Authority may resign that office by giving notice in writing to the person who appointed him<sup>19</sup>.

The Authority may pay to the chairman or any of the other members of the Authority such remuneration as the Secretary of State may determine<sup>20</sup>. The Authority may pay, or make provision for paying, to or in respect of the chairman or any of the other members of the Authority such pensions, allowances, fees, expenses or gratuities as the Secretary of State may determine<sup>21</sup>. The Authority may make a payment to a person who ceases to hold office as chairman or other member of the Authority otherwise than on the expiry of his term of office if it appears to the Secretary of State that there are special circumstances which make it right for that person to receive compensation<sup>22</sup>.

The Authority may appoint such staff as it considers appropriate, on such terms and conditions as it may determine<sup>23</sup>.

The validity of any proceedings<sup>24</sup> of the Authority is not affected by: (a) any vacancy in the office of chairman, member appointed by the National Assembly for Wales, or member appointed by the relevant Northern Ireland department; (b) any defect in a person's appointment as chairman or other member; or (c) the composition for the time being of the membership of the Authority<sup>25</sup>.

The Authority must establish and maintain a system for the declaration and registration of private interests of its members and publish entries recorded in the register of members' interests<sup>26</sup>.

The Authority is not to be regarded as the servant or agent of the Crown, or as enjoying any status, privilege or immunity of the Crown; and the property of the Authority is not to be regarded as property of, or property held on behalf of, the Crown<sup>27</sup>.

Any action taken by or on behalf of the Authority in the exercise of its administrative functions may be investigated by the Parliamentary Commissioner for Administration<sup>28</sup>. A member of the Authority is disqualified from membership of the House of Commons<sup>29</sup>.

1 As to the commencement of the Human Tissue Act 2004 see PARA 234 ante.

2 Ibid s 13(1).

3 As to the Secretary of State see PARA 5 ante.

4 As to the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

5 Human Tissue Act 2004 s 13(2), Sch 2 para 1(1). For the meaning of 'relevant Northern Ireland department' see PARA 234 note 4 ante.

6 Ibid Sch 2 para 1(2). As to activities within the remit of the Authority see PARA 246 post.

7 Ibid Sch 2 para 2.

8 Ibid Sch 2 para 3(1)(a). As to bankruptcy generally see BANKRUPTCY AND INDIVIDUAL INSOLVENCY.

9 Ibid Sch 2 para 3(1)(b). Where a person is disqualified under Sch 2 para 2(1)(b) because a bankruptcy order has been made against him or his estate has been sequestrated, the disqualification ceases: (1) on his obtaining a discharge; or (2) if the bankruptcy order is annulled or the sequestration of his estate is recalled or reduced, on the date of that event: Sch 2 para 3(2). Where a person is disqualified under Sch 2 para 2(1)(b) because of his having made a composition or arrangement with, or granted a trust deed for, his creditors, the disqualification ceases: (a) at the end of the period of five years beginning with the date on which the terms of the deed of composition or arrangement or trust deed are fulfilled; or (b) if, before then, he pays his debts in full, on the date on which the payment is completed: Sch 2 para 3(3).

10 For these purposes, the date of conviction is to be taken to be the ordinary date on which the period allowed for making an appeal or application expires or, if an appeal or application is made, the date on which the appeal or application is finally disposed of or abandoned or fails by reason of its non-prosecution: ibid Sch 2 para 3(4).

11 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

12 Human Tissue Act 2004 Sch 2 para 3(1)(c). The reference in the text to a qualifying sentence is a reference to a sentence of imprisonment for a period of not less than three months (whether suspended or not) without the option of a fine: Sch 2 para 3(5).

13 Ibid Sch 2 para 4.

14 Ibid Sch 2 para 5(1).

15 Ibid Sch 2 para 5(2).

16 Ibid Sch 2 para 6.

17 Ibid Sch 2 para 8.

18 Ibid Sch 2 para 9.

19 Ibid Sch 2 para 7.

20 Ibid Sch 2 para 10(1).

21 Ibid Sch 2 para 10(2).

22 Ibid Sch 2 para 10(3). A payment under Sch 2 para 10(3) is to be of such amount as the Secretary of State may determine: Sch 2 para 10(4).

23 Ibid Sch 2 para 11.

24 As to the regulation of proceedings of the Authority see PARA 240 post.

25 Human Tissue Act 2004 Sch 2 para 13.

26 Ibid Sch 2 para 14.

27 Ibid Sch 2 para 19.

28 See the Parliamentary Commissioner Act 1967 ss 4, 5 Sch 2 (as amended); and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 43. As to the Parliamentary Commissioner for Administration see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 41 et seq.

29 See the House of Commons Disqualification Act 1975 Sch 1 Pt II (as amended); and PARLIAMENT vol 78 (2010) PARA 908. As to disqualification from membership of the House of Commons generally see PARLIAMENT vol 78 (2010) PARA 905 et seq.

## **UPDATE**

### **239 The Authority**

TEXT AND NOTE 9--The Human Tissue Act 2004 Sch 2 para 3(1)(b), (2) and (3) are disqualification provisions for the purpose of the Enterprise Act 2002 s 268 (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 699A), which has effect with modifications: see the Human Tissue Act 2004 Sch 6 para 6.

NOTE 18--Human Tissue Act 2004 Sch 2 paras 9A-9C added: Health Act 2009 Sch 3 para 7.

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#### **240. Procedure.**

The Human Tissue Act 2004<sup>1</sup> provides that the Human Tissue Authority<sup>2</sup> may regulate its own procedure (including quorum)<sup>3</sup>.

The application of the seal of the Authority must be authenticated by the signature of any member of the Authority or of any other person who has been authorised for the purpose by the Authority, whether generally or specially<sup>4</sup>. A document purporting to be duly executed under the seal of the Authority, or to be signed on its behalf, must be received in evidence and be taken, without further proof, to be so executed or signed unless the contrary is shown<sup>5</sup>.

1 As to the commencement of the Human Tissue Act 2004 see PARA 234 ante.

2 As to the establishment of the Human Tissue Authority see PARA 239 ante.

3 Human Tissue Act 2004 s 13(2), Sch 2 para 12. As to the validity of the proceedings of the Authority see PARA 239 ante.

4 Ibid Sch 2 para 17.

5 Ibid Sch 2 para 18.

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**241. Power to delegate.**

The Human Tissue Act 2004<sup>1</sup> provides that the Human Tissue Authority<sup>2</sup> may delegate any of its functions<sup>3</sup> (to such extent as it may determine) to any member of the Authority or staff of the Authority<sup>4</sup> or to a committee consisting of persons each of whom is either a member of the Authority, or a member of the staff of the Authority<sup>5</sup>.

1 As to the commencement of the Human Tissue Act 2004 see PARA 234 ante.

2 As to the establishment of the Human Tissue Authority see PARA 239 ante.

3 As to the functions of the Authority generally see PARA 247 et seq post.

4 As to the appointment of members and staff of the Authority see PARA 239 ante.

5 Human Tissue Act 2004 s 13(2), Sch 2 para 21.

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## **242. Appeals committee.**

As from a day to be appointed<sup>1</sup>, the Human Tissue Authority<sup>2</sup> must maintain one or more appeals committees to carry out its functions in pursuance of notices relating to the exercise of the right to reconsideration of licensing decisions<sup>3</sup>. An appeals committee is to consist of not less than five members of the Authority<sup>4</sup> and the quorum for an appeals committee is three<sup>5</sup>.

1 At the date at which this volume states the law no such day had been appointed. As to the commencement of the Human Tissue Act 2004 see PARA 234 ante.

2 As to the establishment of the Human Tissue Authority see PARA 239 ante.

3 Human Tissue Act 2004 s 20(1), (2). The notices referred to in the text are notices under s 19: see PARA 263 post.

4 Ibid s 20(3). As to the appointment of members of the Authority see PARA 239 ante.

5 Ibid s 20(4).

### **UPDATE**

## **242 Appeals committee**

TEXT AND NOTE 1--Day now appointed: SI 2005/2792, SI 2006/404, SI 2006/1997.

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### **243. Agency arrangements.**

The Human Tissue Act 2004<sup>1</sup> provides that arrangements may be made between the Human Tissue Authority<sup>2</sup> and a government department<sup>3</sup>, a public authority or the holder of a public office ('the other authority') for: (1) any functions<sup>4</sup> of the Authority to be carried out by, or by members of the staff of, the other authority; or (2) the provision by the other authority of administrative, professional or technical services to the Authority<sup>5</sup>. Arrangements under head (1) above do not affect responsibility for the carrying out of the Authority's functions<sup>6</sup>. Head (1) above does not apply to functions of making subordinate legislation<sup>7</sup>.

1 As to the commencement of the Human Tissue Act 2004 see PARA 234 ante.

2 As to the establishment of the Human Tissue Authority see PARA 239 ante.

3 As to government departments generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 360, 427 et seq.

4 As to the functions of the Authority generally see PARA 247 et seq post.

5 Human Tissue Act 2004 s 35(1)(a).

6 Ibid s 35(2).

7 Ibid s 35(3). 'Subordinate legislation' means Orders in Council, orders, rules, regulations, schemes, warrants, byelaws and other instruments made or to be made under any Act: see the Interpretation Act 1978 s 21; definition applied by virtue of the Human Tissue Act 2004 s 35(3). See further STATUTES vol 44(1) (Reissue) PARA 1381. As to the general power to make orders and regulations under the Human Tissue Act 2004 see PARA 235 ante.



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#### **244. Finances, accounts and audit.**

The Human Tissue Act 2004<sup>1</sup> provides that the Secretary of State<sup>2</sup> may out of money provided by Parliament make payments to the Human Tissue Authority<sup>3</sup> of such amounts, at such times and on such conditions (if any) as he considers appropriate<sup>4</sup>.

The Authority must keep proper accounts and proper records in relation to its accounts<sup>5</sup>; and it must prepare a statement of accounts in respect of each of its financial years<sup>6</sup>. Any such statement of accounts must comply with any directions given by the Secretary of State with the approval of the Treasury<sup>7</sup> as to the information to be contained in it, the manner in which that information is to be presented, and the methods and principles according to which the statement is to be prepared<sup>8</sup>. The Authority must send a copy of each statement of accounts to: (1) the Secretary of State; (2) the National Assembly for Wales<sup>9</sup>; (3) the relevant Northern Ireland department<sup>10</sup>; and (4) the Comptroller and Auditor General<sup>11</sup>, before the end of such period after the end of the financial year to which the statement relates as the Secretary of State may specify by notice given to the Authority<sup>12</sup>.

The Comptroller and Auditor General must examine, certify and report on each statement of accounts received by him<sup>13</sup> and lay a copy of the statement of accounts, and of his report on it, before each House of Parliament<sup>14</sup>.

1 As to the commencement of the Human Tissue Act 2004 see PARA 234 ante.

2 As to the Secretary of State see PARA 5 ante.

3 As to the establishment of the Human Tissue Authority see PARA 239 ante.

4 Human Tissue Act 2004 s 13(2), Sch 2 para 15.

5 Ibid Sch 2 para 16(1).

6 Ibid Sch 2 para 16(2). 'Financial year' means: (1) the period beginning with the date on which the Authority is established and ending with the next 31 March; and (2) each successive period of 12 months ending with 31 March: see Sch 2 para 16(8).

7 As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

8 Human Tissue Act 2004 Sch 2 para 16(3). The power to give directions includes power to vary or revoke directions given in previous exercise of the power: Sch 2 para 16(7).

9 As to the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

10 The relevant Northern Ireland department must lay before the Northern Ireland Assembly each statement of accounts received under these provisions: Human Tissue Act 2004 Sch 2 para 16(5). For the meaning of 'relevant Northern Ireland department' see PARA 234 note 4 ante.

11 As to the Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 724-726.

12 Human Tissue Act 2004 Sch 2 para 16(4).

13 *Ie* under head (4) in the text.

14 Human Tissue Act 2004 Sch 2 para 16(6).



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## 245. Annual report.

The Human Tissue Act 2004<sup>1</sup> provides that the Human Tissue Authority<sup>2</sup> is to prepare a report for the first 12 months of its existence, and a report for each succeeding period of 12 months<sup>3</sup>. Each report is to deal with the activities of the Authority<sup>4</sup> in the period to which the report relates<sup>5</sup>. The Authority must send each report to the Secretary of State<sup>6</sup>, to the National Assembly for Wales<sup>7</sup>, and to the relevant Northern Ireland department<sup>8</sup>, as soon as practicable after the end of the period to which the report relates<sup>9</sup>. The Secretary of State must lay a copy of each report received by him before each House of Parliament<sup>10</sup>.

1 As to the commencement of the Human Tissue Act 2004 see PARA 234 ante.

2 As to the establishment of the Human Tissue Authority see PARA 239 ante.

3 Human Tissue Act 2004 s 36(1).

4 As to the functions of the Authority and activities within its remit see PARA 246 et seq post.

5 Human Tissue Act 2004 s 36(2).

6 As to the Secretary of State see PARA 5 ante.

7 As to the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

8 The relevant Northern Ireland department must lay a copy of each report received by it before the Northern Ireland Assembly: Human Tissue Act 2004 s 36(5). For the meaning of 'relevant Northern Ireland department' see PARA 234 note 4 ante.

9 Ibid s 36(3).

10 Ibid s 36(4).

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## (B) REMIT AND FUNCTIONS OF THE AUTHORITY

### **246. Activities within the remit of the Authority.**

The Human Tissue Act 2004<sup>1</sup> provides that the activities within the remit of the Human Tissue Authority<sup>2</sup> are as follows:

259 (1) the removal from a human body, for use for a scheduled purpose<sup>3</sup> of any relevant material<sup>4</sup> of which the body consists or which it contains<sup>5</sup>;

260 (2) the use, for a scheduled purpose, of:

87

118. (a) the body of a deceased person; or

119. (b) relevant material which has come from a human body<sup>6</sup>;

88

261 (3) the storage of an anatomical specimen<sup>7</sup> or former anatomical specimen<sup>8</sup>;

262 (4) the storage (in any case not falling within head (3) above) of:

89

120. (a) the body of a deceased person; or

121. (b) relevant material which has come from a human body,

90

263 for use for a scheduled purpose<sup>9</sup>;

264 (5) the import<sup>10</sup> or export<sup>11</sup> of:

91

122. (a) the body of a deceased person; or

123. (b) relevant material which has come from a human body,

92

265 for use for a scheduled purpose<sup>12</sup>;

266 (6) the disposal of the body of a deceased person which has been:

93

124. (a) imported for use;

125. (b) stored for use; or

126. (c) used,

94

267 for a scheduled purpose<sup>13</sup>;

268 (7) the disposal of relevant material which:

95

127. (a) has been removed from a person's body for the purposes of his medical treatment;

128. (b) has been removed from the body of a deceased person for the purposes of an anatomical, or post mortem, examination;

129. (c) has been removed from a human body (otherwise than as mentioned in head (b) above) for use for a scheduled purpose;

130. (d) has come from a human body and been imported for use for a scheduled purpose; or

131. (e) has come from the body of a deceased person which has been imported for use for a scheduled purpose<sup>14</sup>.

The activities within the remit of the Authority include<sup>15</sup>, in particular, the carrying out of an anatomical examination<sup>16</sup> and the making of a post mortem examination<sup>17</sup>. An activity is excluded from the remit of the Authority if it relates to the body of a person who died before the day on which these provisions come into force or to material which has come from the body of such a person, and at least one hundred years have elapsed since the date of the person's death<sup>18</sup>. The Secretary of State<sup>19</sup> may by order add to the activities within the remit of the Authority<sup>20</sup>.

Nothing in heads (1) to (7) above applies to anything done for purposes related to the prevention or detection of crime<sup>21</sup>, or the conduct of a prosecution<sup>22</sup>. However, this does not except from heads (1) to (7) above the carrying out of a post mortem examination<sup>23</sup> for purposes of functions of a coroner<sup>24</sup>.

The following activities are excluded from heads (1) to (7) above:

- 269 (i) the use of the body of a deceased person, or relevant material which has come from a human body, for the purpose of public display<sup>25</sup> at a place of public religious worship or at a place associated<sup>26</sup> with such a place<sup>27</sup>; and
- 270 (ii) the storage of the body of a deceased person, or relevant material which has come from a human body, for use for the purpose mentioned in head (i) above<sup>28</sup>,

if there is a connection between the body or material to which the activity relates, and the religious worship which takes place at the place of public religious worship concerned<sup>29</sup>.

1 At the date at which this volume states the law, only certain provisions of the Human Tissue Act had been brought into force, and no day had been appointed for the commencement of the remaining provisions. At the date at which this volume states the law, s 14 and Sch 1 had been brought into force; s 1 was not yet in force; ss 39, 40 were in force so far as they relate to s 14; and ss 41, 54 were only in force for certain purposes: see the Human Tissue Act 2004 (Commencement No 1) Order 2005, SI 2005/919, art 3, Schedule. As to the commencement of the Human Tissue Act 2004 see PARA 234 ante.

2 As to the establishment of the Human Tissue Authority see PARA 239 ante.

3 'Scheduled purpose' means a purpose specified in the Human Tissue Act 2004 s 1, Sch 1: see PARA 250 post.

4 For the purposes of the Human Tissue Act 2004, 'relevant material' means material, other than gametes, which consists of or includes human cells, and references to relevant material from a human body do not include embryos outside the human body, or hair and nail from the body of a living person (s 53); and for the purposes of s 14, 'relevant material' in relation to use for the scheduled purpose of transplantation, does not include blood or anything derived from blood (s 14(5)). References to material from the body of a living person are references to material from the body of a person alive at the point of separation (s 54(2)(a)), and references to material from the body of a deceased person are references to material from the body of a person not alive at the point of separation (s 54(2)(b)). Material is not to be regarded as from a human body if it is created outside the human body: s 54(7). 'Transplantation' means transplantation to a human body and includes transfusion: s 54(3). As to the meaning of 'gametes' see PARA 278 note 5 post; and for the meaning of 'embryo' see PARA 278 note 2 post (definitions applied by s 54(6)).

5 Ibid s 14(1)(a).

6 Ibid s 14(1)(b).

7 'Anatomical specimen' means the body of a deceased person to be used for the purpose of anatomical examination; or the body of a deceased person in the course of being used for the purpose of anatomical examination (including separated parts of such a body): ibid s 41(1). 'Anatomical examination' means macroscopic examination by dissection for anatomical purposes: s 54(1).

8 Ibid s 14(1)(c).

9 Ibid s 14(1)(d).

10 'Import' means import into England, Wales or Northern Ireland from a place outside England, Wales and Northern Ireland: *ibid* s 41(1).

11 'Export' means export from England, Wales or Northern Ireland to a place outside England, Wales and Northern Ireland: *ibid* s 41(1).

12 Ibid s 14(1)(e).

13 Ibid s 14(1)(f).

14 Ibid s 14(1)(g).

15 This is without prejudice to the generality of heads (1) and (2) in the text: *ibid* s 14(2).

16 'Carrying out of an anatomical examination' means the carrying out of a macroscopic examination by dissection for anatomical purposes of the body of a deceased person, and, where parts of the body of a deceased person are separated in the course of such an examination, include the carrying out of a macroscopic examination by dissection of the parts for those purposes: *ibid* s 41(2).

17 Ibid s 14(2).

18 Ibid s 14(3).

19 As to the Secretary of State see *PARA 5 ante*.

20 See the Human Tissue Act 2004 s 14(4). At the date at which this volume states the law no such orders had been made. As to the general power to make orders under the Human Tissue Act 2004 see *PARA 235 ante*.

21 Detecting crime is to be taken to include establishing by whom, for what purpose, by what means and generally in what circumstances any crime was committed, and the apprehension of the person by whom any crime was committed; and the reference to the detection of crime includes any detection outside the United Kingdom of any crime or suspected crime: *ibid* s 39(4). References to crime include a reference to any conduct which:

52 (1) constitutes one or more criminal offences (whether under the law of a part of the United Kingdom or of a country or territory outside the United Kingdom) (s 39(6)(a));

53 (2) is, or corresponds to, any conduct which, if it all took place in any one part of the United Kingdom, would constitute one or more criminal offences (s 39(6)(b)); or

54 (3) constitutes one or more offences of a kind triable by court-martial under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957 (Human Tissue Act 2004 s 39(6)(c)).

As to courts-martial see *ARMED FORCES vol 2(2) (Reissue) PARA 448 et seq*. For the meaning of 'United Kingdom' see *PARA 1 note 3 ante*.

22 Ibid s 39(1). The reference to a prosecution includes a prosecution brought in respect of any crime in a country or territory outside the United Kingdom: s 39(5).

23 The reference to the carrying out of a post mortem examination does not include the removal of relevant material from the body of a deceased person, or from a part of the body of a deceased person, at the first place where the body or part is situated to be attended by a constable: *ibid* s 39(3).

24 Ibid s 39(2). As to coroners see *CORONERS*.

25 References to public display, in relation to the body of a deceased person, do not include display for the purpose of enabling people to pay their final respects to the deceased, or display which is incidental to the deceased's funeral: *ibid* s 54(5).

26 A place is associated with a place of public religious worship if it is used for purposes associated with the religious worship which takes place there: *ibid* s 40(3).

27 Ibid s 40(1)(a).

28 Ibid s 40(1)(b).

29 Ibid s 40(2).

## **UPDATE**

### **246 Activities within the remit of the Authority**

TEXT AND NOTES 1-20--See also Human Tissue Act 2004 s 14(2ZA) (added by Human Fertilisation and Embryology Act 2008 Sch 7 para 23).

TEXT AND NOTES 1-14--Also, head (8) the procurement, processing, preservation, testing, storage, distribution, import or export of tissue or cells, in so far as those activities are activities to which the Human Tissue (Quality and Safety for Human Application) Regulations 2007, SI 2007/1523, reg 7(1) or (2) applies and are not within the remit of the Authority by virtue of heads (1)-(7): 2004 Act s 14(1)(h) (added by SI 2007/1523).

NOTE 1--All provisions of Human Tissue Act 2004 now in force: see PARA 234 NOTE 6.

NOTE 4--Human Tissue Act 2004 s 54(6) substituted: Human Fertilisation and Embryology Act 2008 Sch 7 para 24.

NOTE 21--Human Tissue Act 2004 s 39(6)(c) amended: Armed Forces Act 2006 Sch 16 para 241.

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## **247. General powers, functions and duties.**

The Human Tissue Act 2004<sup>1</sup> provides that the Human Tissue Authority<sup>2</sup> is to have the following general functions<sup>3</sup>:

- 271 (1) maintaining a statement of the general principles which it considers should be followed in the carrying on of activities within its remit<sup>4</sup>, and in the carrying out of its functions in relation to such activities<sup>5</sup>;
- 272 (2) providing in relation to activities within its remit such general oversight and guidance as it considers appropriate<sup>6</sup>;
- 273 (3) superintending, in relation to activities within its remit, compliance with certain requirements<sup>7</sup> and codes of practice<sup>8</sup>;
- 274 (4) providing to the public, and to persons carrying on activities within its remit, such information and advice as it considers appropriate about the nature and purpose of such activities<sup>9</sup>;
- 275 (5) monitoring developments relating to activities within its remit and advising the Secretary of State<sup>10</sup>, the National Assembly for Wales<sup>11</sup> and the relevant Northern Ireland department<sup>12</sup> on issues relating to such developments<sup>13</sup>;
- 276 (6) advising the Secretary of State, the National Assembly for Wales or the relevant Northern Ireland department on such other issues relating to activities within its remit as he, the Assembly or the department may require<sup>14</sup>.

The Authority must carry out its functions effectively, efficiently and economically<sup>15</sup>, and, so far as relevant, have regard to the principles of best regulatory practice (including the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed)<sup>16</sup>.

The Authority may do anything which is calculated to facilitate, or is conducive or incidental to, the carrying out of its functions, but may not borrow money<sup>17</sup>.

1 As to the commencement of the Human Tissue Act 2004 see PARA 234 ante.

2 As to the establishment of the Human Tissue Authority see PARA 239 ante.

3 As to the power of the Human Tissue Authority to delegate its functions see PARA 241 ante.

4 As to activities within the remit of the Human Tissue Authority see PARA 246 ante.

5 Human Tissue Act 2004 s 15(a).

6 Ibid s 15(b).

7 Ibid s 15(c)(i). The requirements are those imposed under Pt 1 (ss 1-12) and Pt 2 (ss 13-41).

8 Ibid s 15(c)(ii). As to codes of practice issued under the Human Tissue Act 2004 see PARA 266 post.

9 Ibid s 15(d).

10 As to the Secretary of State see PARA 5 ante.



- 11 As to the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS.
- 12 For the meaning of 'relevant Northern Ireland department' see PARA 234 note 4 ante.
- 13 Human Tissue Act 2004 s 15(e).
- 14 Ibid s 15(f).
- 15 Ibid s 38(1).
- 16 Ibid s 38(2).
- 17 Ibid s 13(2), Sch 2 para 20.

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## **248. Power to give directions.**

As from a day to be appointed<sup>1</sup>, the Human Tissue Authority<sup>2</sup> may give directions<sup>3</sup> under Part 2 of the Human Tissue Act 2004<sup>4</sup>.

Any directions given for these purposes to a particular person must be given by serving notice of the directions on the person<sup>5</sup>. Directions given in respect of any licence<sup>6</sup> (including one which has ceased to have effect) may be given:

- 277 (1) by serving notice of the directions on the person who is (or was immediately before the cessation) the designated individual<sup>7</sup> or holder of the licence<sup>8</sup>; or
- 278 (2) if it appears to the Authority that it is not practicable to give notice in that way, by publishing the directions in such way as, in its opinion, is likely to bring them to the attention of the persons to whom they are applicable<sup>9</sup>.

Directions which appear to the Authority to be general directions may be given by publishing them as mentioned in head (2) above<sup>10</sup>.

1 At the date at which this volume states the law no such day had been appointed. As to the commencement of the Human Tissue Act 2004 see PARA 234 ante.

2 As to the establishment of the Human Tissue Authority see PARA 239 ante.

3 This power is exercisable by instrument in writing: Human Tissue Act 2004 s 37(3). It includes the power to vary or revoke directions given in previous exercise of the power under Pt 2 (ss 13-41): s 37(2). The power does not apply to directions under s 13(2), Sch 2: s 37(7).

4 See *ibid* s 37(1).

5 *Ibid* s 37(4).

6 'Licence' means a licence under *ibid* s 16(6), Sch 3 para 1 (see PARA 256 post): s 54(1). As to the granting of a licence see PARA 256 post.

7 'Designated individual', in relation to a licence, means the individual designated in the licence as the person under whose supervision the licensed activity is authorised to be carried on: *ibid* s 41(1). 'Licensed activity', in relation to a licence, means the activity which the licence authorises to be carried on: s 54(1).

8 *Ibid* s 37(5)(a).

9 *Ibid* s 37(5)(b).

10 *Ibid* s 37(6).

## **UPDATE**

### **248 Power to give directions**

TEXT AND NOTE 1--Day now appointed: SI 2005/2792, SI 2006/404, SI 2006/1997.

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**249. Power to assist other public authorities.**

The Human Tissue Act 2004<sup>1</sup> provides that the Human Tissue Authority<sup>2</sup> may, if it thinks it appropriate to do so, provide assistance to any other public authority in the United Kingdom<sup>3</sup> for the purpose of the exercise by that authority of its functions<sup>4</sup>. Such assistance may be provided on such terms, including terms as to payment, as the Authority thinks fit<sup>5</sup>.

1 As to the commencement of the Human Tissue Act 2004 see PARA 234 ante.

2 As to the establishment of the Human Tissue Authority see PARA 239 ante.

3 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

4 Human Tissue Act 2004 s 42(1).

5 Ibid s 42(2).

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### **C. AUTHORISATION OF ACTIVITIES**

#### **250. Activities lawful if done with consent.**

As from a day to be appointed<sup>1</sup>, the Human Tissue Act 2004 provides that certain activities undertaken for scheduled purposes require consent<sup>2</sup>. The 'scheduled purposes' are:

- 279 (1) anatomical examination<sup>3</sup>;
- 280 (2) determining the cause of death<sup>4</sup>;
- 281 (3) establishing after a person's death the efficacy of any drug or other treatment administered to him<sup>5</sup>;
- 282 (4) obtaining scientific or medical information about a living or deceased person which may be relevant to any other person (including a future person)<sup>6</sup>;
- 283 (5) public display<sup>7</sup>;
- 284 (6) research in connection with disorders, or the functioning, of the human body<sup>8</sup>;
- 285 (7) transplantation<sup>9</sup>;
- 286 (8) clinical audit<sup>10</sup>;
- 287 (9) education or training relating to human health<sup>11</sup>;
- 288 (10) performance assessment<sup>12</sup>;
- 289 (11) public health monitoring<sup>13</sup>; and
- 290 (12) quality assurance<sup>14</sup>.

The Secretary of State<sup>15</sup> may by order vary, omit or add to any of the purposes in heads (1) to (12) above<sup>16</sup>.

The following activities<sup>17</sup> are lawful if done with appropriate consent<sup>18</sup>:

- 291 (a) the storage of the body of a deceased person for use for a purpose specified in heads (2) to (12) above<sup>19</sup>;
- 292 (b) the use of the body of a deceased person for a purpose specified in heads (2) to (12) above<sup>20</sup>;
- 293 (c) the removal from the body of a deceased person for use for a purpose specified in heads (1) to (12) above of any relevant material of which the body consists or which it contains<sup>21</sup>;
- 294 (d) the storage for use for a purpose specified in heads (1) to (7) above of any relevant material which has come from a human body<sup>22</sup>;
- 295 (e) the storage for use for a purpose specified in heads (8) to (12) above of any relevant material which has come from the body of a deceased person<sup>23</sup>;
- 296 (f) the use for a purpose specified in heads (1) to (7) above of any relevant material which has come from a human body<sup>24</sup>;
- 297 (g) the use for a purpose specified in heads (8) to (12) above of any relevant material which has come from the body of a deceased person<sup>25</sup>.

The storage of the body of a deceased person for use for the purpose of anatomical examination is lawful if done with appropriate consent<sup>26</sup> and after the signing of a certificate of the cause of death of the person<sup>27</sup>. The use of the body of a deceased person for the purpose of

anatomical examination is lawful if done with appropriate consent<sup>28</sup> and after the death of the person has been registered<sup>29</sup>.

The provisions described above<sup>30</sup> do not apply to an activity of a kind mentioned above if it is done in relation to: (i) a body which has been imported<sup>31</sup> or is the body of a person who died before the day on which these provisions come into force and at least one hundred years have elapsed since the date of the person's death<sup>32</sup>; or (ii) relevant material which has been imported or which has come from a body which has been imported, or which is material which has come from the body of a person who died before the day on which these provisions come into force and at least one hundred years have elapsed since the date of the person's death<sup>33</sup>. Head (d) above does not apply to the storage of relevant material for use for the purpose of research in connection with disorders or the functioning of the human body if the material has come from the body of a living person and the research is ethically approved in accordance with regulations made by the Secretary of State<sup>34</sup> and is to be, or is, carried out in circumstances such that the person carrying it out is not in possession, and not likely to come into possession, of information from which the person from whose body the material has come can be identified<sup>35</sup>. Head (f) above does not apply to the use of relevant material for the purpose of research in connection with disorders or the functioning of the human body if the material has come from the body of a living person and the research is ethically approved in accordance with regulations made by the Secretary of State and is to be, or is, carried out in circumstances such that the person carrying it out is not in possession, and not likely to come into possession, of information from which the person from whose body the material has come can be identified<sup>36</sup>. The storage for use for a purpose specified in heads (8) to (12) above of any relevant material which has come from the body of a living person, the use for such a purpose of any relevant material which has come from the body of a living person, and an activity in relation to which these provisions<sup>37</sup> have effect, are all lawful activities<sup>38</sup>.

Nothing in Part 1 of the Human Tissue Act 2004<sup>39</sup> applies to anything done for purposes of functions of a coroner or under the authority of a coroner<sup>40</sup>. Where a person knows, or has reason to believe, that the body of a deceased person, or relevant material which has come from the body of a deceased person, is, or may be, required for purposes of functions of a coroner, he must not act on authority under the above provisions<sup>41</sup> in relation to the body, or material, except with the consent of the coroner<sup>42</sup>.

Where part of a body<sup>43</sup> lying in a hospital, nursing home or other institution is or may be suitable for use for transplantation, it is lawful for the person having the control and management of the institution<sup>44</sup> to take steps for the purpose of preserving the part for use for transplantation<sup>45</sup> and to retain the body for that purpose<sup>46</sup>. However, such authority ceases to apply once it has been established that consent making removal of the part for transplantation lawful has not been, and will not be, given<sup>47</sup>. An activity done with authority under these provisions is treated as not being an activity within heads (1) to (7) above<sup>48</sup>.

It is lawful for: (A) material which consists of or includes human cells and which has come from a person's body in the course of his receiving medical treatment, undergoing diagnostic testing, or participating in research<sup>49</sup>; and (B) relevant material which has come from a human body, and ceases to be used, or stored for use, for a purpose specified in heads (1) to (12) above,<sup>50</sup> to be dealt with as waste<sup>51</sup>.

1 At the date at which this volume states the law, only certain provisions of the Human Tissue Act had been brought into force, and no day had been appointed for the commencement of the remaining provisions. At the date at which this volume states the law, Sch 1 had been brought into force; but ss 1, 11, 43, 44 were not yet in force: see the Human Tissue Act 2004 (Commencement No 1) Order 2005, SI 2005/919, art 3, Schedule. As to the commencement of the Human Tissue Act 2004 see PARA 234 ante.

2 See *ibid* s 1; and the text and notes 17-38 *infra*. The 'scheduled purposes' are set out in s 1, Sch 1: Sch 1 Pt 1 contains a list of purposes requiring consent (see heads (1)-(7) in the text), and Sch 1 Pt 2 lists purposes requiring consent in the case of deceased persons (see heads (8)-(12) in the text).

3 Ibid Sch 1 Pt 1 para 1. For the meaning of 'anatomical examination' see PARA 246 note 7 ante.

4 Ibid Sch 1 Pt 1 para 2.

5 Ibid Sch 1 Pt 1 para 3.

6 Ibid Sch 1 Pt 1 para 4.

7 Ibid Sch 1 Pt 1 para 5. As to the meaning of 'public display' see PARA 246 note 25 ante.

8 Ibid Sch 1 Pt 1 para 6.

9 Ibid Sch 1 Pt 1 para 7. For the meaning of 'transplantation' see PARA 246 note 4 ante.

10 Ibid Sch 1 Pt 2 para 8.

11 Ibid Sch 1 Pt 2 para 9.

12 Ibid Sch 1 Pt 2 para 10.

13 Ibid Sch 1 Pt 2 para 11.

14 Ibid Sch 1 Pt 2 para 12.

15 As to the Secretary of State see PARA 5 ante.

16 Human Tissue Act 2004 s 1(11). At the date at which this volume states the law no such orders had been made. As to the general power to make orders under the Human Tissue Act 2004 see PARA 235 ante.

17 Nothing in ibid s 1 applies to:

55 (1) the use of relevant material in connection with a device to which European Parliament and EC Council Directive 98/79 (OJ L331, 7.12.98, p 1) on in vitro diagnostic medical devices applies, where the use falls within the Directive (Human Tissue Act 2004 s 1(12)(a)); or

56 (2) the storage of relevant material for use falling within head (1) supra (s 1(12)(b)).

For the meaning of 'relevant material' see PARA 246 note 4 ante. For transitional provisions relating to existing holdings and anatomical specimens see PARA 254 post.

18 As to appropriate consent see PARA 251 post.

19 Human Tissue Act 2004 s 1(1)(a).

20 Ibid s 1(1)(b).

21 Ibid s 1(1)(c).

22 Ibid s 1(1)(d).

23 Ibid s 1(1)(e).

24 Ibid s 1(1)(f).

25 Ibid s 1(1)(g).

26 Ibid s 1(2)(a).

27 Ibid s 1(2)(b). As to certificates of the cause of death see the Births and Deaths Registration Act 1953 s 22(1) (as amended); the Births and Deaths Registration (Northern Ireland) Order 1976, SI 1976/1041 (NI 14), art 25(2); and REGISTRATION CONCERNING THE INDIVIDUAL vol 39(2) (Reissue) PARA 563. As to registration of death generally see REGISTRATION CONCERNING THE INDIVIDUAL vol 39(2) (Reissue) PARA 561 et seq.

28 Human Tissue Act 2004 s 1(3)(a).

29 Ibid s 1(3)(b). As to registration of death see the Births and Deaths Registration Act 1953 s 15 (as amended); the Births and Deaths Registration (Northern Ireland) Order 1976, SI 1976/1041 (NI 14), art 21; and REGISTRATION CONCERNING THE INDIVIDUAL vol 39(2) (Reissue) PARA 561.

30 le the Human Tissue Act 2004 s 1(1)-(3) (see the text and notes 17-29 supra).

31 For the purposes of ibid s 1, references to a body or material which has been imported do not include a body or material which has been imported after having been exported with a view to its subsequently being re-imported: s 1(13). For the meaning of 'import' see PARA 246 note 10 ante; and for the meaning of 'export' see PARA 246 note 11 ante.

32 See ibid s 1(4)(a), (5).

33 See ibid s 1(4)(b), (6).

34 At the date at which this volume states the law no such regulations had been made. As to the general power to make regulations under the Human Tissue Act 2004 see PARA 235 ante.

35 See ibid s 1(7), (9).

36 See ibid s 1(8), (9).

37 le ibid s 1(4), (7) or (8) (see the text and notes 30-36 supra).

38 Ibid s 1(10).

39 le ibid Pt 1 (ss 1-12).

40 Ibid s 11(1). As to coroners see CORONERS.

41 le ibid s 1 (see the text and notes 1-38 supra).

42 Ibid s 11(2).

43 For the purposes of ibid s 43, 'body' means the body of a deceased person: s 43(6).

44 Authority under ibid s 43(1) extends to any person authorised to act under the authority by the person on whom the authority is conferred by s 43(1), or a person authorised under s 43(4) to act under the authority: s 43(4).

45 Ibid s 43(1)(a). Authority under s 43(1)(a) only extends to the taking of the minimum steps necessary for the purpose mentioned in that provision (s 43(2)(a)), and to the use of the least invasive procedure (s 43(2)(b)).

46 Ibid s 43(1)(b).

47 Ibid s 43(3).

48 Ibid s 43(5)(a).

49 Ibid s 44(2).

50 Ibid s 44(3).

51 Ibid s 44(1). Section 44 is not to be read as making unlawful anything which is otherwise lawful: see s 44(4).

## UPDATE

### **250-265 Activities lawful if done with consent ... Existing holdings and anatomical specimens**

All provisions of Human Tissue Act 2004 now in force: see PARA 234 NOTE 6.

### **250 Activities lawful if done with consent**

NOTE 34--See the Human Tissue Act 2004 (Ethical Approval, Exceptions from Licensing and Supply of Information about Transplants) Regulations 2006, SI 2006/1260 (amended by SI 2008/3067).

TEXT AND NOTES 35, 36, 38--See Human Tissue Act 2004 s 1(9A), (10A) (added by Human Fertilisation and Embryology Act 2008 Sch 7 para 22).



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## **251. Appropriate consent.**

As from a day to be appointed<sup>1</sup>, the Human Tissue Act 2004 provides for the interpretation of 'appropriate consent'<sup>2</sup>.

In relation to an activity involving the body, or material from the body<sup>3</sup>, of a person who is an adult<sup>4</sup> or has died an adult ('the person concerned')<sup>5</sup>:

- 298 (1) where the person concerned is alive, 'appropriate consent' means his consent<sup>6</sup>;
- 299 (2) where the person concerned has died and the activity is one involving storage for use, or use, for the purpose of public display<sup>7</sup> or, where the subject matter of the activity is not excepted material<sup>8</sup>, anatomical examination, 'appropriate consent' means his consent in writing<sup>9</sup>;
- 300 (3) where the person concerned has died and the activity is not one involving storage for use, or use, for the purpose of public display or, where the subject matter of the activity is not excepted material, anatomical examination, 'appropriate consent' means: (a) if a decision of his to consent to the activity, or a decision of his not to consent to it, was in force immediately before he died, his consent<sup>10</sup>; (b) if head (a) above does not apply and he has appointed a person or persons<sup>11</sup> to deal after his death with the issue of consent in relation to the activity, consent given under the appointment<sup>12</sup>; (c) if neither head (a) nor head (b) above applies, the consent of a person who stood in a qualifying relationship<sup>13</sup> to him immediately before he died<sup>14</sup>.

In relation to an activity involving the body, or material from the body, of a person who is a child<sup>16</sup> or has died a child ('the child concerned')<sup>17</sup>:

- 301 (i) where the child concerned is alive, 'appropriate consent' means his consent<sup>18</sup>, although, where:
  - 97 132. (A) neither a decision of his to consent to the activity, nor a decision of his not to consent to it, is in force; and
  - 133. (B) either he is not competent to deal with the issue of consent in relation to the activity or, though he is competent to deal with that issue, he fails to do so,
- 98 302 'appropriate consent' means the consent of a person who has parental responsibility<sup>19</sup> for him<sup>20</sup>;
- 303 (ii) where the child concerned has died and the activity is one involving storage for use, or use, for the purpose of public display or, where the subject matter of the activity is not excepted material, anatomical examination, 'appropriate consent' means his consent in writing<sup>21</sup>;
- 304 (iii) where the child concerned has died and the activity is not one involving storage for use, or use, for the purpose of public display or, where the subject matter of the activity is not excepted material, anatomical examination, 'appropriate consent' means: (A) if a decision of his to consent to the activity, or a decision of his not to consent to it, was in force immediately before he died, his

consent<sup>22</sup>; (B) if head (A) above does not apply, the consent of a person who had parental responsibility for him immediately before he died<sup>23</sup>; or (C) if head (A) above does not apply and no person had parental responsibility for him immediately before he died, the consent of a person who stood in a qualifying relationship to him at that time<sup>24</sup>.

The Human Tissue Act 2004 provides that the duty of the Human Tissue Authority<sup>25</sup> to prepare and issue codes of practice dealing with the removal from a human body for use for a scheduled purpose<sup>26</sup> of any relevant material of which the body consists or which it contains<sup>27</sup>, and with the storage for use for a scheduled purpose, and the use for such a purpose, of the body of a deceased person, or relevant material which has come from a human body<sup>28</sup>, is to have effect, in particular, to require the Authority to lay down the standards expected in relation to the obtaining of consent where consent falls by virtue of head (3)(c) or head (iii)(c) above to be obtained from a person in a qualifying relationship<sup>29</sup>. The standards required to be laid down<sup>30</sup> must include provision to the effect set out below<sup>31</sup>.

The qualifying relationships for the purpose of heads (3)(c) and (iii)(c) above are to be ranked in the following order:

- 305 (aa) spouse or partner;
- 306 (bb) parent or child;
- 307 (cc) brother or sister;
- 308 (dd) grandparent or grandchild;
- 309 (ee) child of a person falling within head (cc) above;
- 310 (ff) stepfather or stepmother;
- 311 (gg) half-brother or half-sister;
- 312 (hh) friend of longstanding<sup>32</sup>.

Relationships in the same head above are to be accorded equal ranking<sup>33</sup>. Consent is to be obtained from the person whose relationship to the person concerned is accorded the highest ranking in accordance with these provisions<sup>34</sup>. If the relationship of each of two or more persons to the person concerned is accorded equal highest ranking, it is sufficient to obtain the consent of any of them<sup>35</sup>. In applying these principles, a person's relationship is to be left out of account if he does not wish to deal with the issue of consent, if he is not able to deal with that issue, or if, having regard to the activity in relation to which consent is sought, it is not reasonably practicable to communicate with him within the time available if consent in relation to the activity is to be acted on<sup>36</sup>.

1 At the date at which this volume states the law, only certain provisions of the Human Tissue Act had been brought into force, and no day had been appointed for the commencement of the remaining provisions. At the date at which this volume states the law, s 27 had been brought into force; ss 2, 3, 12 were not yet in force; and s 54 was only in force for certain purposes: see the Human Tissue Act 2004 (Commencement No 1) Order 2005, SI 2005/919, art 3, Schedule. As to the commencement of the Human Tissue Act 2004 see PARA 234 ante.

2 As to the requirement for appropriate consent see *ibid* s 1; and PARA 250 ante.

3 As to the meanings of 'material from the body of a living person' and 'material from the body of a deceased person' see PARA 246 note 4 ante.

4 'Adult' means a person who has attained the age of 18 years: Human Tissue Act 2004 s 54(1).

5 *Ibid* s 3(1).

6 *Ibid* s 3(2).

7 For the meaning of 'public display' see PARA 246 note 25 ante.

8 'Excepted material' means material which has come from the body of a living person, or come from the body of a deceased person otherwise than in the course of use of the body for the purpose of anatomical examination: Human Tissue Act 2004 s 12. For the meaning of 'anatomical examination' see PARA 246 note 7 ante.

9 See *ibid* s 3(3), (4). Consent in writing for the purposes of s 3(3) is only valid if: (1) it is signed by the person concerned in the presence of at least one witness who attests the signature (s 3(5)(a)); (2) it is signed at the direction of the person concerned, in his presence and in the presence of at least one witness who attests the signature (s 3(5)(b)); or (3) it is contained in a will of the person concerned made in accordance with the requirements of the Wills Act 1837 s 9 (as substituted), or the Wills and Administration Proceedings (Northern Ireland) Order 1994, SI 1994/1899 (NI 13), art 5 (Human Tissue Act 2004 s 3(5)(c)). As to wills generally see WILLS.

10 *Ibid* s 3(4), (6)(a).

11 *Ie* under *ibid* s 4: see PARA 252 post.

12 *Ibid* s 3(4), (6)(b). Where the person concerned has appointed a person or persons under s 4 to deal after his death with the issue of consent in relation to the activity, the appointment is to be disregarded for the purposes of head (3) in the text if no one is able to give consent under it: s 3(7). If it is not reasonably practicable to communicate with a person appointed under s 4 within the time available if consent in relation to the activity is to be acted on, he is to be treated for the purposes of s 3(7) as not able to give consent under the appointment in relation to it: s 3(8).

13 For the purposes of the Human Tissue Act 2004, the following are qualifying relationships: spouse, partner, parent, child, brother, sister, grandparent, grandchild, child of a brother or sister, stepfather, stepmother, half-brother, half-sister and friend of long standing: s 54(9). A person is another's partner if the two of them (whether of different sexes or the same sex) live as partners in an enduring family relationship: s 54(8). The Secretary of State may by order amend s 54(9): s 54(10). At the date at which this volume states the law no such orders had been made. As to the general power to make orders under the Human Tissue Act 2004 see PARA 235 ante. As to the Secretary of State see PARA 5 ante.

14 *Ibid* s 3(4), (6)(c).

16 'Child' means, except in the context of qualifying relationships, a person who has not attained the age of 18 years: *ibid* s 54(1).

17 *Ibid* s 2(1).

18 *Ibid* s 2(2).

19 'Parental responsibility', in relation to England and Wales, has the same meaning as in the Children Act 1989 and, in relation to Northern Ireland, has the same meaning as in the Children (Northern Ireland) Order 1995, SI 1995/755 (NI 2) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 133 et seq): Human Tissue Act 2004 s 54(1).

20 *Ibid* s 2(3).

21 See *ibid* s 2(4), (5). Consent in writing for the purposes of s 2(4) is only valid if: (1) it is signed by the child concerned in the presence of at least one witness who attests the signature (s 2(6)(a)); or (2) it is signed at the direction of the child concerned, in his presence and in the presence of at least one witness who attests the signature (s 2(6)(b)).

22 *Ibid* s 2(5), (7)(a).

23 *Ibid* s 2(5), (7)(b)(i).

24 *Ibid* s 2(5), (7)(b)(ii).

25 As to the establishment of the Human Tissue Authority see PARA 239 ante.

26 For the meaning of 'scheduled purpose' see PARA 250 ante.

27 See the Human Tissue Act 2004 s 26(2)(h); and PARA 266 post.

28 See *ibid* s 26(2)(i); and PARA 266 post.

29 Ibid s 27(1). As to the commencement of s 27 see PARA 234 ante. As to codes of practice prepared and issued by the Authority see PARA 266 post.

30 le by ibid s 27(1).

31 Ibid s 27(2). However, the standards required to be laid down by s 27(1) may include provision to different effect in relation to cases which appear to the Authority to be exceptional: s 27(3).

32 Ibid s 27(4). The Secretary of State may by order amend s 27(4): s 27(9). At the date at which this volume states the law no such orders had been made.

33 Ibid s 27(5).

34 Ibid s 27(6).

35 Ibid s 27(7).

36 Ibid s 27(8).

## **UPDATE**

### **250-265 Activities lawful if done with consent ... Existing holdings and anatomical specimens**

All provisions of Human Tissue Act 2004 now in force: see PARA 234 NOTE 6.

### **251 Appropriate consent**

NOTE 13--Civil partner also a qualifying relationship: Human Tissue Act 2004 s 54(9) (amended by the Civil Partnership Act 2004 (Overseas Relationships and Consequential, etc Amendments) Order 2005, SI 2005/3129).

TEXT AND NOTE 32--Head (aa) now includes civil partner: 2004 Act s 27(4) (amended by SI 2005/3129).

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## **252. Consent by nominated representative.**

As from a day to be appointed<sup>1</sup>, an adult<sup>2</sup> may appoint one or more persons to represent him after his death in relation to consent<sup>3</sup> for the purposes of the Human Tissue Act 2004<sup>4</sup>. An appointment may be general or limited to consent in relation to such one or more activities as may be specified in the appointment<sup>5</sup>. Where a person appoints two or more persons in relation to the same activity, they are to be regarded as appointed to act jointly and severally unless the appointment provides that they are appointed to act jointly<sup>6</sup>. An appointment may be revoked at any time<sup>7</sup>. A person appointed may at any time renounce his appointment<sup>8</sup>. A person may not act under an appointment if he is not an adult, or he is of a description prescribed<sup>9</sup> by regulations made by the Secretary of State<sup>10</sup>.

1 At the date at which this volume states the law no such day had been appointed. As to the commencement of the Human Tissue Act 2004 see PARA 234 ante.

2 As to the meaning of 'adult' see PARA 251 note 4 ante.

3 As to the requirement for consent see the Human Tissue Act 2004 s 1; and PARA 250 ante. As to the appropriate consent see PARA 251 ante.

4 Ibid s 4(1). An appointment may be made orally or in writing: s 4(3). An oral appointment is only valid if made in the presence of at least two witnesses present at the same time: s 4(4). A written appointment is only valid if: (1) it is signed by the person making it in the presence of at least one witness who attests the signature (s 4(5)(a)); (2) it is signed at the direction of the person making it, in his presence and in the presence of at least one witness who attests the signature (s 4(5)(b)); or (3) it is contained in a will of the person making it, being a will which is made in accordance with the requirements of the Wills Act 1837 s 9 (as substituted), or the Wills and Administration Proceedings (Northern Ireland) Order 1994, SI 1994/1899 (NI 13), art 5 (s 4(5)(c)). As to wills generally see WILLS.

5 Human Tissue Act 2004 s 4(2).

6 Ibid s 4(6).

7 Ibid s 4(7). The provisions of s 4(3)-(5) apply to the revocation of an appointment under s 4(7) as they apply to the making of such an appointment (see note 4 supra): s 4(8).

8 Ibid s 4(9).

9 Ie for the purposes of ibid s 4(10).

10 Ibid s 4(10). As to the Secretary of State see PARA 5 ante. At the date at which this volume states the law no such regulations had been made. As to the general power to make regulations under the Human Tissue Act 2004 see PARA 235 ante.

## **UPDATE**

### **250-265 Activities lawful if done with consent ... Existing holdings and anatomical specimens**

All provisions of Human Tissue Act 2004 now in force: see PARA 234 NOTE 6.

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### **253. Deemed consent.**

As from a day to be appointed<sup>1</sup>, if the Human Tissue Authority is satisfied<sup>2</sup>:

- 313 (1) that: (a) relevant material has come from the body of a living person<sup>3</sup>; (b) it is not reasonably possible to trace the person from whose body the material has come ('the donor')<sup>4</sup>; (c) it is desirable in the interests of another person (including a future person) that the material be used for the purpose of obtaining scientific or medical information about the donor<sup>5</sup>; and (d) there is no reason to believe that the donor has died, that a decision of the donor to refuse to consent to the use of the material for that purpose is in force, or that the donor lacks capacity to consent to the use of the material for that purpose<sup>6</sup>; or
- 314 (2) that: (a) relevant material has come from the body of a living person<sup>7</sup>; (b) it is desirable in the interests of another person (including a future person) that the material be used for the purpose of obtaining scientific or medical information about the person from whose body the material has come ('the donor')<sup>8</sup>; (c) reasonable efforts have been made to get the donor to decide whether to consent to the use of the material for that purpose<sup>9</sup>; (d) there is no reason to believe that the donor has died, that a decision of the donor to refuse to consent to the use of the material for that purpose is in force, or that the donor lacks capacity to consent to the use of the material for that purpose<sup>10</sup>; and (e) the donor has been given notice of the application for the exercise of this power<sup>11</sup>,

the Authority may direct that for the purposes of Part 1 of the Human Tissue Act 2004<sup>12</sup> there is deemed to be consent of the donor to the use of the material for the purpose of obtaining scientific or medical information about him which may be relevant to the person for whose benefit the direction is given<sup>13</sup>.

The Secretary of State<sup>14</sup> may by regulations<sup>15</sup> enable the High Court, in such circumstances as the regulations may provide, to make an order deeming there to be for the purposes of Part 1 of the Human Tissue Act 2004 appropriate consent to an activity consisting of: (i) the storage of the body of a deceased person for use for the purpose of research in connection with disorders, or the functioning, of the human body<sup>16</sup>; (ii) the use of the body of a deceased person for that purpose<sup>17</sup>; (iii) the removal from the body of a deceased person, for use for that purpose, of any relevant material of which the body consists or which it contains<sup>18</sup>; (iv) the storage for use for that purpose of any relevant material which has come from a human body<sup>19</sup>; or (v) the use for that purpose of any relevant material which has come from a human body<sup>20</sup>.

Where an activity of a specified kind<sup>21</sup> involves material from the body of a person who is an adult<sup>22</sup> and lacks capacity to consent to the activity, and neither a decision of his to consent to the activity, nor a decision of his not to consent to it, is in force, there is, for the purposes of Part 1 of the Human Tissue Act 2004, deemed to be consent of his to the activity if it is done in circumstances of a kind specified by regulations<sup>23</sup> made by the Secretary of State<sup>24</sup>.

<sup>1</sup> At the date at which this volume states the law no such day had been appointed. As to the commencement of the Human Tissue Act 2004 see PARA 234 ante.

- 2 As to the establishment of the Human Tissue Authority see PARA 239 ante.
- 3 Human Tissue Act 2004 s 7(1)(a). For the meaning of 'relevant material' see PARA 246 note 4 ante. As to the meanings of 'material from a human body' and 'material from the body of a living' person' see PARA 246 note 4 ante.
- 4 Ibid s 7(1)(b).
- 5 Ibid s 7(1)(c).
- 6 Ibid s 7(1)(d).
- 7 Ibid s 7(2)(a).
- 8 Ibid s 7(2)(b).
- 9 Ibid s 7(2)(c).
- 10 Ibid s 7(2)(d).
- 11 Ibid s 7(2)(e). The power referred to in the text is the power conferred by s 7(2).
- 12 Ie ibid Pt 1 (ss 1-12).
- 13 See ibid s 7(1)-(3). As to the power to give directions see s 37; para 248 ante.
- 14 As to the Secretary of State see PARA 5 ante.
- 15 At the date at which this volume states the law no such regulations had been made. As to the general power to make regulations under the Human Tissue Act 2004 see PARA 235 ante.
- 16 Ibid s 7(4)(a).
- 17 Ibid s 7(4)(b).
- 18 Ibid s 7(4)(c).
- 19 Ibid s 7(4)(d).
- 20 Ibid s 7(4)(e).
- 21 Ie an activity of a kind mentioned in ibid s 1(1)(d) (see PARA 250 head (d) ante) or s 1(1)(f) (see PARA 250 head (f) ante).
- 22 For the meaning of 'adult' see PARA 251 note 4 ante.
- 23 At the date at which this volume states the law no such regulations had been made.
- 24 Human Tissue Act 2004 s 6.

## **UPDATE**

### **250-265 Activities lawful if done with consent ... Existing holdings and anatomical specimens**

All provisions of Human Tissue Act 2004 now in force: see PARA 234 NOTE 6.

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## **254. Existing holdings and anatomical specimens.**

As from a day to be appointed<sup>1</sup>, the requirement for appropriate consent<sup>2</sup> does not apply to: (1) the storage of an existing holding<sup>3</sup> for use for a scheduled purpose<sup>4</sup>; and (2) the use of an existing holding for a scheduled purpose<sup>5</sup>.

Special provisions apply in relation to existing anatomical specimens<sup>6</sup> where a person has died during the three years immediately preceding the coming into force of the provision requiring consent<sup>7</sup>.

1 At the date at which this volume states the law no such day had been appointed. As to the commencement of the Human Tissue Act 2004 see PARA 234 ante.

2 I.e. the requirement in *ibid* s 1(1): see PARA 250 ante. As to appropriate consent see PARA 251 ante.

3 'Existing holding' means the body of a deceased person, or relevant material which has come from a human body, held, immediately before the day on which *ibid* s 1(1) comes into force, for use for a purpose specified in Sch 1 (see PARA 250 ante): s 9(4).

4 For the meaning of 'scheduled purpose' see PARA 250 ante.

5 See the Human Tissue Act 2004 s 9(1). This provision does not apply where the existing holding is a body, or separated part of a body, in relation to which s 10(3) or (5) (see note 7 *infra*) has effect: s 9(2). The provisions of s 5(1), (2) (see PARA 268 post) have effect as if the activities mentioned in s 9(1) were not activities to which s 1(1) applies: s 9(3).

6 For the meaning of 'anatomical specimen' see PARA 246 note 7 ante.

7 Human Tissue Act 2004 s 10(1). As to the provision requiring consent see s 1; and PARA 250 ante.

Where, before s 1 comes into force, authority is given under the Anatomy Act 1984 s 4(2) or (3) (prospectively repealed) (see PARA 226 ante) for the person's body to be used for anatomical examination and the Human Tissue Act 2004 s 1 comes into force before anatomical examination of the person's body is concluded, that authority is to be treated for the purposes of s 1, during so much of the relevant period as falls after s 1 comes into force, as appropriate consent in relation to: (1) the storage of the person's body, or separated parts of his body, for use for the purpose of anatomical examination; and (2) the use of his body, or separated parts of his body, for that purpose: see s 10(2), (3). For the purposes of s 10(3), 'the relevant period', in relation to a person, means whichever is the shorter of: (a) the period of three years beginning with the date of the person's death; and (b) the period beginning with that date and ending when anatomical examination of the person's body is concluded: s 10(7). For the meaning of 'anatomical examination' see PARA 246 note 7 ante.

Where, before s 1 comes into force, authority is given under the Anatomy Act 1984 s 6(2) or (3) (prospectively repealed) (see PARA 229 ante) for possession of parts (or any specified parts) of the person's body to be held after anatomical examination of his body is concluded, and anatomical examination of the person's body is concluded after the Human Tissue Act 2004 s 1 comes into force but before the end of the period of three years beginning with the date of the person's death, that authority is treated for the purposes of s 1, with effect from the conclusion of the anatomical examination of the person's body, as appropriate consent in relation to: (i) the storage for use for a qualifying purpose of a part of the person's body which is a part to which that authority relates and is such that the person cannot be recognised simply by examination of the part; and (ii) the use for a qualifying purpose of such a part of the person's body: see s 10(4), (5). For the purposes of s 10(5), 'qualifying purpose' means a purpose specified in Sch 1 para 6 (see PARA 250 head (6) ante) or Sch 1 para 9 (see PARA 250 head (9) ante): s 10(8). The Secretary of State may by order amend s 10(8): s 10(9). At the date at which this volume states the law no such orders had been made. As to the general power to make orders under the Human Tissue Act 2004 see PARA 235 ante. As to the Secretary of State see PARA 5 ante.

Where for the purposes of s 1 there would not be appropriate consent in relation to an activity but for authority given under the Anatomy Act 1984 being treated for those purposes as appropriate consent in relation to the



activity, the provisions of the Human Tissue Act 2004 s 1(1)-(3) do not authorise the doing of the activity otherwise than in accordance with that authority: s 10(6).

**UPDATE**

**250-265 Activities lawful if done with consent ... Existing holdings and anatomical specimens**

All provisions of Human Tissue Act 2004 now in force: see PARA 234 NOTE 6.

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## **D. LICENSING**

### **(A) THE LICENCE**

#### **255. Licence requirement.**

As from a day to be appointed<sup>1</sup>, no person is to do an activity listed below otherwise than under the authority of a licence<sup>2</sup>. The activities are<sup>3</sup>:

- 315 (1) the carrying out of an anatomical examination<sup>4</sup>;
- 316 (2) the making of a post mortem examination<sup>5</sup>;
- 317 (3) the removal from the body of a deceased person (otherwise than in the course of an activity mentioned in head (1) or head (2) above) of relevant material of which the body consists or which it contains, for use for a scheduled purpose other than transplantation<sup>6</sup>;
- 318 (4) the storage of an anatomical specimen<sup>7</sup>;
- 319 (5) the storage (in any case not falling within head (4) above) of: (a) the body of a deceased person; or (b) relevant material which has come from a human body, for use for a scheduled purpose<sup>8</sup>;
- 320 (6) the use, for the purpose of public display<sup>9</sup>, of the body of a deceased person or relevant material which has come from the body of a deceased person<sup>10</sup>.

Where part of a body<sup>11</sup> lying in a hospital, nursing home or other institution is or may be suitable for use for transplantation, it is lawful for the person having the control and management of the institution<sup>12</sup> to take steps for the purpose of preserving the part for use for transplantation<sup>13</sup> and to retain the body for that purpose<sup>14</sup>. However, such authority ceases to apply once it has been established that consent making removal of the part for transplantation lawful has not been, and will not be, given<sup>15</sup>. An activity done with authority under these provisions is treated as not being an activity within heads (1) to (6) above<sup>16</sup>.

Nothing in heads (1) to (6) above applies to anything done for purposes related to the prevention or detection of crime<sup>17</sup>, or the conduct of a prosecution<sup>18</sup>. However, this does not except from heads (1) to (6) above the carrying out of a post mortem examination<sup>19</sup> for purposes of functions of a coroner<sup>20</sup>.

The following activities are excluded from heads (1) to (6) above:

- 321 (i) the use of the body of a deceased person, or relevant material which has come from a human body, for the purpose of public display at a place of public religious worship or at a place associated with such a place<sup>21</sup>; and
- 322 (ii) the storage of the body of a deceased person, or relevant material which has come from a human body, for use for the purpose mentioned in head (i) above<sup>22</sup>,

if there is a connection between the body or material to which the activity relates, and the religious worship which takes place at the place of public religious worship concerned<sup>23</sup>.

1 At the date at which this volume states the law no such day had been appointed. As to the commencement of the Human Tissue Act 2004 see PARA 234 ante.

2 See *ibid* s 16(1). The licence mentioned in the text is one granted for the purposes of s 16. As to the granting of a licence see PARA 256 post. As to the persons to whom a licence applies see PARA 258 post. As to the conditions of a licence see PARA 257 post. As to the prosecution of offences committed by a body corporate see PARA 277 post. As to the breach of a licence requirement see s 25; and PARA 270 post.

It is lawful for: (1) any material which consists of or includes human cells and which has come from a person's body in the course of his receiving medical treatment, undergoing diagnostic testing, or participating in research; (b) any relevant material which has come from a human body and ceases to be used, or stored for use, for a scheduled purpose, to be dealt with as waste: s 44(1)-(3). Section 44 must not be read as making unlawful anything which is otherwise lawful: see s 44(4). As to the meaning of 'material from a human body' see PARA 246 note 4 ante. For the meaning of 'relevant material' for the purposes of the Human Tissue Act 2004 generally see PARA 246 note 4 ante. For the meaning of 'scheduled purpose' see PARA 250 ante.

3 The Secretary of State may by regulations amend *ibid* s 16 for the purpose of adding to the activities to which s 16 applies; removing an activity from the activities to which s 16 applies; or altering the description of an activity to which s 16 applies: s 16(5). An activity is excluded from heads (1)-(6) in the text if it relates to the body of a person who died before the day on which s 16 comes into force or to material which has come from the body of such a person, and at least one hundred years have elapsed since the date of the person's death: s 16(4).

4 *Ibid* s 16(2)(a). For the meaning of 'carrying out of an anatomical examination' see PARA 246 note 16 ante. For the meaning of 'anatomical examination' see PARA 246 note 7 ante.

5 *Ibid* s 16(2)(b).

6 *Ibid* s 16(2)(c). For the purposes of s 16(2), 'relevant material', in relation to use for the scheduled purpose of transplantation, does not include blood or anything derived from blood: s 16(7)(b). For the meaning of 'transplantation' see PARA 246 note 4 ante. As to the meaning of 'material from the body of a deceased person' see PARA 246 note 4 ante.

7 *Ibid* s 16(2)(d). For the purposes of s 16(2), references to storage do not include storage which is incidental to transportation: s 16(7)(a). For the meaning of 'anatomical specimen' see PARA 246 note 7 ante.

8 *Ibid* s 16(2)(e). The Secretary of State may by regulations specify circumstances in which storage of relevant material by a person who intends to use it for a scheduled purpose is excepted from head (5)(b) in the text: s 16(3). At the date at which this volume states the law no such regulations had been made. As to the general power to make regulations under the Human Tissue Act 2004 see PARA 235 ante. As to the Secretary of State see PARA 5 ante.

9 As to the meaning of 'public display' see PARA 246 note 25 ante.

10 Human Tissue Act 2004 s 16(2)(f).

11 For meaning of 'body' see PARA 250 note 43 ante.

12 Authority under the Human Tissue Act 2004 s 43(1) extends to any person authorised to act under the authority by the person on whom the authority is conferred by s 43(1), or a person authorised under s 43(4) to act under the authority: s 43(4).

13 *Ibid* s 43(1)(a). Authority under s 43(1)(a) only extends to the taking of the minimum steps necessary for the purpose mentioned in that provision (s 43(2)(a)), and to the use of the least invasive procedure (s 43(2)(b)).

14 *Ibid* s 43(1)(b).

15 *Ibid* s 43(3).

16 *Ibid* s 43(5)(a).

17 As to the meanings of 'detection of crime' and 'crime' see PARA 246 note 21 ante.

18 Human Tissue Act 2004 s 39(1). As to the meaning of 'prosecution' see PARA 246 note 22 ante.

19 As to the meaning of 'the carrying out of a post mortem examination' see PARA 246 note 23 ante.

20 Human Tissue Act 2004 s 39(2). As to coroners see CORONERS.

21 Ibid s 40(1)(a). As to when a place is associated with a place of public religious worship see PARA 246 note 26 ante.

22 Ibid s 40(1)(b).

23 Ibid s 40(2).

## **UPDATE**

### **250-265 Activities lawful if done with consent ... Existing holdings and anatomical specimens**

All provisions of Human Tissue Act 2004 now in force: see PARA 234 NOTE 6.

#### **255 Licence requirement**

TEXT AND NOTES 1-10--The 2004 Act s 16 does not apply to the procurement, testing, processing, preservation, storage, distribution, import or export of tissue and cells intended for human application in so far as those activities are activities to which the Human Tissue (Quality and Safety for Human Application) Regulations 2007, SI 2007/1523, reg 7(1) or (2) applies: 2004 Act s 16(2A) (added by SI 2007/1523).

NOTE 8--See the Human Tissue Act 2004 (Ethical Approval, Exceptions from Licensing and Supply of Information about Transplants) Regulations 2006, SI 2006/1260 (amended by SI 2008/3067).

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## **256. Grant of a licence.**

As from a day to be appointed<sup>1</sup>, the Human Tissue Authority<sup>2</sup> may on application grant a licence for activities requiring a licence under the Human Tissue Act 2004<sup>3</sup>.

The Authority may by regulations make provision about applications and may, in particular, make provision about the form and content of such an application, the information to be supplied with such an application and the procedure in relation to the determination of such an application<sup>4</sup>.

The Authority may not grant a licence in pursuance of an application unless the following requirements are met<sup>5</sup>:

- 323 (1) the proposed designated individual<sup>6</sup> must be the applicant for the licence or consent to the application for the licence<sup>7</sup>;
- 324 (2) the Authority must be satisfied that the proposed designated individual is a suitable person to supervise the activity to be authorised by the licence and will perform the duty of a designated individual under the Human Tissue Act 2004<sup>8</sup>;
- 325 (3) where the applicant for the licence is not the proposed designated individual, the Authority must be satisfied that the applicant is a suitable person to be the holder of the licence<sup>9</sup>;
- 326 (4) the Authority must be satisfied that the premises in respect of which the licence is to be granted are suitable for the activity to be authorised by the licence<sup>10</sup>;
- 327 (5) a copy of the conditions to be imposed by the licence must have been shown to, and acknowledged in writing by, the applicant for the licence and, where different, the proposed designated individual<sup>11</sup>.

A licence does not authorise the carrying on of more than one activity requiring a licence under the Human Tissue Act 2004<sup>12</sup>. A licence must specify the premises where the licensed activity<sup>13</sup> is authorised to be carried on and designate an individual as the person under whose supervision the licensed activity is authorised to be carried on<sup>14</sup>. A licence must not authorise the licensed activity to be carried on on premises at different places or under the supervision of more than one individual<sup>15</sup>.

<sup>1</sup> At the date at which this volume states the law no such day had been appointed. As to the commencement of the Human Tissue Act 2004 see PARA 234 ante.

<sup>2</sup> As to the establishment of the Human Tissue Authority see PARA 239 ante.

<sup>3</sup> Human Tissue Act 2004 s 16(6), Sch 3 para 1. As to the activities requiring a licence see s 16; and PARA 255 ante. An application is to be accompanied by such fee (if any) as the Authority may determine: Sch 3 para 13(2).

<sup>4</sup> Ibid Sch 3 para 13(1). At the date at which this volume states the law no such regulations had been made. As to the general power to make regulations under the Human Tissue Act 2004 see PARA 235 ante.

<sup>5</sup> Ibid Sch 3 para 6(1).

6 For the purposes of *ibid* Sch 3 para 6, references to the proposed designated individual are references to the individual whom the application proposes the licence designate as the person under whose supervision the activity to be authorised by the licence is to be carried on: Sch 3 para 6(7).

7 *Ibid* Sch 3 para 6(2).

8 *Ibid* Sch 3 para 6(3). As to the duty of the designated individual see s 18; and PARA 258 post.

9 *Ibid* Sch 3 para 6(4).

10 *Ibid* Sch 3 para 6(5).

11 *Ibid* Sch 3 para 6(6).

12 *Ibid* Sch 3 para 2(1).

13 As to the meaning of 'licensed activity' see PARA 248 note 7 ante.

14 Human Tissue Act 2004 Sch 3 para 2(2).

15 *Ibid* Sch 3 para 2(3).

## **UPDATE**

### **250-265 Activities lawful if done with consent ... Existing holdings and anatomical specimens**

All provisions of Human Tissue Act 2004 now in force: see PARA 234 NOTE 6.

### **256 Grant of a licence**

TEXT AND NOTE 4--Also applies to applications under the Human Tissue (Quality and Safety for Human Application) Regulations 2007, SI 2007/1523, Sch 1: 2004 Act Sch 3 para 13(1) (amended by SI 2007/1523).

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## **257. Conditions of a licence.**

As from a day to be appointed<sup>1</sup>, it is to be a condition of a licence<sup>2</sup> that:

- 328 (1) the licensed activity<sup>3</sup> is to be carried on only on the premises specified in the licence<sup>4</sup>;
- 329 (2) the licensed activity is to be carried on only under the supervision of the individual designated in the licence as the person under whose supervision it is authorised to be carried on<sup>5</sup>;
- 330 (3) such information about such matters relating to the carrying on of the licensed activity as may be specified in directions<sup>6</sup> is to be recorded in such form as may be so specified<sup>7</sup>;
- 331 (4) any record made for the purposes of the condition in head (3) above is to be kept until the end of such period as may be specified in directions<sup>8</sup>;
- 332 (5) there is to be provided to such person and at such intervals as may be specified in directions such copies of, or extracts from, any record to which the condition in head (4) above relates, and such other information, as may be so specified<sup>9</sup>;
- 333 (6) there is to be paid to the Human Tissue Authority<sup>10</sup> at such times as may be specified in directions sums of such amount as may be so specified in respect of its costs in connection with superintending compliance with the terms of licences<sup>11</sup>.

It is to be a condition of a licence authorising the storage of anatomical specimens that<sup>12</sup>:

- 334 (a) storage at the premises specified in the licence of the body of a deceased person for use for the purpose of anatomical examination<sup>13</sup> is not to begin before that body's storage there for use for that purpose has been authorised in writing by the designated individual or an individual who has the Authority's permission to give such authorisation<sup>14</sup>;
- 335 (b) any anatomical specimen which is stored at the premises specified in the licence is to be released from storage at the premises only into the possession of a person who is authorised in writing by the designated individual to have the specimen in his possession<sup>15</sup>;
- 336 (c) the designated individual is to give authority for the purposes of the condition in head (b) above only if he is satisfied that the person to whom authority is given is a suitable person to have the specimen in his possession and that that person intends to use the specimen only for the purpose of education, training or research<sup>16</sup>;
- 337 (d) any authority given for the purposes of the condition in head (b) above is to specify the person to whom the authority is given, the specimen to which the authority relates, the purpose for which the specimen may be used and the duration of the authority<sup>17</sup>;
- 338 (e) the designated individual is to give such notice of any authorisation for the purposes of the condition in head (b) above as may be specified in directions<sup>18</sup>;

- 339 (f) such information about authorisations for the purposes of the condition in head (b) above as may be specified in directions is to be recorded in such form as may be so specified<sup>19</sup>.

Except in the case of storage of an anatomical specimen, it is to be a condition of a licence authorising the storage of the body of a deceased person, or storage of relevant material which has come from a human body, for use for a scheduled purpose<sup>20</sup> that:

- 340 (i) any former anatomical specimen which is stored at the premises specified in the licence is to be released from storage at the premises only into the possession of a person who is authorised in writing by the designated individual to have the specimen in his possession<sup>21</sup>;
- 341 (ii) the designated individual is to give authority for the purposes of the condition in head (i) above only if he is satisfied that the person to whom authority is given is a suitable person to have the specimen in his possession and that that person intends to use the specimen only for the purpose of education, training or research<sup>22</sup>;
- 342 (iii) any authority given for the purposes of the condition in head (i) above is to specify the person to whom the authority is given, the specimen to which the authority relates, the purpose for which the specimen may be used and the duration of the authority<sup>23</sup>;
- 343 (iv) the designated individual is to give such notice of any authorisation for the purposes of the condition in head (i) above as may be specified in directions<sup>24</sup>;
- 344 (v) such information about authorisations for the purposes of the condition in head (i) above as may be specified in directions is to be recorded in such form as may be so specified<sup>25</sup>.

The Authority may grant a licence subject to such further conditions as it thinks fit<sup>26</sup>.

1 At the date at which this volume states the law no such day had been appointed. As to the commencement of the Human Tissue Act 2004 see PARA 234 ante.

2 For the meaning of 'licence' see PARA 248 note 6 ante.

3 As to the meaning of 'licensed activity' see PARA 248 note 7 ante.

4 Human Tissue Act 2004 s 16(6), Sch 3 para 2(4)(a).

5 Ibid Sch 3 para 2(4)(b).

6 Directions for the purposes of ibid Sch 3 para 2(4) may be given in relation to licences generally, licences of a particular description or a particular licence: Sch 3 para 2(5). As to the power to give directions see s 37; and PARA 248 ante.

7 Ibid Sch 3 para 2(4)(c).

8 Ibid Sch 3 para 2(4)(d).

9 Ibid Sch 3 para 2(4)(e).

10 As to the establishment of the Human Tissue Authority see PARA 239 ante.

11 Human Tissue Act 2004 Sch 3 para 2(4)(f).

12 See ibid Sch 3 para 3(1). For the meaning of 'anatomical specimen' see PARA 246 note 7 ante.

13 For the meaning of 'anatomical examination' see PARA 246 note 7 ante.



14 Human Tissue Act 2004 Sch 3 para 3(2). For the meaning of 'designated individual' see PARA 248 note 7 ante.

The provisions of Sch 3 para 12 apply to a licence authorising the storage of anatomical specimens: Sch 3 para 12(1). The reference to the Authority's permission in the condition of the licence required by Sch 3 para 3(2) ('the authorisation condition') is a reference to:

- 57 (1) permission granted by the Authority on an application made, in conjunction with the application for the licence, by the applicant for the licence or the person who, within the meaning of Sch 3 para 6 (see PARA 256 ante), is the proposed designated individual (Sch 3 para 12(2)(a)); or
- 58 (2) permission granted by the Authority on application by the holder of the licence or the designated individual (Sch 3 para 12(2)(b)).

The Authority may grant permission to an individual for the purposes of the authorisation condition only if it is satisfied that the individual is a suitable person to give authorisation under that condition: Sch 3 para 12(3). The Authority may revoke permission granted to an individual for the purposes of the authorisation condition: (a) on application by the individual, the designated individual or the holder of the licence; or (b) if it ceases to be satisfied that the individual is a suitable person to give authorisation under that condition: Sch 3 para 12(4). Before refusing an application for the grant or revocation of permission, the Authority must give the applicant notice of the proposed refusal and of the reasons for it: Sch 3 para 12(5). Before revoking permission under head (b) supra, the Authority must give notice of the proposed revocation and of the reasons for it to the individual concerned, and to the designated individual and, where different, the holder of the licence: Sch 3 para 12(6). The provisions of Sch 3 para 10(3), (4) (see PARA 262 post) apply in relation to notice under Sch 3 para 12(5) or (6) as to notice under Sch 3 para 10(1): Sch 3 para 12(7). In the case of a decision to refuse an application for the grant or revocation of permission, the Authority must give notice of the decision to the applicant: Sch 3 para 12(8). In the case of a decision to grant or revoke permission, the Authority must give notice of the decision to the individual concerned and to the designated individual and, where different, the holder of the licence: Sch 3 para 12(9). Notice under Sch 3 para 12(8), (9) must include a statement of the reasons for the refusal or revocation: Sch 3 para 12(10). Where the Authority has reasonable grounds to suspect that there are grounds for revoking permission granted to an individual for the purposes of the authorisation condition and is of the opinion that the permission should immediately be suspended, it may by notice suspend the permission for such period not exceeding three months as may be specified in the notice: Sch 3 para 12(11). The Authority may continue suspension under Sch 3 para 12(11) by giving a further notice under that provision: Sch 3 para 12(12). Notice under Sch 3 para 12(11) is to be given to the individual concerned and the designated individual and, where different, the holder of the licence: Sch 3 para 12(13).

15 Ibid Sch 3 para 3(3).

16 Ibid Sch 3 para 3(4).

17 Ibid Sch 3 para 3(5).

18 Ibid Sch 3 para 3(6).

19 Ibid Sch 3 para 3(7).

20 See *ibid* s 16(2)(e), Sch 3 para 4(1). For the meanings of 'relevant material', 'material from a human body' and 'material from the body of a deceased person' see PARA 246 note 4 ante. For the meaning of 'scheduled purpose' see PARA 250 ante.

21 Ibid Sch 3 para 4(2). This does not apply to the release from storage of a specimen for the purpose of its decent disposal: Sch 3 para 4(3). References to 'decent disposal' include, in relation to disposal of material which has come from a human body, disposal as waste: s 54(4). As to material dealt with as waste see s 44; and PARA 250 ante.

22 Ibid Sch 3 para 4(4).

23 Ibid Sch 3 para 4(5).

24 Ibid Sch 3 para 4(6).

25 Ibid Sch 3 para 4(7).

26 Ibid Sch 3 para 5.

## UPDATE

**250-265 Activities lawful if done with consent ... Existing holdings and anatomical specimens**

All provisions of Human Tissue Act 2004 now in force: see PARA 234 NOTE 6.

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## **258. Persons to whom the licence applies.**

As from a day to be appointed,<sup>1</sup> the authority conferred by a licence<sup>2</sup> extends to:

- 345 (1) the designated individual<sup>3</sup>;
- 346 (2) any person who is designated as a person to whom the licence applies by a notice given to the Human Tissue Authority<sup>4</sup> by the designated individual<sup>5</sup>; and
- 347 (3) any person acting under the direction of the designated individual or a person designated as mentioned in head (2) above<sup>6</sup>.

It is the duty of the individual designated in a licence as the person under whose supervision the licensed activity<sup>7</sup> is authorised to be carried on to secure that the other persons to whom the licence applies<sup>8</sup> are suitable persons to participate in the carrying on of the licensed activity, that suitable practices are used in the course of carrying on that activity and that the conditions of the licence are complied with<sup>9</sup>.

<sup>1</sup> At the date at which this volume states the law no such day had been appointed. As to the commencement of the Human Tissue Act 2004 see PARA 234 ante.

<sup>2</sup> For the meaning of 'licence' see PARA 248 note 6 ante.

<sup>3</sup> Human Tissue Act 2004 s 17(a). For the meaning of 'designated individual' see PARA 248 note 7 ante.

<sup>4</sup> As to the establishment of the Human Tissue Authority see PARA 239 ante.

<sup>5</sup> Human Tissue Act 2004 s 17(b).

<sup>6</sup> Ibid s 17(c).

<sup>7</sup> As to the meaning of 'licensed activity' see PARA 248 note 7 ante.

<sup>8</sup> For the purposes of the Human Tissue Act 2004 Pt 2 (ss 13-41), references to a person to whom a licence applies are references to a person to whom the authority conferred by the licence extends (as provided by s 17): s 41(3).

<sup>9</sup> Ibid s 18.

## **UPDATE**

### **250-265 Activities lawful if done with consent ... Existing holdings and anatomical specimens**

All provisions of Human Tissue Act 2004 now in force: see PARA 234 NOTE 6.

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## **259. Variation of a licence.**

As from a day to be appointed,<sup>1</sup> the Human Tissue Authority<sup>2</sup> may vary a licence<sup>3</sup>:

- 348 (1) on application by the holder of a licence, so as to substitute another individual for the designated individual<sup>4</sup>, if the application is made with the consent of the other individual and the Authority is satisfied that the other individual is a suitable person to supervise the licensed activity<sup>5</sup>;
- 349 (2) on application by the holder of the licence or the designated individual<sup>6</sup>;
- 350 (3) without an application under head (2) above, if it has power to revoke the licence otherwise than on an application by the holder of the licence or the designated individual<sup>7</sup>;
- 351 (4) without an application under head (2) above, by removing or varying a condition of the licence or by adding a condition to the licence<sup>8</sup>.

<sup>1</sup> At the date at which this volume states the law no such day had been appointed. As to the commencement of the Human Tissue Act 2004 see PARA 234 ante.

<sup>2</sup> As to the establishment of the Human Tissue Authority see PARA 239 ante.

<sup>3</sup> For the meaning of 'licence' see PARA 248 note 6 ante. The powers conferred by the Human Tissue Act 2004 Sch 3 para 8 do not extend to the conditions required by Sch 3 paras 2(4), 3, 4 (see PARA 257 ante): Sch 3 para 8(6).

<sup>4</sup> For the meaning of 'designated individual' see PARA 248 note 7 ante.

<sup>5</sup> Human Tissue Act 2004 s 16(6), Sch 3 para 8(1). As to the meaning of 'licensed activity' see PARA 248 note 7 ante.

<sup>6</sup> Ibid Sch 3 para 8(2). The powers under head (2) and head (3) in the text do not extend to making the kind of variation mentioned in head (1) in the text: Sch 3 para 8(4).

<sup>7</sup> See ibid Sch 3 para 8(3). See note 6 supra. For the power to revoke a licence otherwise than on an application by the holder of the licence or the designated individual see Sch 3 para 7(2); and PARA 261 post.

<sup>8</sup> Ibid Sch 3 para 8(5).

## **UPDATE**

### **250-265 Activities lawful if done with consent ... Existing holdings and anatomical specimens**

All provisions of Human Tissue Act 2004 now in force: see PARA 234 NOTE 6.

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## **260. Suspension of a licence.**

As from a day to be appointed<sup>1</sup>, where the Human Tissue Authority<sup>2</sup> has reasonable grounds to suspect that there are grounds for revoking a licence<sup>3</sup>, and is of the opinion that the licence should immediately be suspended, it may by notice suspend the licence for such period not exceeding three months as may be specified in the notice<sup>4</sup>. However, the Authority may continue suspension by giving further notice<sup>5</sup>. A licence is of no effect while a notice is in force<sup>6</sup>.

1 At the date at which this volume states the law no such day had been appointed. As to the commencement of the Human Tissue Act 2004 see PARA 234 ante.

2 As to the establishment of the Human Tissue Authority see PARA 239 ante.

3 For the meaning of 'licence' see PARA 248 note 6 ante. As to the revocation of a licence see the Human Tissue Act 2004 s 16(6), Sch 3 para 7; and PARA 261 post.

4 Ibid Sch 3 para 9(1). The notice must be given to the designated individual or, where the designated individual has died or appears to the Authority to be unable because of incapacity to discharge the duty under s 18 (see PARA 258 ante), to the holder of the licence or to some other person to whom the licence applies: Sch 3 para 9(3). For the meaning of 'designated individual' see PARA 248 note 7 ante.

5 Ibid Sch 3 para 9(2).

6 Ibid Sch 3 para 9(4). However, an application may be made under Sch 3 para 7(1) (see PARA 261 post) or Sch 3 para 8(1) or (2) (see PARA 259 ante) notwithstanding the fact that a notice under Sch 3 para 9(1) is in force: Sch 3 para 9(5).

## **UPDATE**

### **250-265 Activities lawful if done with consent ... Existing holdings and anatomical specimens**

All provisions of Human Tissue Act 2004 now in force: see PARA 234 NOTE 6.

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## **261. Revocation of a licence.**

As from a day to be appointed<sup>1</sup>, the Human Tissue Authority<sup>2</sup> may revoke a licence<sup>3</sup>:

- 352 (1) on application by the holder of the licence or the designated individual<sup>4</sup>;
- 353 (2) otherwise than on an application under head (1) above if:
- 99
- 134. (a) it is satisfied that any information given for the purposes of the application for the licence was in any material respect false or misleading<sup>5</sup>;
- 135. (b) it is satisfied that the designated individual has failed to discharge, or is unable because of incapacity to discharge, his duty under the Human Tissue Act 2004<sup>6</sup>;
- 136. (c) it ceases to be satisfied that the premises specified in the licence are suitable for the licensed activity<sup>7</sup>;
- 137. (d) it ceases to be satisfied that the person to whom the licence is granted is a suitable person to be the holder of the licence<sup>8</sup>;
- 138. (e) it ceases to be satisfied that the designated individual is a suitable person to supervise the licensed activity<sup>9</sup>;
- 139. (f) the designated individual dies<sup>10</sup>; or
- 140. (g) it is satisfied that there has been any other material change of circumstances since the licence was granted<sup>11</sup>.
- 100

<sup>1</sup> At the date at which this volume states the law no such day had been appointed. As to the commencement of the Human Tissue Act 2004 see PARA 234 ante.

<sup>2</sup> As to the establishment of the Human Tissue Authority see PARA 239 ante.

<sup>3</sup> For the meaning of 'licence' see PARA 248 note 6 ante.

<sup>4</sup> Human Tissue Act 2004 s 16(6), Sch 3 para 7(1). For the meaning of 'designated individual' see PARA 248 note 7 ante.

<sup>5</sup> Ibid Sch 3 para 7(2)(a).

<sup>6</sup> Ibid Sch 3 para 7(2)(b). As to the duty of the designated individual see s 18; and PARA 258 ante.

<sup>7</sup> Ibid Sch 3 para 7(2)(c). For the meaning of 'licensed activity' see PARA 248 note 7 ante.

<sup>8</sup> Ibid Sch 3 para 7(2)(d). As to the granting of a licence see PARA 256 ante.

<sup>9</sup> Ibid Sch 3 para 7(2)(e).

<sup>10</sup> Ibid Sch 3 para 7(2)(f).

<sup>11</sup> Ibid Sch 3 para 7(2)(g).

## **UPDATE**

### **250-265 Activities lawful if done with consent ... Existing holdings and anatomical specimens**

All provisions of Human Tissue Act 2004 now in force: see PARA 234 NOTE 6.

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## **262. Licensing decisions.**

As from a day to be appointed<sup>1</sup>, before making a decision to refuse an application for the grant, revocation or variation of a licence<sup>2</sup>, or making a decision to grant an application for a licence subject to such conditions as the Human Tissue Authority thinks fit<sup>3</sup>, the Authority must give the applicant notice of the proposed decision and of the reasons for it<sup>4</sup>. Before making a decision to revoke or vary a licence without an application by the holder of the licence or the designated individual<sup>5</sup>, the Authority must give notice of the proposed decision and, of the reasons for it, to the holder of the licence and, where different, the designated individual<sup>6</sup>. A person to whom notice is given has the right to require the Authority to give him an opportunity to make representations of one of the following kinds about the proposed decision, namely: (1) oral representations by him, or a person acting on his behalf; (2) written representations by him<sup>7</sup>.

In the case of:

- 354 (a) a decision to grant a licence, the Authority must give notice of the decision to the applicant and the person who is to be the designated individual<sup>8</sup>;
- 355 (b) a decision to revoke a licence, the Authority must give notice of the decision to the holder of the licence and the designated individual<sup>9</sup>;
- 356 (c) a decision on an application by the holder of a licence to vary a licence so as to substitute another individual for the designated individual<sup>10</sup>, the Authority must give notice of the decision to the holder of the licence and the person who is to be the designated individual<sup>11</sup>;
- 357 (d) any other decision to vary a licence, the Authority must give notice of the decision to the holder of the licence and the designated individual<sup>12</sup>;
- 358 (e) a decision to refuse an application for the grant, revocation or variation of a licence, the Authority must give notice of the decision to the applicant<sup>13</sup>.

A notice under head (b), head (d) or head (e) above is to include a statement of the reasons for the decision<sup>14</sup>.

The Authority may by regulations<sup>15</sup> make such additional provision about procedure in relation to the carrying out of functions in relation to licences<sup>16</sup> as it thinks fit<sup>17</sup>.

<sup>1</sup> At the date at which this volume states the law no such day had been appointed. As to the commencement of the Human Tissue Act 2004 see PARA 234 ante.

<sup>2</sup> For the meaning of 'licence' see PARA 248 note 6 ante. As to the grant of a licence see PARA 256 ante. As to the revocation of a licence see PARA 261 ante. As to the variation of a licence see PARA 259 ante.

<sup>3</sup> Ie subject to a condition under the Human Tissue Act 2004 s 16(6), Sch 3 para 5: see PARA 257 ante. As to the establishment of the Human Tissue Authority see PARA 239 ante.

<sup>4</sup> See *ibid* Sch 3 para 10(1).

<sup>5</sup> Ie a decision under *ibid* Sch 3 para 7(2) (see PARA 261 ante) or Sch 3 para 8(3) or (5) (see PARA 259 ante). For the meaning of 'designated individual' see PARA 248 note 7 ante.

<sup>6</sup> See *ibid* Sch 3 para 10(2).



7 Ibid Sch 3 para 10(3). The right under Sch 3 para 10(3) is exercisable by giving the Authority notice of exercise of the right before the end of the period of 28 days beginning with the day on which the notice under Sch 3 para 10(1) or (2) (see the text and notes 1-6 supra) was given: Sch 3 para 10(4).

8 Ibid Sch 3 para 11(1).

9 Ibid Sch 3 para 11(2).

10 Ie on an application under ibid Sch 3 para 8(1): see PARA 259 ante.

11 Ibid Sch 3 para 11(3).

12 Ibid Sch 3 para 11(4).

13 Ibid Sch 3 para 11(5).

14 Ibid Sch 3 para 11(6). However, in the case of a notice under head (b) or head (d) in the text, the notice is not required to include a statement of the reasons for the decision if the decision is made on an application under Sch 3 para 7(1) (see PARA 261 ante) or Sch 3 para 8(2) (see PARA 259 ante): Sch 3 para 11(7).

15 At the date at which this volume states the law no such regulations had been made. As to the general power to make regulations under the Human Tissue Act 2004 see PARA 235 ante.

16 Ie the carrying out of functions under ibid Sch 3.

17 Ibid Sch 3 para 10(5).

## **UPDATE**

### **250-265 Activities lawful if done with consent ... Existing holdings and anatomical specimens**

All provisions of Human Tissue Act 2004 now in force: see PARA 234 NOTE 6.

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### **263. Reconsideration of licensing decisions.**

As from a day to be appointed<sup>1</sup>, if:

- 359 (1) an application for the grant, revocation or variation of a licence<sup>2</sup> is refused, the applicant may require the Human Tissue Authority to reconsider the decision<sup>3</sup>;
- 360 (2) a licence is revoked or varied, otherwise than on application by the holder of the licence or the designated individual<sup>4</sup>, the holder of the licence or the designated individual may require the Authority to reconsider the decision<sup>5</sup>;
- 361 (3) an application for the grant, or revocation, of permission for the purposes of an authorisation condition<sup>6</sup> is refused, the applicant may require the Authority to reconsider the decision<sup>7</sup>;
- 362 (4) permission for the purposes of an authorisation condition is revoked where the Authority ceases to be satisfied that the individual is a suitable person to give authorisation under that condition<sup>8</sup>, any of: (a) the individual concerned; (b) the holder of the licence; and (c) the designated individual, may require the Authority to reconsider the decision<sup>9</sup>.

Heads (1) to (4) above<sup>10</sup> do not apply to a decision on reconsideration<sup>11</sup>. Reconsideration is to be by way of fresh decision<sup>12</sup>. On reconsideration:

- 363 (i) the person by whom reconsideration is required ('the appellant') is entitled to require that he or his representative be given an opportunity to appear before and be heard by the appeals committee dealing with the matter<sup>13</sup>;
- 364 (ii) at any meeting at which such an opportunity is given, the person who made the decision which is the subject of reconsideration is entitled to appear and be heard in person or by a representative<sup>14</sup>; and
- 365 (iii) the appeals committee dealing with the matter must consider any written representations received from the appellant or the person who made the decision which is the subject of reconsideration<sup>15</sup>.

The appeals committee by which a decision is reconsidered<sup>16</sup> must give the appellant notice of its decision<sup>17</sup>. If on reconsideration an appeals committee upholds the previous decision, the notice given to the appellant<sup>18</sup> is to include a statement of the reasons for the appeals committee's decision<sup>19</sup>.

Where reconsideration of a decision is required under head (2) or head (4) above<sup>20</sup> by only one of two persons by whom it could have been required or is required under head (4) above by only one or two of three persons by whom it could have been required, it is to be treated<sup>21</sup> as required by both or (as the case may be) all of them<sup>22</sup>.

A person aggrieved by a decision on reconsideration<sup>23</sup> may appeal to the High Court on a point of law<sup>24</sup>.

The Authority may by regulations make such other provision about procedure in relation to reconsideration as it thinks fit<sup>25</sup>.

- 1 At the date at which this volume states the law no such day had been appointed. As to the commencement of the Human Tissue Act 2004 see PARA 234 ante.
- 2 For the meaning of 'licence' see PARA 248 note 6 ante. As to the grant of a licence see PARA 256 ante. As to the revocation of a licence see PARA 261 ante. As to the variation of a licence see PARA 259 ante.
- 3 Human Tissue Act 2004 s 19(1). As to the establishment of the Human Tissue Authority see PARA 239 ante. As to reconsideration of licensing decisions by appeals committees see s 20; and PARA 242 ante. The right under head (1) or head (2) in the text is exercisable by giving the Authority notice of exercise of the right before the end of the period of 28 days beginning with the day on which notice of the decision concerned was given under Sch 3 para 11 (see PARA 262 ante): s 19(5).
- 4 *Ie* under *ibid* Sch 3 para 7(2) (see PARA 261 ante) or Sch 3 para 8(3) or (5) (see PARA 259 ante). For the meaning of 'designated individual' see PARA 248 note 7 ante.
- 5 *Ibid* s 19(2). See note 3 *supra*.
- 6 For the purposes of *ibid* s 19, 'authorisation condition' means a condition of a licence where: (1) the licence is one to which Sch 3 para 3 (see PARA 257 ante) applies; and (2) the condition is the one required in the licence by Sch 3 para 3(2): s 19(8).
- 7 *Ibid* s 19(3). The right under head (3) or head (4) in the text is exercisable by giving the Authority notice of exercise of the right before the end of the period of 28 days beginning with the day on which notice of the decision concerned was given under Sch 3 para 12 (see PARA 257 note 14 ante): s 19(6).
- 8 *Ie* under *ibid* Sch 3 para 12(4)(b).
- 9 *Ibid* s 19(4). See note 7 *supra*.
- 10 *Ie* *ibid* s 19(1)-(4).
- 11 See *ibid* s 19(7).
- 12 *Ibid* s 21(1). For the purposes of s 21, 'reconsideration' means reconsideration in pursuance of a notice under s 19 (see the text and notes 1-11 *supra*): s 21(7).
- 13 *Ibid* s 21(2)(a).
- 14 *Ibid* s 21(2)(b).
- 15 *Ibid* s 21(2)(c).
- 16 *Ie* in pursuance of a notice under *ibid* s 19 (see the text and notes 1-11 *supra*).
- 17 *Ibid* s 21(3).
- 18 *Ie* under *ibid* s 21(3).
- 19 *Ibid* s 21(4).
- 20 *Ie* under *ibid* s 19(2) or (4).
- 21 *Ie* for the purposes of *ibid* s 21.
- 22 *Ibid* s 21(6).
- 23 *Ie* in pursuance of a notice under *ibid* s 19 (see the text and notes 1-11 *supra*).
- 24 *Ibid* s 22.
- 25 *Ibid* s 21(5). At the date at which this volume states the law no such regulations had been made. As to the general power to make regulations under the Human Tissue Act 2004 see PARA 235 ante.

## UPDATE

### **250-265 Activities lawful if done with consent ... Existing holdings and anatomical specimens**

All provisions of Human Tissue Act 2004 now in force: see PARA 234 NOTE 6.

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## **264. Changes of licence circumstance.**

As from a day to be appointed<sup>1</sup>, directions made by the Human Tissue Authority<sup>2</sup> may make provision for the purpose of dealing with a situation arising in consequence of:

- 366 (1) the variation of a licence<sup>3</sup>; or
- 367 (2) a licence ceasing to have effect<sup>4</sup>.

Directions under head (1) above may impose requirements on:

- 368 (a) the holder of the licence<sup>5</sup>;
- 369 (b) a person who is the designated individual<sup>6</sup> immediately before, or immediately after, the variation<sup>7</sup>;
- 370 (c) any other person, if he consents<sup>8</sup>.

Directions under head (2) above may impose requirements on:

- 371 (i) the person who is the holder of the licence immediately before the licence ceases to have effect<sup>9</sup>;
- 372 (ii) the person who is the designated individual at that time<sup>10</sup>;
- 373 (iii) any other person, if he consents<sup>11</sup>.

Directions may, in particular, require anything kept, or information held, in pursuance of the licence to be transferred in accordance with the directions<sup>12</sup>. Where a licence has ceased to have effect by reason of the death or dissolution of its holder, anything subsequently done by a person before directions are given is, if the licence would have been authority for doing it, to be treated as authorised by a licence<sup>13</sup>.

1 At the date at which this volume states the law no such day had been appointed. As to the commencement of the Human Tissue Act 2004 see PARA 234 ante.

2 As to the power to give directions see *ibid* s 37; and PARA 248 ante. As to the establishment of the Human Tissue Authority see PARA 239 ante.

3 *Ibid* s 24(1)(a). For the meaning of 'licence' see PARA 248 note 6 ante. As to the variation of a licence see PARA 259 ante.

4 *Ibid* s 24(1)(b).

5 *Ibid* s 24(2)(a).

6 For the meaning of 'designated individual' see PARA 248 note 7 ante.

7 Human Tissue Act s 24(2)(b).

8 *Ibid* s 24(2)(c).

9 *Ibid* s 24(3)(a).

10 Ibid s 24(3)(b).

11 Ibid s 24(3)(c).

12 Ibid s 24(4).

13 Ibid s 24(5).

#### **UPDATE**

#### **250-265 Activities lawful if done with consent ... Existing holdings and anatomical specimens**

All provisions of Human Tissue Act 2004 now in force: see PARA 234 NOTE 6.

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## (B) CONDUCT OF LICENSED ACTIVITIES

### **265. Existing holdings and anatomical specimens.**

As from a day to be appointed<sup>1</sup>, directions made by the Human Tissue Authority<sup>2</sup> may impose requirements in relation to the conduct of the activity which a licence<sup>3</sup> authorises to be carried on<sup>4</sup>. Directions may be given in relation to licences generally, licences of a particular description or a particular licence<sup>5</sup>. A person must comply with a requirement imposed by directions if it is applicable to him<sup>6</sup>.

1 At the date at which this volume states the law no such day had been appointed. As to the commencement of the Human Tissue Act 2004 see PARA 234 ante.

2 As to the power to give directions see *ibid* s 37; and PARA 248 ante. As to the establishment of the Human Tissue Authority see PARA 239 ante.

3 For the meaning of 'licence' see PARA 248 note 6 ante. As to activities requiring a licence see PARA 255 ante.

4 Human Tissue Act 2004 s 23(1).

5 *Ibid* s 23(2).

6 *Ibid* s 23(3).

## **UPDATE**

### **250-265 Activities lawful if done with consent ... Existing holdings and anatomical specimens**

All provisions of Human Tissue Act 2004 now in force: see PARA 234 NOTE 6.

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## **266. Codes of practice.**

The Human Tissue Act 2004<sup>1</sup> provides that the Human Tissue Authority<sup>2</sup> may prepare and issue codes of practice<sup>3</sup> for the purpose of giving practical guidance to persons carrying on activities within its remit<sup>4</sup> and for the purpose of laying down the standards expected in relation to the carrying on of such activities<sup>5</sup>. In preparing and issuing such codes of practice, the Authority must deal with the following matters:

- 374 (1) the carrying out of anatomical examinations<sup>6</sup>;
- 375 (2) the storage of anatomical specimens<sup>7</sup>;
- 376 (3) the storage and disposal of former anatomical specimens<sup>8</sup>;
- 377 (4) the definition of death for the purposes of this Act<sup>9</sup>;
- 378 (5) communication with the family of the deceased in relation to the making of a post mortem examination<sup>10</sup>;
- 379 (6) the making of post mortem examinations<sup>11</sup>;
- 380 (7) communication with the family of the deceased in relation to the removal from the body of the deceased, for use for a scheduled purpose, of any relevant material of which the body consists or which it contains<sup>12</sup>;
- 381 (8) the removal from a human body, for use for a scheduled purpose, of any relevant material of which the body consists or which it contains<sup>13</sup>;
- 382 (9) the storage for use for a scheduled purpose, and the use for such a purpose, of the body of a deceased person or relevant material which has come from a human body<sup>14</sup>;
- 383 (10) the storage for use for a scheduled purpose, and the use for such a purpose, of an existing holding<sup>15</sup>;
- 384 (11) the import<sup>16</sup> and the export<sup>17</sup> of the body of a deceased person or relevant material which has come from a human body, for use for a scheduled purpose<sup>18</sup>;
- 385 (12) the disposal of relevant material which has been removed from a human body for use for a scheduled purpose or which has come from a human body and is an existing holding<sup>19</sup>.

In dealing with the matters mentioned in heads (8) and (9) above, the Authority must, in particular, deal with consent<sup>20</sup>.

The Authority may not issue a code of practice that deals with a matter mentioned in any of heads (1) to (3) and heads (5) to (10) above unless a draft of it has been sent to and approved by the Secretary of State<sup>21</sup> and laid by him before both Houses of Parliament, and the 40 day period<sup>22</sup> has elapsed without either House resolving not to approve the draft<sup>23</sup>. If the Secretary of State does not approve a draft sent to him he must give his reasons to the Authority<sup>24</sup>.

The Authority must publish a code of practice in such a way as, in its opinion, is likely to bring it to the attention of those interested<sup>25</sup>. A code of practice is to come into effect on such day as may be appointed by directions<sup>26</sup>.

A failure on the part of any person to observe any provision of a code of practice will not of itself render the person liable to any proceedings<sup>27</sup>. However, the Authority may, in carrying out its functions with respect to licences<sup>28</sup>, take into account any relevant observance of, or failure



to observe, a code of practice, so far as dealing with a matter mentioned in any of heads (1) to (3) and heads (5) to (10) above<sup>29</sup>.

- 1 As to the commencement of the Human Tissue Act 2004 see PARA 234 ante.
- 2 As to the establishment of the Human Tissue Authority see PARA 239 ante.
- 3 The Authority must keep any code of practice under the Human Tissue Act 2004 s 26 under review and prepare a revised code of practice when appropriate: s 26(4). Before preparing a code of practice, the Authority must:
  - 59 (1) consult such persons as it considers appropriate (s 26(5)(a));
  - 60 (2) if the code of practice relates to Wales, consult the National Assembly for Wales (s 26(5)(b)); and
  - 61 (3) if the code of practice relates to Northern Ireland, consult the relevant Northern Ireland department (s 26(5)(c)).

As to the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS. For the meaning of 'relevant Northern Ireland department' see PARA 234 note 4 ante. Codes of practice issued under s 26 may make different provision in relation to England, Wales and Northern Ireland respectively: s 26(8).

- 4 As to activities within the remit of the Authority see PARA 246 ante.
- 5 Human Tissue Act 2004 s 26(1).
- 6 Ibid s 26(2)(a). For the meaning of 'carrying out of an anatomical examination' see PARA 246 note 16 ante. For the meaning of 'anatomical examination' see PARA 246 note 7 ante.
- 7 Ibid s 26(2)(b). For the meaning of 'anatomical specimen' see PARA 246 note 7 ante.
- 8 Ibid s 26(2)(c).
- 9 Ibid s 26(2)(d).
- 10 Ibid s 26(2)(e).
- 11 Ibid s 26(2)(f).
- 12 Ibid s 26(2)(g). For the meaning of 'relevant material' see PARA 246 note 4 ante. As to the meaning of 'material from the body of a deceased person' see PARA 246 note 4 ante. For the meaning of 'scheduled purpose' see PARA 250 ante.
- 13 Ibid s 26(2)(h). As to the meaning of 'material from a human body' see PARA 246 note 4 ante.
- 14 Ibid s 26(2)(i).
- 15 Ibid s 26(2)(j). For the meaning of 'existing holding' see PARA 254 note 3 ante.
- 16 For the meaning of 'import' see PARA 246 note 10 ante.
- 17 For the meaning of 'export' see PARA 246 note 11 ante.
- 18 Human Tissue Act 2004 s 26(2)(k).
- 19 Ibid s 26(2)(l).
- 20 Ibid s 26(3). The duty under s 26(3) has effect, in particular, to require the Authority to lay down the standards expected in relation to the obtaining of consent where consent falls by virtue of s 2(7)(b)(ii) or s 3(6)(c) (see PARA 251 ante) to be obtained from a person in a qualifying relationship: see s 27(1); and PARA 251 ante. For the meaning of 'qualifying relationship' see PARA 251 note 13 ante. As to consent generally see PARA 251 ante.
- 21 As to the Secretary of State see PARA 5 ante. Before approving a draft code of practice sent to him under ibid s 29(1), the Secretary of State must: (1) if the code relates to Wales, consult the National Assembly for Wales; and (2) if the code relates to Northern Ireland, consult the relevant Northern Ireland department: s

29(2). If the Secretary of State approves a draft code of practice sent to him under s 29(1), he must: (a) if the code relates to Wales, send a copy of it to the National Assembly for Wales (s 29(3)(a)); and (b) if the code relates to Northern Ireland, send a copy of it to the relevant Northern Ireland department (s 29(3)(b)). The relevant Northern Ireland department must lay before the Northern Ireland Assembly any document which it receives under s 29(3)(b): s 29(5).

22 For the purposes of *ibid* s 29(1)(b), '40 day period', in relation to the draft of a code of practice, means: (1) if the draft is laid before one House on a day later than the day on which it is laid before the other House, the period of 40 days beginning with the later of the two days; and (2) in any other case, the period of 40 days beginning with the day on which the draft is laid before each House, no account being taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days: s 29(6).

23 *Ibid* s 29(1).

24 *Ibid* s 29(4).

25 *Ibid* s 26(6).

26 *Ibid* s 26(7). As to the power to give directions see s 37; para 248 ante.

27 *Ibid* s 28(1).

28 For the meaning of 'licence' see PARA 248 note 6 ante. As to the functions of the Authority with respect to licences see PARAS 256-264 ante.

29 Human Tissue Act 2004 s 28(2).

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## ***E. DE-ACCESSION OF HUMAN REMAINS***

### **267. Power to de-accession human remains.**

As from a day to be appointed<sup>1</sup>, the following bodies have the power to de-accession human remains:

- 386 (1) the Board of Trustees of the Armouries;
- 387 (2) the Trustees of the British Museum;
- 388 (3) the Trustees of the Imperial War Museum;
- 389 (4) the Board of Governors of the Museum of London;
- 390 (5) the Trustees of the National Maritime Museum;
- 391 (6) the Board of Trustees of the National Museums and Galleries on Merseyside;
- 392 (7) the Trustees of the Natural History Museum;
- 393 (8) the Board of Trustees of the Science Museum;
- 394 (9) the Board of Trustees of the Victoria and Albert Museum<sup>2</sup>.

Bodies mentioned in heads (1) to (9) above may transfer from their collections any human remains which they reasonably believe to be remains of a person who died less than one thousand years before the commencement of these provisions if it appears to them to be appropriate to do so for any reason, whether or not relating to their other functions<sup>3</sup>. If, in relation to any human remains in its collection, it appears to any of the bodies mentioned in heads (1) to (9) above that the human remains are mixed or bound up with something other than human remains, and that it is undesirable, or impracticable, to separate them, the power mentioned above<sup>4</sup> includes power to transfer the thing with which the human remains are mixed or bound up<sup>5</sup>.

<sup>1</sup> At the date at which this volume states the law no such day had been appointed. As to the commencement of the Human Tissue Act 2004 see PARA 234 ante.

<sup>2</sup> See the Human Tissue Act 2004 s 47(1). As to the Armouries and the Board of Trustees of the Armouries see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 881 et seq. As to the British Museum, the Trustees of the British Museum, the Natural History Museum and the Trustees of the Natural History Museum see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 825 et seq. As to the Imperial War Museum and the Trustees of the Imperial War Museum see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 844 et seq. As to the Museum of London and the Board of Governors of the Museum of London see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 857. As to the National Maritime Museum and the Trustees of the National Maritime Museum see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 850 et seq. As to the Science Museum and the Board of Trustees of the Science Museum see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 875. As to the Victoria and Albert Museum and the Board of Trustees of the Victoria and Albert Museum see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 869.

<sup>3</sup> See *ibid* s 47(2). The power conferred by s 47(2) does not affect any trust or condition subject to which a body to which s 47 applies holds anything in relation to which the power is exercisable: s 47(4). The power conferred by s 47(2) is an additional power: s 47(5).

<sup>4</sup> *Ie* the power conferred by *ibid* s 47(2).

<sup>5</sup> *Ibid* s 47(3).

## **UPDATE**

**267 Power to de-accession human remains**

TEXT AND NOTE 1--Day now appointed: SI 2005/2632.

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## **F. OFFENCES**

### **268. Activities done without appropriate consent etc.**

As from a day to be appointed<sup>1</sup>, a person commits an offence if he does an activity requiring consent<sup>2</sup> without the appropriate consent<sup>3</sup>, unless he reasonably believes that he does the activity with the appropriate consent, or that what he does is not an activity to which the provision requiring consent applies<sup>4</sup>.

A person commits an offence if: (1) he falsely represents to a person whom he knows, or believes is going to, or may, do an activity requiring consent<sup>5</sup>, that there is appropriate consent to the doing of the activity, or that the activity is not one to which the provision requiring consent applies; and (2) he knows that the representation is false or does not believe it to be true<sup>6</sup>.

A person commits an offence if, when he does an activity requiring consent and the signing of a certificate as to the cause of death<sup>7</sup> and the certificate has not been signed<sup>8</sup>. However, this does not apply:

- 395 (a) where the person reasonably believes that the certificate has been signed in relation to the cause of death of the person concerned or that what he does is not an activity requiring consent and the signing of the certificate as to the cause of death<sup>9</sup>; or
- 396 (b) where the person comes into lawful possession of the body immediately after death and stores it prior to its removal to a place where anatomical examination<sup>10</sup> is to take place<sup>11</sup>.

A person commits an offence if, when he does an activity requiring consent and the registration of the death of the person<sup>12</sup>, the death of the person concerned has not been registered<sup>13</sup>. However, this does not apply where the person reasonably believes that the death of the person concerned has been registered or that what he does is not an activity requiring consent and registration of the death of the person<sup>14</sup>.

1 At the date at which this volume states the law no such day had been appointed. As to the commencement of the Human Tissue Act 2004 see PARA 234 ante.

2 ie an activity to which *ibid* s 1(1), (2) or (3) applies: see PARA 250 ante.

3 As to appropriate consent see PARA 251 ante; definition applied by *ibid* s 5(8).

4 See *ibid* s 5(1). A person guilty of such an offence is liable, on summary conviction, to a fine not exceeding the statutory maximum or, on conviction on indictment, to imprisonment for a term not exceeding three years or to a fine or to both: s 5(7). As to the statutory maximum see PARA 208 note 14 ante. As to the prosecution of offences committed by bodies corporate see s 49; and PARA 277 post.

5 ie an activity to which *ibid* s 1(1), (2) or (3) applies: see PARA 250 ante.

6 See *ibid* s 5(2). A person guilty of such an offence is liable, on summary conviction, to a fine not exceeding the statutory maximum or, on conviction on indictment, to imprisonment for a term not exceeding three years or to a fine or to both: s 5(7).

7     le an activity to which *ibid* s 1(2) applies: see PARA 250 ante.

8     See *ibid* s 5(3). As to certificates of the cause of death see the Births and Deaths Registration Act 1953 s 22(1) (as amended); the Births and Deaths Registration (Northern Ireland) Order 1976, SI 1976/1041 (NI 14), art 25(2); and REGISTRATION CONCERNING THE INDIVIDUAL vol 39(2) (Reissue) PARA 563. As to registration of death generally see REGISTRATION CONCERNING THE INDIVIDUAL vol 39(2) (Reissue) PARA 561 et seq. A person guilty of such an offence is liable, on summary conviction, to a fine not exceeding the statutory maximum or, on conviction on indictment, to imprisonment for a term not exceeding three years or to a fine or to both: Human Tissue Act 2004 s 5(7).

9     See *ibid* s 5(4)(a).

10    For the meaning of 'anatomical examination' see PARA 246 note 7 ante.

11    See the Human Tissue Act 2004 s 5(4)(b).

12    le an activity to which *ibid* s 1(3) applies: see PARA 250 ante.

13    See *ibid* s 5(5). As to registration of death see the Births and Deaths Registration Act 1953 s 15 (as amended); the Births and Deaths Registration (Northern Ireland) Order 1976, SI 1976/1041 (NI 14), art 21; and REGISTRATION CONCERNING THE INDIVIDUAL vol 39(2) (Reissue) PARA 561.

A person guilty of such an offence is liable, on summary conviction, to a fine not exceeding the statutory maximum or, on conviction on indictment, to imprisonment for a term not exceeding three years or to a fine or to both: Human Tissue Act 2004 s 5(7).

14    See *ibid* s 5(6).

## **UPDATE**

### **268-277 Activities done without appropriate consent etc ... Prosecution of offences committed by bodies corporate**

All provisions of Human Tissue Act 2004 now in force: see PARA 234 NOTE 6.

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## **269. Donated material used or stored for use other than for qualifying purposes.**

As from a day to be appointed<sup>1</sup>, a person commits an offence if he uses donated material<sup>2</sup> for a purpose which is not a qualifying purpose<sup>3</sup> or stores donated material for use for a purpose which is not a qualifying purpose<sup>4</sup>. However, this does not apply where the person reasonably believes that what he uses, or stores, is not donated material<sup>5</sup>.

1 At the date at which this volume states the law no such day had been appointed. As to the commencement of the Human Tissue Act 2004 see PARA 234 ante.

2 For the purposes of *ibid* s 8, references to donated material are references to the body of a deceased person, or relevant material which has come from a human body, which is, or has been, the subject of donation: s 8(5). For the purposes of s 8(5), a body, or material, is the subject of donation if authority under s 1(1)-(3) (see PARA 250 ante) exists in relation to it: s 8(6). For the meaning of 'relevant material' see PARA 246 note 4 ante. For the meaning of 'material from the body of a deceased person' and as to the meaning of 'material from a human body' see PARA 246 note 4 ante.

3 For the purposes of *ibid* s 8(1), references to a qualifying purpose are references to a purpose specified in Sch 1 (see PARA 250 ante), the purpose of medical diagnosis or treatment, the purpose of decent disposal, or a purpose specified in regulations made by the Secretary of State: s 8(4). As to the meaning of 'decent disposal' see PARA 257 note 21 ante. At the date at which this volume states the law no such regulations had been made. As to the general power to make regulations under the Human Tissue Act 2004 see PARA 235 ante. As to the Secretary of State see PARA 5 ante.

4 *Ibid* s 8(1). A person guilty of such an offence is liable, on summary conviction, to a fine not exceeding the statutory maximum or, on conviction on indictment, to imprisonment for a term not exceeding three years or to a fine or to both: s 8(3). As to the statutory maximum see PARA 208 note 14 ante. As to the prosecution of offences committed by bodies corporate see *ibid* s 49; and PARA 277 post.

5 *Ibid* s 8(2).

## **UPDATE**

### **268-277 Activities done without appropriate consent etc ... Prosecution of offences committed by bodies corporat**

All provisions of Human Tissue Act 2004 now in force: see PARA 234 NOTE 6.

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## **270. Breach of licence requirement.**

As from a day to be appointed<sup>1</sup>, a person who contravenes the licence requirement<sup>2</sup> commits an offence, unless he reasonably believes that what he does is not an activity to which the licence requirement applies or that he acts under the authority of a licence<sup>3</sup>.

1 At the date at which this volume states the law no such day had been appointed. As to the commencement of the Human Tissue Act 2004 see PARA 234 ante.

2 As to the licence requirement see *ibid* s 16(1); and PARA 255 ante. For the meaning of 'licence' see PARA 248 note 6 ante.

3 *Ibid* s 25(1). A person guilty of such an offence is liable, on summary conviction, to a fine not exceeding the statutory maximum or, on conviction on indictment, to imprisonment for a term not exceeding three years or to a fine or to both: s 25(2). As to the statutory maximum see PARA 208 note 14 ante. As to the prosecution of offences committed by bodies corporate see s 49; and PARA 277 post.

## **UPDATE**

### **268-277 Activities done without appropriate consent etc ... Prosecution of offences committed by bodies corporat**

All provisions of Human Tissue Act 2004 now in force: see PARA 234 NOTE 6.



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## **271. Possession of anatomical specimens away from licensed premises.**

As from a day to be appointed<sup>1</sup>, a person commits an offence if he has possession of an anatomical specimen<sup>2</sup> and the specimen is not on premises in respect of which an anatomy licence is in force<sup>3</sup>. However, this does not apply where:

- 397 (1) the specimen has come from premises in respect of which a storage licence<sup>4</sup> is in force and the person is authorised in writing by the designated individual<sup>5</sup> to have possession of the specimen, and has possession of the specimen only for a purpose for which he is so authorised to have possession of it<sup>6</sup>;
- 398 (2) the specimen is the body of a deceased person which is to be used for the purpose of anatomical examination, the person who has possession of the body has come into lawful possession of it immediately after the deceased's death, and he retains possession of the body prior to its removal to premises in respect of which an anatomy licence is in force<sup>7</sup>;
- 399 (3) the person has possession of the specimen only for the purpose of transporting it to premises in respect of which an anatomy licence is in force or where the specimen is to be used for the purpose of education, training or research<sup>8</sup>;
- 400 (4) the person has possession of the specimen for purposes of functions of, or under the authority of, a coroner<sup>9</sup>;
- 401 (5) the person reasonably believes that what he has possession of is not an anatomical specimen, that the specimen is on premises in respect of which an anatomy licence is in force, or that any of heads (1) to (4) above apply<sup>10</sup>.

A person also commits an offence if he has possession of a former anatomical specimen and the specimen is not on premises in respect of which a storage licence is in force<sup>11</sup>. However, this does not apply where:

- 402 (a) the specimen has come from premises in respect of which a storage licence is in force and the person is authorised in writing by the designated individual to have possession of the specimen, and has possession of the specimen only for a purpose for which he is so authorised to have possession of it<sup>12</sup>;
- 403 (b) the person has possession of the specimen only for the purpose of transporting it to premises in respect of which a storage licence is in force or where the specimen is to be used for the purpose of education, training or research<sup>13</sup>;
- 404 (c) the person has possession of the specimen only for the purpose of its decent disposal<sup>14</sup> or for purposes of functions of, or under the authority of, a coroner<sup>15</sup>;
- 405 (d) the person reasonably believes that what he has possession of is not a former anatomical specimen, that the specimen is on premises in respect of which a storage licence is in force, or that any of heads (a) to (c) above apply<sup>16</sup>.

<sup>1</sup> At the date at which this volume states the law no such day had been appointed. As to the commencement of the Human Tissue Act 2004 see PARA 234 ante.

<sup>2</sup> For the meaning of 'anatomical specimen' see PARA 246 note 7 ante.

3 Human Tissue Act 2004 s 30(1). For the purposes of s 30, 'anatomy licence' means a licence authorising the carrying out of an anatomical examination or the storage of anatomical specimens: s 30(8). For the meaning of 'anatomical examination' see PARA 246 note 7 ante. For the meaning of 'carrying out of an anatomical examination' see PARA 246 note 16 ante. For the meaning of 'licence' see PARA 248 note 6 ante.

A person guilty of an offence under s 30(1) is liable, on summary conviction, to a fine not exceeding the statutory maximum or, on conviction on indictment, to imprisonment for a term not exceeding three years or to a fine or to both: s 30(7). As to the statutory maximum see PARA 208 note 14 ante. As to the prosecution of offences committed by bodies corporate see s 49; and PARA 277 post.

4 For the purposes of ibid s 30, 'storage licence' means a licence authorising the storage of anatomical specimens: s 30(8).

5 For the meaning of 'designated individual' see PARA 248 note 7 ante.

6 Human Tissue Act 2004 s 30(2).

7 Ibid s 30(3).

8 Ibid s 30(4).

9 Ibid s 30(5). As to coroners see CORONERS.

10 Ibid s 30(6).

11 Ibid s 31(1). For the purposes of s 31, 'storage licence' means a licence authorising the storage, for use for a scheduled purpose, of relevant material which has come from a human body: s 31(7). For the meaning of 'scheduled purpose' see PARA 250 ante. For the meaning of 'relevant material' see PARA 246 note 4 ante. As to the meaning of 'material from a human body' see PARA 246 note 4 ante.

A person guilty of an offence under s 31(1) is liable, on summary conviction, to a fine not exceeding the statutory maximum or, on conviction on indictment, to imprisonment for a term not exceeding three years or to a fine or to both: s 31(6).

12 Ibid s 31(2).

13 Ibid s 31(3).

14 As to the meaning of 'decent disposal' see PARA 257 note 21 ante.

15 Human Tissue Act 2004 s 31(4).

16 Ibid s 31(5).

## UPDATE

### **268-277 Activities done without appropriate consent etc ... Prosecution of offences committed by bodies corporat**

All provisions of Human Tissue Act 2004 now in force: see PARA 234 NOTE 6.

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## **272. Commercial dealing in human material for transplantation.**

As from a day to be appointed<sup>1</sup>, a person commits an offence if he:

**.1**

- 141. (1) gives or receives a reward for the supply of, or for an offer to supply, any controlled material<sup>2</sup>;
- 142. (2) seeks to find a person willing to supply any controlled material for reward<sup>3</sup>;
- 143. (3) offers to supply any controlled material for reward<sup>4</sup>;
- 144. (4) initiates or negotiates any arrangement involving the giving of a reward for the supply of, or for an offer to supply, any controlled material<sup>5</sup>;
- 145. (5) takes part in the management or control of a body of persons corporate or unincorporate whose activities consist of or include the initiation or negotiation of such arrangements<sup>6</sup>.

101

Without prejudice to heads (2) and (3) above, a person commits an offence if he causes to be published or distributed, or knowingly publishes or distributes, an advertisement<sup>7</sup>, inviting persons to supply, or offering to supply, any controlled material for reward, or indicating that the advertiser is willing to initiate or negotiate any such arrangement as is mentioned in head (4) above<sup>8</sup>.

A person who engages in an activity to which the provisions described above apply does not commit an offence if he is designated by the Human Tissue Authority<sup>9</sup> as a person who may lawfully engage in the activity<sup>10</sup>.

1 At the date at which this volume states the law no such day had been appointed. As to the commencement of the Human Tissue Act 2004 see PARA 234 ante.

2 Ibid s 32(1)(a). For the purposes of s 32, 'reward' means any description of financial or other material advantage: s 32(11). For the purposes of s 32(1), (2), payment in money or money's worth to the holder of a licence is treated as not being a reward where it is in consideration for transporting, removing, preparing, preserving or storing controlled material, and its receipt by the holder of the licence is not expressly prohibited by the terms of the licence: s 32(6). For the meaning of 'licence' see PARA 248 note 6 ante. References in s 32(1), (2) to reward, in relation to the supply of any controlled material, do not include payment in money or money's worth for defraying or reimbursing:

- 62 (1) any expenses incurred in, or in connection with, transporting, removing, preparing, preserving or storing the material (s 32(7)(c));
- 63 (2) any liability incurred in respect of expenses incurred by a third party in, or in connection with, any of the activities mentioned in head (1) supra, or a payment in relation to which s 32(6) has effect (s 32(7)(b)); or
- 64 (3) any expenses or loss of earnings incurred by the person from whose body the material comes so far as reasonably and directly attributable to his supplying the material from his body (s 32(7)(c)).

For the purposes of s 32, controlled material is any material which: (a) consists of or includes human cells; (b) is, or is intended to be removed, from a human body; (c) is intended to be used for the purpose of transplantation; and (d) is not of a kind excepted under s 32(9): s 32(8). For the purposes of s 32, where the body of a deceased person is intended to be used to provide material which consists of or includes human cells

and is not of a kind excepted under s 32(9), for use for the purpose of transplantation, the body is to be treated as controlled material: s 32(10). The following kinds of material are excepted: (i) gametes; (ii) embryos; and (iii) material which is the subject of property because of an application of human skill: s 32(9). As to the meaning of 'gametes' see PARA 278 note 5 post; and for the meaning of 'embryo' see PARA 278 note 2 post (definitions applied by s 54(6)). For the meaning of 'transplantation' see PARA 246 note 4 ante.

A person guilty of an offence under s 32(1) is liable, on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both or, on conviction on indictment, to imprisonment for a term not exceeding three years or to a fine or to both: s 32(4). In relation to an offence committed before the commencement of the Criminal Justice Act 2003 s 154(1) (general limit on magistrates' courts power to impose imprisonment), the reference to 12 months is to be read as a reference to 6 months: see the Human Tissue Act 2004 s 58(1). At the date at which this volume states the law no day had been appointed for the commencement of the Criminal Justice Act 2003 s 154(1). In relation to Northern Ireland, a reference to 6 months is substituted for the reference to 12 months: see the Human Tissue Act 2004 s 51(1), (3). As to the statutory maximum see PARA 208 note 14 ante.

As to the prosecution of offences committed by bodies corporate see s 49; and PARA 277 post.

3 Ibid s 32(1)(b). See note 2 supra.

4 Ibid s 32(1)(c). See note 2 supra.

5 Ibid s 32(1)(d). See note 2 supra.

6 Ibid s 32(1)(e). See note 2 supra.

7 For the purposes of ibid s 32, 'advertisement' includes any form of advertising whether to the public generally, to any section of the public or individually to selected persons: s 32(11).

8 Ibid s 32(2). A person guilty of an offence under s 32(2) is liable on summary conviction to imprisonment for a term not exceeding 51 weeks or to a fine not exceeding level 5 on the standard scale or to both: s 32(5). In relation to an offence committed before the commencement of the Criminal Justice Act 2003 s 281(5) (alteration of penalties), the reference to 51 weeks is to be read as a reference to 6 months: see the Human Tissue Act 2004 s 58(2). At the date at which this volume states the law no day had been appointed for the commencement of the Criminal Justice Act 2003 s 281(5). In relation to Northern Ireland, a reference to 6 months is substituted for the reference to 51 weeks: see the Human Tissue Act 2004 s 51(1), (2). As to the standard scale see PARA 185 note 11 ante.

9 As to the establishment of the Human Tissue Authority see PARA 239 ante.

10 Human Tissue Act 2004 s 32(3).

## UPDATE

### **268-277 Activities done without appropriate consent etc ... Prosecution of offences committed by bodies corporat**

All provisions of Human Tissue Act 2004 now in force: see PARA 234 NOTE 6.

### **272 Commercial dealing in human material for transplantation**

NOTE 2--Human Tissue Act 2004 s 54(6) substituted: Human Fertilisation and Embryology Act 2008 Sch 7 para 24.

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### **273. Offences relating to transplants.**

As from a day to be appointed<sup>1</sup>, a person commits an offence if he removes any transplantable material<sup>2</sup> from the body of a living person<sup>3</sup> intending that the material be used for the purpose of transplantation<sup>4</sup> and when he removes the material, he knows, or might reasonably be expected to know, that the person from whose body he removes the material is alive<sup>5</sup>. A person also commits an offence if he uses for the purpose of transplantation any transplantable material which has come from the body of a living person and when he does so, he knows, or might reasonably be expected to know, that the transplantable material has come from the body of a living person<sup>6</sup>.

The Secretary of State may by regulations<sup>7</sup> provide that the provisions described above are not to apply in a case where:

- 406 (1) the Human Tissue Authority is satisfied that no reward<sup>8</sup> has been or is to be given in contravention of the prohibition of commercial dealings in human material for transplantation<sup>9</sup> and that such other conditions as are specified in the regulations are satisfied<sup>10</sup>; and
- 407 (2) such other requirements as are specified in the regulations are complied with<sup>11</sup>.

Where such an exception is in force, a person does not commit an offence if he reasonably believes that the exception applies<sup>12</sup>.

The Secretary of State may make regulations<sup>13</sup> requiring such persons as may be specified in the regulations to supply to such authority as may be so specified such information as may be so specified with respect to transplants that have been or are proposed to be carried out using transplantable material removed from a human body<sup>14</sup>. A person commits an offence if: (a) he fails without reasonable excuse to comply with such regulations<sup>15</sup>; or (b) in purported compliance with such regulations, he knowingly or recklessly supplies information which is false or misleading in a material respect<sup>16</sup>.

1 At the date at which this volume states the law no such day had been appointed. As to the commencement of the Human Tissue Act 2004 see PARA 234 ante.

2 For the purposes of *ibid* ss 33, 34 (see the text and notes 13-16 *infra*), 'transplantable material' means material of a description specified by regulations made by the Secretary of State: ss 33(7), 34(6). At the date at which this volume states the law no such regulations had been made. As to the general power to make regulations under the Human Tissue Act 2004 see PARA 235 ante. As to the Secretary of State see PARA 5 ante.

3 For the meaning of 'material from the body of a living person' see PARA 246 note 4 ante.

4 For the meaning of 'transplantation' see PARA 246 note 4 ante.

5 Human Tissue Act 2004 s 33(1). A person guilty of an offence under s 33 is liable on summary conviction to imprisonment for a term not exceeding 51 weeks or to a fine not exceeding level 5 on the standard scale or to both: s 33(6). In relation to an offence committed before the commencement of the Criminal Justice Act 2003 s 281(5) (alteration of penalties), the reference to 51 weeks is to be read as a reference to 6 months: see the Human Tissue Act 2004 s 58(2). At the date at which this volume states the law no day had been appointed for the commencement of the Criminal Justice Act 2003 s 281(5). In relation to Northern Ireland, a reference to 6

months is substituted for the reference to 51 weeks: see the Human Tissue Act 2004 s 51(1), (2). As to the standard scale see PARA 185 note 11 ante.

As to the prosecution of offences committed by bodies corporate see s 49; and PARA 277 post.

6 Ibid s 33(2). See note 5 supra.

7 At the date at which this volume states the law no such regulations had been made. Regulations under ibid s 33(3) must include provision for decisions of the Human Tissue Authority in relation to matters which fall to be decided by it under the regulations to be subject, in such circumstances as the regulations may provide, to reconsideration in accordance with such procedure as the regulations may provide: s 33(4). As to the establishment of the Human Tissue Authority see PARA 239 ante.

8 For the meaning of 'reward' see PARA 272 note 2 ante; definition applied by virtue of ibid s 33(7).

9 As to the prohibition of commercial dealings in human material for transplantation see ibid s 32; and PARA 272 ante.

10 Ibid s 33(3)(a).

11 Ibid s 33(3)(b).

12 Ibid s 33(5).

13 At the date at which this volume states the law no such regulations had been made.

14 Human Tissue Act 2004 s 34(1). As to the meaning of 'material from a human body' see PARA 246 note 4 ante. An authority must keep a record of information supplied to it in pursuance of regulations under s 34: s 34(2).

15 Ibid s 34(3)(a). A person guilty of an offence under s 34(3)(a) is liable on summary conviction to a fine not exceeding level 3 on the standard scale: ibid s 34(4)

16 Ibid s 34(3)(b). A person guilty of an offence under s 34(3)(b) is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 34(5).

## UPDATE

### **268-277 Activities done without appropriate consent etc ... Prosecution of offences committed by bodies corporat**

All provisions of Human Tissue Act 2004 now in force: see PARA 234 NOTE 6.

### **273 Offences relating to transplants**

NOTE 7--See the Human Tissue Act 2004 (Persons who Lack Capacity to Consent and Transplants) Regulations 2006, SI 2006/1659.

NOTE 13--See the Human Tissue Act 2004 (Ethical Approval, Exceptions from Licensing and Supply of Information about Transplants) Regulations 2006, SI 2006/1260 (amended by SI 2008/3067).

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## **274. Non-consensual analysis of DNA.**

As from a day to be appointed<sup>1</sup>, a person commits an offence if: (1) he has any bodily material<sup>2</sup>, intending that any human DNA in the material be analysed without qualifying consent<sup>3</sup> and that the results of the analysis be used otherwise than for an excepted purpose<sup>4</sup>; (2) the material is not of a kind excepted<sup>5</sup>; and (3) he does not reasonably believe the material to be of a kind so excepted<sup>6</sup>.

1 At the date at which this volume states the law no such day had been appointed. As to the commencement of the Human Tissue Act 2004 see PARA 234 ante.

2 For these purposes, 'bodily material' means material which has come from a human body and consists of or includes human cells: *ibid* s 45(5). As to the meaning of 'material from a human body' see PARA 246 note 4 ante.

3 Provision is made for the interpretation of 'qualifying consent' for these purposes: see *ibid* s 45(4), Sch 4 Pt 1 para 1. In relation to analysis of DNA manufactured by the body of a person who:

- 65 (1) is alive, 'qualifying consent' means his consent, except that where: (a) the person is a child; (b) neither a decision of his to consent, nor a decision of his not to consent, is in force; and (c) either he is not competent to deal with the issue of consent, or though he is competent to deal with that issue, he fails to do so, 'qualifying consent' means the consent of a person who has parental responsibility for him (Sch 4 Pt 1 para 2(1), (2));
- 66 (2) has died an adult, 'qualifying consent' means: (a) if a decision of his to consent, or a decision of his not to consent, was in force immediately before he died, his consent; (b) if head (2)(a) *supra* does not apply, the consent of a person who stood in a qualifying relationship to him immediately before he died (Sch 4 Pt 1 para 2(3));
- 67 (3) has died a child, 'qualifying consent' means: (a) if a decision of his to consent, or a decision of his not to consent, was in force immediately before he died, his consent; (b) if head (3)(a) *supra* does not apply, the consent of a person who had parental responsibility for him immediately before he died, or where no person had parental responsibility for him immediately before he died, the consent of a person who stood in a qualifying relationship to him at that time (Sch 4 Pt 1 para 2(4)).

For the meaning of 'child' see PARA 251 note 16 ante. For the meaning of 'parental responsibility' see PARA 251 note 19 ante. For the meaning of 'adult' see PARA 251 note 4 ante. As to the meaning of 'qualifying relationship' see PARA 251 note 13 ante.

As to the application of the definition of 'qualifying consent' in relation to Scotland see Sch 4 Pt 1 para 3.

4 Provision is made for the interpretation of 'use for an excepted purpose': see *ibid* Sch 4 Pt 2 para 4.

Use of the results of an analysis of DNA for any of the following purposes is use for an excepted purpose:

- 68 (1) the medical diagnosis or treatment of the person whose body manufactured the DNA (Sch 4 Pt 2 para 5(1)(a));
- 69 (2) purposes of functions of a coroner (Sch 4 Pt 2 para 5(1)(b));
- 70 (3) purposes of functions of a procurator fiscal in connection with the investigation of deaths (Sch 4 Pt 2 para 5(1)(c));
- 71 (4) the prevention or detection of crime (Sch 4 Pt 2 para 5(1)(d));
- 72 (5) the conduct of a prosecution (Sch 4 Pt 2 para 5(1)(e));

73 (6) purposes of national security (Sch 4 Pt 2 para 5(1)(f));

74 (7) implementing an order or direction of a court or tribunal, including one outside the United Kingdom (Sch 4 Pt 2 para 5(1)(g)).

For the purposes of head (4) supra, detecting crime is taken to include establishing by whom, for what purpose, by what means and generally in what circumstances any crime was committed, and the apprehension of the person by whom any crime was committed; and the reference in head (4) supra to the detection of crime includes any detection outside the United Kingdom of any crime or suspected crime: Sch 4 Pt 2 para 5(2). In head (5) supra, the reference to a prosecution includes a prosecution brought in respect of a crime in a country or territory outside the United Kingdom: Sch 4 Pt 2 para 5(3). For the purposes of Sch 4 Pt 2 para 5, a reference to a crime includes a reference to any conduct which constitutes one or more criminal offences (whether under the law of a part of the United Kingdom or a country or territory outside the United Kingdom), or which is, or corresponds to, conduct which, if it all took place in any one part of the United Kingdom, would constitute one or more criminal offences, or which constitutes one or more offences of a kind triable by court-martial under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957: Human Tissue Act 2004 Sch 4 Pt 2 para 5(4). Head (7) supra is not to be taken to confer any power to make orders or give directions: Sch 4 Pt 2 para 5(5). As to coroners see CORONERS. As to courts-martial see ARMED FORCES vol 2(2) (Reissue) PARA 448 et seq. For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

Use of the results of an analysis of DNA for any the purpose of research in connection with disorders, or the functioning, of the human body is use for an excepted purpose if the bodily material concerned is the subject of an order under Sch 4 Pt 2 para 6(2): Sch 4 Pt 2 para 6(1). The Secretary of State may by regulations specify circumstances in which the High Court or the Court of Session may order that Sch 4 Pt 2 para 6(1) is to apply to bodily material: Sch 4 Pt 2 para 6(2). At the date at which this volume states the law no such regulations had been made. As to the general power to make regulations under the Human Tissue Act 2004 see PARA 235 ante. As to the Secretary of State see PARA 5 ante.

Use of the results of an analysis of DNA for any of the following purposes is use for an excepted purpose if the bodily material concerned is an existing holding:

75 (a) clinical audit (Sch 4 Pt 2 para 7(a));

76 (b) determining the cause of death (Sch 4 Pt 2 para 7(b));

77 (c) education or training relating to human health (Sch 4 Pt 2 para 7(c));

78 (d) establishing after a person's death the efficacy of any drug or other treatment administered to him (Sch 4 Pt 2 para 7(d));

79 (e) obtaining scientific or medical information about a living or deceased person which may be relevant to any other person (including a future person) (Sch 4 Pt 2 para 7(e));

80 (f) performance assessment (Sch 4 Pt 2 para 7(f));

81 (g) public health monitoring (Sch 4 Pt 2 para 7(g));

82 (h) quality assurance (Sch 4 Pt 2 para 7(h));

83 (i) research in connection with disorders, or the functioning, of the human body (Sch 4 Pt 2 para 7(i));

84 (j) transplantation (Sch 4 Pt 2 para 7(j)).

For the purposes of s 45 and Sch 4, 'existing holding' means bodily material held immediately before the day on which s 45 comes into force: s 45(5). For the meaning of 'transplantation' see PARA 246 note 4 ante. Use of the results of an analysis of DNA for a purpose specified in Sch 4 Pt 2 para 7 is use for an excepted purpose if the use in England and Wales or Northern Ireland for that purpose of the bodily material concerned is authorised by s 1(1) or s 1(10)(c) (see PARA 250 ante): Sch 4 Pt 2 para 11.

Use of the results of an analysis of DNA for any of the following purposes is use for an excepted purpose if the bodily material concerned is from the body of a living person:

85 (i) clinical audit (Sch 4 Pt 2 para 8(a));

86 (ii) education or training relating to human health (Sch 4 Pt 2 para 8(b));

87 (iii) performance assessment (Sch 4 Pt 2 para 8(c));



- 88 (iv) public health monitoring (Sch 4 Pt 2 para 8(d));
- 89 (v) quality assurance (Sch 4 Pt 2 para 8(e)).

Use of the results of an analysis of DNA for the purpose of obtaining scientific or medical information about the person whose body manufactured the DNA is use for an excepted purpose if the bodily material concerned is the subject of a direction under Sch 4 Pt 2 para 9(2) or (3) or an order under Sch 4 Pt 2 para 9(4) or (5) and the information may be relevant to the person for whose benefit the direction is given or order is made: Sch 4 Pt 2 para 9(1). If the Human Tissue Authority is satisfied that bodily material has come from the body of a living person, that it is not reasonably possible to trace the person from whose body the material has come ('the donor'), that it is desirable in the interests of another person (including a future person) that DNA in the material be analysed for the purpose of obtaining scientific or medical information about the donor and that there is no reason to believe that the donor has died, that a decision of the donor to refuse consent to the use of the material for that purpose is in force or that the donor lacks capacity to consent to the use of the material for that purpose, it may direct that Sch 4 Pt 2 para 9 is to apply to the material for the benefit of the other person: Sch 4 Pt 2 para 9(2). As to the power to give directions see s 37; para 248 ante. If the Authority is satisfied that bodily material has come from the body of a living person, that it is desirable in the interests of another person (including a future person) that DNA in the material be analysed for the purpose of obtaining scientific or medical information about the person from whose body the material has come ('the donor'), that reasonable efforts have been made to get the donor to decide whether to consent to the use of the material for that purpose, that there is no reason to believe that the donor has died or that a decision of the donor to refuse to consent to the use of the material for that purpose is in force or that the donor lacks capacity to consent to the use of the material for that purpose, and that the donor has been given notice of the application for the exercise of the power conferred by Sch 4 Pt 2 para 9(3), it may direct that Sch 4 Pt 2 para 9 is to apply to the material for the benefit of the other person: Sch 4 Pt 2 para 9(3). In Scotland the Court of Session may direct that Sch 4 Pt 2 para 9 is to apply to the material for the benefit of another person: see Sch 4 Pt 2 para 9(4), (5). For the meaning of 'material from the body of a living person' see PARA 246 note 4 ante. As to the establishment of the Human Tissue Authority see PARA 239 ante.

Use of the results of an analysis of DNA for the purpose of research in connection with disorders, or the functioning, of the human body is use for an excepted purpose if:

- 90 (A) the bodily material concerned is from the body of a living person (Sch 4 Pt 2 para 10(a));
- 91 (B) the research is ethically approved in accordance with regulations made by the Secretary of State (Sch 4 Pt 2 para 10(b)); and
- 92 (C) the analysis is to be carried out in circumstances such that the person carrying it out is not in possession, and not likely to come into possession, of information from which the individual from whose body the material has come can be identified (Sch 4 Pt 2 para 10(c)).

At the date at which this volume states the law no regulations had been made under head (B) supra.

Use of the results of an analysis of DNA for a purpose specified under Sch 4 Pt 2 para 12(2) is use for an excepted purpose if the DNA has been manufactured by the body of a person who has attained the age of 18 years and, under the law of England and Wales or Northern Ireland, lacks capacity to consent to analysis of the DNA or, under the law of Scotland, is an adult with incapacity, and neither a decision of his to consent to analysis of the DNA for that purpose, nor a decision of his not to consent to analysis of it for that purpose, is in force: Sch 4 Pt 2 para 12(1)(a), (b)).

The Secretary of State may by regulations specify for the purposes of Sch 4 Pt 2 para 12 purposes for which DNA may be analysed: Sch 4 Pt 2 para 12(2). At the date at which this volume states the law no such regulations had been made. The Secretary of State may by order amend Sch 4 Pt 2 para 5, 7 or 8 for the purpose of varying or omitting any of the purposes specified in that provision or adding to the purposes so specified: Sch 4 Pt 2 para 13. At the date at which this volume states the law no such orders had been made. As to the general power to make orders under the Human Tissue Act 2004 see PARA 235 ante.

5 Ibid s 45(1)(b). Bodily material is excepted if: (1) it is material which has come from the body of a person who died before the day on which s 45 comes into force and at least one hundred years have elapsed since the date of the person's death; (2) it is an existing holding and the person who has it is not in possession, and not likely to come into possession, of information from which the individual from whose body the material has come can be identified; or (3) it is an embryo outside the human body: s 45(2). For the meaning of 'embryo' see PARA 278 note 2 post; definition applied by s 54(6).

6 Ibid s 45(1). A person guilty of an offence under s 45 is liable, on summary conviction, to a fine not exceeding the statutory maximum or, on conviction on indictment, to imprisonment for a term not exceeding three years or to a fine or to both: s 45(3). As to the statutory maximum see PARA 208 note 14 ante. As to the prosecution of offences committed by bodies corporate see PARA 277 post.

## UPDATE

**268-277 Activities done without appropriate consent etc ... Prosecution of offences committed by bodies corporat**

All provisions of Human Tissue Act 2004 now in force: see PARA 234 NOTE 6.

**274 Non-consensual analysis of DNA**

NOTE 4--Human Tissue Act 2004 Sch 4 Pt 2 para 5(4) amended: Armed Forces Act 2006 Sch 16 para 242. Head (B). See the Human Tissue Act 2004 (Ethical Approval, Exceptions from Licensing and Supply of Information about Transplants) Regulations 2006, SI 2006/1260 (amended by SI 2008/3067).

NOTE 5--Human Tissue Act 2004 s 54(6) substituted: Human Fertilisation and Embryology Act 2008 Sch 7 para 24.

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## **G. ENFORCEMENT**

### **(A) INSPECTION, ENTRY, SEARCH AND SEIZURE**

#### **275. Powers of inspection, entry, search and seizure.**

As from a day to be appointed<sup>1</sup>, a duly authorised person<sup>2</sup> may require a person to produce for inspection any records which he is required to keep by or by virtue of the Human Tissue Act 2004<sup>3</sup>. Where records which a person is so required to keep are stored in any electronic form, this power includes power to require the records to be made available for inspection in a visible and legible form or in a form from which they can readily be produced in a visible and legible form<sup>4</sup>.

A duly authorised person may at any reasonable time enter and inspect any premises in respect of which a licence is in force<sup>5</sup>. This power is exercisable for purposes of the Human Tissue Authority's functions in relation to licences<sup>6</sup>.

If a justice of the peace is satisfied on sworn information<sup>7</sup> that there are reasonable grounds for believing that an offence under Part 1 or Part 2 of the Human Tissue Act 2004<sup>8</sup> is being, or has been, committed on any premises, and that any of the conditions are met in relation to the premises, he may by signed warrant authorise a duly authorised person to enter the premises, if need be by force, and search them<sup>9</sup>. The conditions are: (1) that entry to the premises has been, or is likely to be, refused and notice of the intention to apply for a warrant has been given to the occupier<sup>10</sup>; (2) that the premises are unoccupied<sup>11</sup>; (3) that the occupier is temporarily absent<sup>12</sup>; (4) that an application for admission to the premises or the giving of notice of the intention to apply for a warrant would defeat the object of entry<sup>13</sup>. Entry and search under a warrant<sup>14</sup> is unlawful if any of the following is not complied with<sup>15</sup>:

- 408 (a) entry and search must be at a reasonable time unless the person executing the warrant thinks that the purpose of the search may be frustrated on an entry at a reasonable time<sup>16</sup>;
- 409 (b) if the occupier of the premises to which the warrant relates is present when the person executing the warrant seeks to enter them, the person executing the warrant must produce the warrant to the occupier and give him a copy of the warrant and an appropriate statement<sup>17</sup>;
- 410 (c) if the occupier of the premises to which the warrant relates is not present when the person executing the warrant seeks to enter them, but some other person is present who appears to the person executing the warrant to be in charge of the premises, the person executing the warrant must produce the warrant to that other person, give him a copy of the warrant and an appropriate statement, and leave a copy of the warrant in a prominent place on the premises<sup>18</sup>;
- 411 (d) if the premises to which the warrant relates are unoccupied, the person executing the warrant must leave a copy of it in a prominent place on the premises<sup>19</sup>.

Where the premises in relation to which a warrant for entry and search<sup>20</sup> is executed are unoccupied or the occupier is temporarily absent, the person executing the warrant must, when leaving the premises, leave them as effectively secured as he found them<sup>21</sup>.

A duly authorised person: (i) entering and inspecting licensed premises<sup>22</sup> may seize anything on the premises which he has reasonable grounds to believe may be required for purposes of the Authority's functions relating to the grant, revocation, variation or suspension of licences<sup>23</sup>; (ii) entering and searching premises under a warrant<sup>24</sup> may seize anything on the premises which he has reasonable grounds to believe may be required for the purpose of being used in evidence in any proceedings for an offence under Part 1 or Part 2 of the Human Tissue Act 2004<sup>25</sup>.

Where a person has power to seize anything under head (i) or head (ii) above, he may take such steps as appear to be necessary for preserving the thing or preventing interference with it<sup>26</sup>. The power under head (i) or head (ii) above includes power to retain anything seized in exercise of the power for so long as it may be required for the purpose for which it was seized<sup>27</sup>. Where by virtue of head (i) or head (ii) above a person seizes anything, he must leave on the premises from which the thing was seized, a statement giving particulars of what he has seized and stating that he has seized it<sup>28</sup>.

Power to enter and inspect or search any premises includes power to take such other persons and equipment as the person exercising the power reasonably considers necessary<sup>29</sup>. Power to inspect or search any premises includes, in particular, power to inspect any equipment found on the premises, power to inspect and take copies of any records found on the premises and, in the case of premises in respect of which a licence is in force, power to observe the carrying on on the premises of the licensed activity<sup>30</sup>. Any power to enter, inspect or search premises includes power to require any person to afford such facilities and assistance with respect to matters under that person's control as are necessary to enable the power of entry, inspection or search to be exercised<sup>31</sup>.

A person's right to exercise a power is subject to his producing evidence of his entitlement to exercise it, if required<sup>32</sup>. As soon as reasonably practicable after having exercised a power to inspect or search premises, the duly authorised person must prepare a written report of the inspection or search and, if requested to do so by the appropriate person<sup>33</sup>, give him a copy of the report<sup>34</sup>.

1 At the date at which this volume states the law no such day had been appointed. As to the commencement of the Human Tissue Act 2004 see PARA 234 ante.

2 For the purposes of *ibid* Sch 5, 'duly authorised person', in the context of any provision, means a person authorised by the Human Tissue Authority to act for the purposes of that provision: s 48, Sch 5 para 9. As to the establishment of the Human Tissue Authority see PARA 239 ante.

3 *Ibid* Sch 5 para 1(1). A person commits an offence if he fails without reasonable excuse to comply with a requirement under Sch 5 para 1(1) or Sch 5 para 6(3) (see the text and note 31 *infra*) or intentionally obstructs the exercise of any right under Sch 5: Sch 5 para 8(1). A person guilty of an offence under Sch 5 para 8 is liable on summary conviction to a fine not exceeding level 5 on the standard scale: Sch 5 para 8(2). As to the standard scale see PARA 185 note 11 ante. A duly authorised person may inspect and take copies of any records produced for inspection in pursuance of a requirement under Sch 5 para 1: Sch 5 para 1(3).

4 *Ibid* Sch 5 para 1(2).

5 *Ibid* Sch 5 para 2(1). For the meaning of 'licence' see PARA 248 note 6 ante.

6 *Ibid* Sch 5 para 2(2). As to the functions of the Authority with respect to licences see PARAS 256-264 ante.

7 Or in Northern Ireland on a complaint on oath: see *ibid* Sch 5 para 3.

8 *Ie* under *ibid* Pt 1 (ss 1-12) or Pt 2 (ss 13-41).

9 Ibid Sch 5 para 3(1). A warrant under Sch 5 para 3 is to continue in force until the end of the period of 31 days beginning with the day on which it is issued: Sch 5 para 3(3).

10 Ibid Sch 5 para 3(2)(a).

11 Ibid Sch 5 para 3(2)(b).

12 Ibid Sch 5 para 3(2)(c).

13 Ibid Sch 5 para 3(2)(d).

14 Ie under ibid Sch 5 para 2 (see the text and notes 5, 6 supra).

15 Ibid Sch 5 para 4(1).

16 Ibid Sch 5 para 4(2).

17 Ibid Sch 5 para 4(3). In heads (b) and (c) in the text, the references to an appropriate statement are references to a statement in writing containing such information relating to the powers of the person executing the warrant and the rights and obligations of the person to whom the statement is given as may be prescribed by regulations made by the Secretary of State: Sch 5 para 4(5). At the date at which this volume states the law no such regulations had been made. As to the general power to make regulations under the Human Tissue Act 2004 see PARA 235 ante. As to the Secretary of State see PARA 5 ante.

18 Ibid Sch 5 para 4(4). See note 17 supra.

19 Ibid Sch 5 para 4(6).

20 Ie a warrant under ibid Sch 5 para 3 (see the text and notes 7-13 supra).

21 Ibid Sch 5 para 4(7).

22 Ie under ibid Sch 5 para 2 (see the text and notes 5, 6 supra).

23 Ibid Sch 5 para 5(1). As to the granting of a licence see PARA 256 ante. As to the revocation of a licence see PARA 261 ante. As to the variation of a licence see PARA 259 ante. As to the suspension of a licence see PARA 260 ante.

24 Ie a warrant under ibid Sch 5 para 3 (see the text and notes 7-13 supra).

25 Ibid Sch 5 para 5(2).

26 Ibid Sch 5 para 5(3).

27 Ibid Sch 5 para 5(4).

28 Ibid Sch 5 para 5(5).

29 Ibid Sch 5 para 6(1).

30 Ibid Sch 5 para 6(2).

31 Ibid Sch 5 para 6(3). See note 3 supra.

32 Ibid Sch 5 para 7(1).

33 For the purposes of ibid Sch 5 para 7(2), the 'appropriate person' means, in relation to premises in respect of which a licence is in force, the designated individual (see PARA 248 note 7 ante) and, in relation to any other premises, the occupier: Sch 5 para 7(3).

34 Ibid Sch 5 para 7(2).

## UPDATE

### **268-277 Activities done without appropriate consent etc ... Prosecution of offences committed by bodies corporat**

All provisions of Human Tissue Act 2004 now in force: see PARA 234 NOTE 6.

**275 Powers of inspection, entry, search and seizure**

NOTE 17--Regulations now made: see the Human Tissue Act 2004 (Powers of Entry and Search: Supply of Information) Regulations 2006, SI 2006/538.

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## (B) PROSECUTIONS

### **276. Consent of Director of Public Prosecutions required for prosecution of certain offences.**

As from a day to be appointed<sup>1</sup>, no proceedings for an offence relating to the doing of activities without consent<sup>2</sup>, commercial dealings in human material for transplantation<sup>3</sup> or transplants involving a live donor<sup>4</sup> are to be instituted, except by or with the consent of the Director of Public Prosecutions<sup>5</sup>.

1 At the date at which this volume states the law no such day had been appointed. As to the commencement of the Human Tissue Act 2004 see PARA 234 ante.

2 Ie an offence under *ibid* s 5: see PARA 268 ante.

3 Ie an offence under *ibid* s 32: see PARA 272 ante.

4 Ie an offence under *ibid* s 33: see PARA 273 ante.

5 *Ibid* s 50(a). As to the Director of Public Prosecutions see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARAS 1066, 1079 et seq. In Northern Ireland, the consent of the Director of Public Prosecutions for Northern Ireland is required: see s 50(b).

## **UPDATE**

### **268-277 Activities done without appropriate consent etc ... Prosecution of offences committed by bodies corporat**

All provisions of Human Tissue Act 2004 now in force: see PARA 234 NOTE 6.

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## **277. Prosecution of offences committed by bodies corporate.**

As from a day to be appointed<sup>1</sup>, where an offence under the Human Tissue Act 2004 is committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he (as well as the body corporate) commits the offence and is liable to be proceeded against and punished accordingly<sup>2</sup>.

<sup>1</sup> At the date at which this volume states the law no such day had been appointed. As to the commencement of the Human Tissue Act 2004 see PARA 234 ante.

<sup>2</sup> Ibid s 49(1). Where the affairs of a body corporate are managed by its members, s 49(1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate: s 49(2). Where an offence under the Human Tissue Act 2004 is committed by a Scottish partnership and is proved to have been committed with the consent or connivance of a partner, or to be attributable to any neglect on the part of a partner, he (as well as the partnership) commits the offence and is liable to be proceeded against and punished accordingly: s 49(3). For the purposes of s 49(3), 'partner' includes a person purporting to act as a partner: s 49(4).

## **UPDATE**

### **268-277 Activities done without appropriate consent etc ... Prosecution of offences committed by bodies corporat**

All provisions of Human Tissue Act 2004 now in force: see PARA 234 NOTE 6.



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## **(7) HUMAN FERTILISATION AND EMBRYOLOGY**

### **278. Prohibitions.**

No person may bring about the creation<sup>1</sup> of an embryo<sup>2</sup> or keep or use<sup>3</sup> an embryo except in pursuance of a licence<sup>4</sup>. No person may place in a woman a live embryo other than a human embryo or any live gametes<sup>5</sup> other than human gametes<sup>6</sup>. A licence cannot authorise<sup>7</sup>: (1) keeping or using an embryo after the appearance of the primitive streak<sup>8</sup>; (2) placing an embryo in any animal<sup>9</sup>; (3) keeping or using an embryo in any circumstances prohibited by regulations<sup>10</sup>; or (4) replacing a nucleus of a cell of an embryo with a nucleus taken from a cell of any person, embryo or subsequent development of an embryo<sup>11</sup>. No person, except in pursuance of a licence<sup>12</sup>, may: (a) store any gametes<sup>13</sup>; or (b) in the course of providing treatment services<sup>14</sup> for any woman, use the sperm of any man unless the services are being provided for the woman and the man together, or use the eggs of any other woman<sup>15</sup>; or (c) mix gametes with the live gametes of any animal<sup>16</sup>. No person may, for the purpose of providing fertility services<sup>17</sup> for any woman, use female germ cells<sup>18</sup> taken or derived from an embryo or a foetus or use embryos created by using such cells<sup>19</sup>, and no person may place sperm and eggs in a woman in any circumstances specified in regulations except in pursuance of a licence<sup>20</sup>.

It is also an offence for any person who is or has been a member or employee of the Human Fertilisation and Embryology Authority, or a person who is or was a person to whom a licence applies or is a person to whom directions have been given, to disclose information in contravention of the requirements of confidentiality laid down by the Human Fertilisation and Embryology Act 1990<sup>21</sup>.

No proceedings for an offence may be instituted except by or with the consent of the Director of Public Prosecutions<sup>22</sup>.

It is a defence for a person charged with doing anything which<sup>23</sup> cannot be done except in pursuance of a licence, to prove: (i) that he was acting under another's direction<sup>24</sup>; and (ii) that he reasonably believed that the other person was at the material time the person responsible under a licence, a person designated<sup>25</sup> as a person to whom a licence applied, or a person to whom directions had been given<sup>26</sup>, and that the defendant was authorised by virtue of the licence or directions to do the thing in question<sup>27</sup>. It is a defence for a person charged with any offence under the Human Fertilisation and Embryology Act 1990 to prove that at the material time he was a person to whom a licence applied or to whom directions had been given<sup>28</sup>, and that he took all such steps as were reasonable and exercised all due diligence to avoid committing the offence<sup>29</sup>.

1 The Human Fertilisation and Embryology Act 1990, so far as it governs bringing about the creation of an embryo, applies only to bringing about the creation of an embryo outside the human body: s 1(2). References to embryos the creation of which was brought about in vitro (in their application to those where fertilisation is complete) are to those where fertilisation began outside the human body whether or not it was completed there: s 1(2)(a). References to embryos taken from a woman do not include embryos whose creation was brought about in vitro: s 1(2)(b).

2 'Embryo' means (unless otherwise stated) a live human embryo where fertilisation is complete, and references to an embryo include an egg in the process of fertilisation: *ibid* s 1(1)(a), (b). Fertilisation is not complete until the appearance of a two cell zygote: s 1(1). The essential thrust of s 1(1)(a) is directed to live human embryos created outside the human body, not to the manner of their creation; an organism created by

cell nuclear replacement falls within the definition of 'embryo': *R (on the application of Quintavalle) v Secretary of State for Health* [2003] UKHL 13, [2003] AC 687, [2003] 2 All ER 113.

3 The Human Fertilisation and Embryology Act 1990, so far as it governs the keeping or use of an embryo, applies only to keeping or using an embryo outside the human body: s 1(3). References to 'keeping' in relation to gametes or embryos include keeping while preserved, whether preserved by cryopreservation or in any other way, and embryos and gametes so kept are referred to as 'stored'; 'store' and 'storage' must be construed accordingly: s 2(2).

4 Ibid s 3(1). Contravention of this provision, other than by doing something which by virtue of s 3(3) (see the text to notes 8-11 *infra*) cannot be authorised by a licence, is an offence punishable on conviction on indictment by imprisonment for up to two years or a fine or both, and on summary conviction by imprisonment for up to six months or a fine not exceeding the statutory maximum or both: s 41(2)(a), (4). As to the statutory maximum see PARA 208 note 14 *ante*. For defences see the text and notes 23-29 *infra*. For the meaning of 'licence' see PARA 281 note 2 *post*. Directions may authorise the keeping of gametes or embryos by or on behalf of the person to whom the licence applies in the course of their carriage to or from any premises: s 24(3). As to directions generally see PARA 288 text and notes 1-4 *post*. In certain circumstances, the unlicensed keeping or examining of embryos in connection with the investigation of offences under the Act is permitted and the manner of, and conditions for, such keeping is prescribed: see s 43; and the Human Fertilisation and Embryology (Special Exemptions) Regulations 1991, SI 1991/1588, reg 2.

5 References to gametes, eggs or sperm (except where otherwise stated) are references to live human gametes, eggs or sperm: Human Fertilisation and Embryology Act 1990 s 1(4). References to gametes or eggs do not include eggs in the process of fertilisation: s 1(4).

6 Ibid s 3(2). Contravention of this provision is an offence punishable on conviction on indictment by imprisonment for up to ten years or a fine or both: s 41(1)(a). For a defence see the text and notes 28-29 *infra*.

7 The doing of anything which, by virtue of *ibid* s 3(3), cannot be authorised by a licence is an offence punishable on conviction on indictment by imprisonment for up to ten years or a fine or both: s 41(1)(b). For a defence see text and notes 28-29 *infra*.

8 Ibid s 3(3)(a). The primitive streak is to be taken to have appeared in an embryo not later than the end of the period of 14 days beginning with the day when the gametes are mixed, not counting any time during which the embryo is stored: s 3(4). See also note 7 *supra*.

9 Ibid s 3(3)(b). See also note 7 *supra*.

10 Ibid s 3(3)(c). See also note 7 *supra*. At the date at which this volume states the law no such regulations had been made.

11 Ibid s 3(3)(d). See also note 7 *supra*. Section 3(3)(d) does not prohibit cell nuclear replacement: *R (on the application of Quintavalle) v Secretary of State for Health* [2003] UKHL 13, [2003] AC 687, [2003] 2 All ER 113.

12 A licence cannot authorise storing or using gametes in any circumstances in which regulations prohibit their storage or use: Human Fertilisation and Embryology Act 1990 s 4(2). At the date at which this volume states the law no such regulations had been made. In certain circumstances, the unlicensed storage of gametes in connection with the investigation of offences under the Human Fertilisation and Embryology Act 1990 is permitted: see s 43; and the Human Fertilisation and Embryology (Special Exemptions) Regulations 1991, 1991/1588, reg 2. Also permitted is the unlicensed storage of gametes for the purposes of research, for the development or testing of pharmaceutical or contraceptive products, or for teaching requiring the use of gametes, provided they are not to be used for treatment services (see note 14 *infra*) or other specified purposes and that they are stored in accordance with prescribed conditions: see reg 3.

13 Human Fertilisation and Embryology Act 1990 s 4(1)(a). Contravention of s 4(1)(a), (b) (see the text to notes 14, 15 *infra*) is an offence punishable on conviction on indictment by imprisonment for up to two years or a fine or both, and on summary conviction by imprisonment for up to six months or a fine not exceeding the statutory maximum or both: s 41(2)(b), (4). For a defence see the text to notes 23-29 *infra*.

14 'Treatment services' means medical, surgical or obstetric services provided to the public or a section of the public for the purposes of assisting women to carry children: *ibid* s 2(1). A woman is not to be treated as carrying a child until the embryo has become implanted: s 2(3). The screening of embryos before implantation using pre-implantation genetic diagnosis in conjunction with tissue typing falls within the definition of treatment services: *R (on the application of Quintavalle) v Human Fertilisation and Embryology Authority (Secretary of State for Health intervening)* [2003] EWCA Civ 667, [2004] QB 168, [2003] 3 All ER 257.

15 Human Fertilisation and Embryology Act 1990 s 4(1)(b). Contravention of this provision is an offence: see note 13 *supra*. Consent to the provision of treatment services 'together' must be consent to each and every

stage of the provision of the treatment services; if the parties at any stage cease to act as a joint enterprise the consent is inoperative: *Evans v Amicus Healthcare Ltd* [2004] EWCA (Civ) 727, [2004] 3 All ER 1025, [2004] 2 FLR 766. Treatment cannot be regarded as being 'together' for the purposes of the Human Fertilisation and Embryology Act 1990 s 4(1)(b), once the man who has provided the sperm has died. However, a woman may be entitled to be treated with her dead husband's sperm in another country of the European Union unless there are public policy reasons to the contrary: *R v Human Fertilisation and Embryology Authority, ex p Blood* [1997] 2 All ER 687, [1997] 2 FCR 501, CA. As to parentage under the Human Fertilisation and Embryology Act 1990 see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 102 et seq.

16 Ibid s 4(1)(c). Contravention of this provision is an offence punishable on conviction on indictment by imprisonment for up to ten years or a fine or both: s 41(1)(a). For defences see the text and notes 23-29 infra.

17 'Fertility services' means medical, surgical or obstetric services provided for the purpose of assisting women to carry children: ibid s 3A(2) (s 3A added by the Criminal Justice and Public Order Act 1994 s 156(1)).

18 'Female germ cells' means cells of the female germ line and includes such cells at any stage of maturity and accordingly includes eggs: Human Fertilisation and Embryology Act 1990 s 3A(2) (as added: see note 17 supra).

19 Ibid s 3A(1) (as added: see note 17 supra). Contravention of this provision is an offence punishable on conviction on indictment by imprisonment for up to ten years or a fine or both: s 41(1)(a) (amended by the Criminal Justice and Public Order Act 1994 s 156(2)). For a defence see the text and notes 28-29 infra.

20 Human Fertilisation and Embryology Act 1990 s 4(3). Contravention of this provision is an offence punishable on conviction on indictment by imprisonment for up to two years or a fine or both, and on summary conviction by imprisonment for up to six months or a fine not exceeding the statutory maximum or both: s 41(2)(c), (4). For a defence see text and notes 28-29 infra. Regulations under s 4(3) may provide that, in relation to licences only to place sperm and eggs in a woman in such circumstances, the licensing provisions of the Act (see PARA 281 et seq post) will have effect with such modification as may be specified in the regulations: s 4(4). At the date at which this volume states the law no such regulations had been made. The code of practice issued by the Human Fertilisation and Embryology Authority may also give guidance about the use of any technique involving the placing of sperm and eggs in a woman: s 25(3). As to the code of practice see PARA 288 post. As to the Human Fertilisation and Embryology Authority see PARA 280 post.

21 In contravention of ibid s 33 (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 109): see s 41(5). A person who commits this offence is liable on conviction on indictment to imprisonment for up to two years or a fine, or both, and on summary conviction to imprisonment for up to six months or a fine not exceeding the statutory maximum, or both: s 41(5).

22 Ibid s 42. As to the Director of Public Prosecutions see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARAS 1066, 1079 et seq.

23 In under ibid s 3(1) or s 4(1): see the text to notes 1-4, 12-16 supra.

24 Ibid s 41(10)(a).

25 In by virtue of ibid s 17(2)(b): see PARA 286 post.

26 In by virtue of ibid s 24(9) (see PARA 287 note 20 post): s 41(10)(b)(i).

27 Ibid s 41(10)(b)(ii).

28 Ibid s 41(11)(a).

29 Ibid s 41(11)(b).

## UPDATE

### 278-290 Human Fertilisation and Embryology

The Authority may charge a fee in respect of any of the following (1) an application for a licence, (2) the grant or renewal of a licence, (3) an application for the revocation or variation of a licence, or (4) the exercise by the Authority of any other function conferred on it by or under the Human Fertilisation and Embryology Act 1990 or by or under any other enactment (a) in relation to a licence, (b) in relation to premises which

are or have been premises to which a licence relates, (c) in relation to premises which are or have been relevant third party premises in relation to a licence, or (d) in relation to premises which, if an application is granted, will be premises to which a licence relates or relevant third party premises: see Human Fertilisation and Embryology Act 1990 s 35B (added by Human Fertilisation and Embryology Act 2008 s 27).

## **278 Prohibitions**

TEXT AND NOTES--Human Fertilisation and Embryology Act 1990 s 41 further amended to take account of the prohibitions introduced by the Human Fertilisation and Embryology Act 2008 including those relating to the creation or use of human admixed embryos without a licence: see s 29, Sch 8 Pt 1.

TEXT AND NOTES 1-4--No person may bring about the creation of an embryo except in pursuance of a licence: 1990 Act s 3(1) (s 3(1), (1A), (1B) substituted by SI 2007/1522). No person may keep or use an embryo except in pursuance of a licence or in the case of the keeping, without storage, of an embryo intended for human application, or the processing, without storage, of such an embryo, in pursuance of a third party agreement: 1990 Act s 3(1A). No person may procure or distribute an embryo intended for human application except in pursuance of a licence or a third party agreement: s 3(1B).

A 'third party agreement' is an agreement in writing between a person who holds a licence and another person which is made in accordance with any licence conditions imposed by the Human Fertilisation and Embryology Authority for the purpose of securing compliance with the requirements of European Parliament and EC Council Directive 2004/23 art 24, and under which the other person (1) procures, tests or processes gametes or embryos, or both, on behalf of the holder of the licence, or (2) supplies to the holder of the licence any goods or services, including distribution services, which may affect the quality or safety of gametes or embryos: 1990 Act s 2A(1) (added by SI 2007/1522).

NOTE 1--References to embryos the creation of which was brought about in vitro (in their application to those where fertilisation or any other process by which an embryo is created is complete) are to those where fertilisation or any other process by which the embryo was created began outside the human body whether or not it was completed there: 1990 Act s 1(2)(a) (substituted by Human Fertilisation and Embryology Act 2008 s 1(3)).

NOTE 2--In the 1990 Act (except in the 1990 Act s 4A (see PARA 278A) or in the term 'human admixed embryo') (1) embryo means a live human embryo and does not include a human admixed embryo (as defined by s 4A(6)), and (2) references to an embryo include an egg that is in the process of fertilisation or is undergoing any other process capable of resulting in an embryo: 1990 Act s 1(1) (substituted by Human Fertilisation and Embryology Act 2008 s 1(2)).

If it appears to the Secretary of State necessary or desirable to do so in the light of developments in science or medicine, regulations may provide that in the 1990 Act (except in s 4A) 'embryo', 'eggs', 'sperm' or 'gametes' includes things specified in the regulations which would not otherwise fall within the definition: 1990 Act s 1(6) (s 1(6), (7) added by Human Fertilisation and Embryology Act 2008 s 1(5)). Regulations made by virtue of the 1990 Act s 1(6) may not provide for anything containing any nuclear or mitochondrial DNA that is not human to be treated as an embryo or as eggs, sperm or gametes: s 1(7). 'Nuclear DNA', in relation to an embryo, includes DNA in the pronucleus of the embryo: s 2(1) (amended by Human Fertilisation and Embryology Act 2008 s 2).

NOTE 3--For 'whether preserved ... construed accordingly' read 'in storage': 1990 Act s 2(2) (amended by SI 2007/1522).

1990 Act s 2 further amended: Human Fertilisation and Embryology Act 2008 Sch 7 para 2.

NOTES 4, 12--SI 1991/1588 replaced: SI 2009/1918.

NOTE 4--Contravention of the 1990 Act s 3(1A) is also an offence: s 41(2)(a) (amended by SI 2007/1522). The directions under the 1990 Act s 24(3) relate to gametes or embryos that are not intended for human application: s 24(3) (amended by SI 2007/1522). In relation to gametes and embryos that are intended for human application, directions may authorise the keeping of gametes or embryos by or on behalf of a person to whom a licence applies, in the course of their carriage between certain premises: 1990 Act s 24(3A) (added by SI 2007/1522). Directions may authorise, in such circumstances and subject to such conditions as may be specified in the directions, the keeping, by or on behalf of a person to whom a licence applies, of human admixed embryos in the course of their carriage to or from any premises: 1990 Act s 24(3B) (added by Human Fertilisation and Embryology Act 2008 s 22(2)).

Directions may require a unique code to be assigned to each donation of gametes and embryos intended for human application received pursuant to a licence: 1990 Act s 24(12) (s 24(12), (13) added by SI 2007/1522). The Human Fertilisation and Embryology Authority may give directions as to the information to be provided to it and any measures to be taken by the person responsible in the event of (1) any occurrence which may adversely influence the quality or safety of gametes or embryos, (2) any adverse incident which may be linked to the quality or safety of gametes or embryos, or (3) any misidentification or mix-up of gametes or embryos, all of which are intended for human application: 1990 Act s 24(13) (as so added).

NOTE 5--In the 1990 Act (except in the 1990 Act s 4A (see PARA 278A)) (1) references to eggs are to live human eggs, including cells of the female germ line at any stage of maturity, but (except in the 1990 Act s 1(1)(b)) not including eggs that are in the process of fertilisation or are undergoing any other process capable of resulting in an embryo, (2) references to sperm are to live human sperm, including cells of the male germ line at any stage of maturity, and (3) references to gametes are to be read accordingly: 1990 Act s 1(4) (substituted by Human Fertilisation and Embryology Act 2008 s 1(4)). See further NOTE 2.

For the purposes of the 1990 Act, sperm is to be treated as a partner-donated sperm if the donor of the sperm and the recipient of the sperm declare that they have an intimate physical relationship: s 1(5) (added by SI 2007/1522).

TEXT AND NOTE 6--No person may place in a woman (1) an embryo other than a permitted embryo (as defined by the 1990 Act s 3ZA (see PARA 279)), or (2) any gametes other than permitted eggs or permitted sperm (as so defined): 1990 Act s 3(2) (substituted by Human Fertilisation and Embryology Act 2008 s 3(2)).

TEXT AND NOTES 8-11--In the 1990 Act s 3(3) (1) at the end of head (2), insert 'or', and (2) omit head (4) and the word 'or' immediately before it: Human Fertilisation and Embryology Act 2008 s 3(3), Sch 8 Pt 1.

NOTE 8--In the 1990 Act s 3(4), for 'the day when the gametes are mixed' substitute 'the day on which the process of creating the embryo began': Human Fertilisation and Embryology Act 2008 s 3(4).

NOTE 13--1990 Act s 41(2)(b), (4) amended, s 41(2)(aa), (ba), (bb) added: see SI 2007/1522; Human Fertilisation and Embryology Act 2008 s 29(3), (4), (10), Sch 8 Pt 1.

TEXT AND NOTES 14, 15--Now head (b) in the course of providing treatment services for any woman, use any sperm, other than partner-donated sperm which has been neither processed nor stored, or the woman's eggs after processing or storage, or the eggs of any other woman: 1990 Act s 4(1)(b) (substituted by SI 2007/1522). No person may procure, test, process or distribute any gametes intended for human application except in pursuance of a licence or a third party agreement: 1990 Act s 4(1A) (added by SI 2007/1522).

NOTE 15--For decision of European Court of Human Rights in *Evans*, cited, see Application 6339/05 *Evans v United Kingdom* [2007] 2 FCR 5, ECtHR.

TEXT AND NOTE 16--1990 Act s 4(1)(c) and the word 'or' immediately before it repealed: Human Fertilisation and Embryology Act 2008 s 4(1)(a), Sch 8 Pt 1. As to prohibitions in connection with genetic material not of human origin see Human Fertilisation and Embryology Act 1990 s 4A and PARA 278A.

TEXT AND NOTES 24-27--1990 Act s 41(10), (10A) substituted, for s 41(10) as originally enacted: Human Fertilisation and Embryology Act 2008 s 29(9).

TEXT AND NOTES 28, 29--After 'to whom a licence' read 'or third party agreement': 1990 Act s 41(11)(a) (amended by SI 2007/1522).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(7) HUMAN FERTILISATION AND EMBRYOLOGY/278A. Prohibitions in connection with genetic material not of human origin.

**278A. Prohibitions in connection with genetic material not of human origin.**

No person may place in a woman (1) a human admixed embryo, (2) any other embryo that is not a human embryo, or (3) any gametes other than human gametes: Human Fertilisation and Embryology Act 1990 s 4A(1) (s 4A added by Human Fertilisation and Embryology Act 2008 s 4(2)). For the purposes of the Human Fertilisation and Embryology Act 1990 a human admixed embryo is (a) an embryo created by replacing the nucleus of an animal egg or of an animal cell, or two animal pronuclei, with (i) two human pronuclei, (ii) one nucleus of a human gamete or of any other human cell, or (iii) one human gamete or other human cell, (b) any other embryo created by using (A) human gametes and animal gametes, or (B) one human pronucleus and one animal pronucleus, (c) a human embryo that has been altered by the introduction of any sequence of nuclear or mitochondrial DNA (see PARA 278) of an animal into one or more cells of the embryo, (d) a human embryo that has been altered by the introduction of one or more animal cells, or (e) any embryo not falling within heads (a) to (d) which contains both nuclear or mitochondrial DNA of a human and nuclear or mitochondrial DNA of an animal ('animal DNA') but in which the animal DNA is not predominant: s 4A(6). In s 4A(6) references to animal cells are to cells of an animal or of an animal embryo, and references to human cells are to cells of a human or of a human embryo: s 4A(7). In s 4A 'embryo' means a live embryo, including an egg that is in the process of fertilisation or is undergoing any other process capable of resulting in an embryo: s 4A(9). For the purposes of s 4A an 'animal' is an animal other than man: s 4A(8). In s 4A references to eggs are to live eggs, including cells of the female germ line at any stage of maturity, but (except in s 4A(9)) not including eggs that are in the process of fertilisation or are undergoing any other process capable of resulting in an embryo, and references to gametes are to eggs (as so defined) or to live sperm, including cells of the male germ line at any stage of maturity: s 4A(10). No person may (aa) mix human gametes with animal gametes, (bb) bring about the creation of a human admixed embryo, or (cc) keep or use a human admixed embryo, except in pursuance of a licence: s 4A(2). A licence cannot authorise keeping or using a human admixed embryo after the earliest of the following; the appearance of the primitive streak, or the end of the period of 14 days beginning with the day on which the process of creating the human admixed embryo began, but not counting any time during which the human admixed embryo is stored: s 4A(3). A licence cannot authorise placing a human admixed embryo in an animal: s 4A(4). A licence cannot authorise keeping or using a human admixed embryo in any circumstances in which regulations prohibit its keeping or use: s 4A(5).

If it appears to the Secretary of State necessary or desirable to do so in the light of developments in science or medicine, regulations may (AA) amend (but not repeal) heads (a) to (e); (BB) provide that in s 4A 'embryo', 'eggs' or 'gametes' includes things specified in the regulations which would not otherwise fall within the definition: s 4A(11). Regulations made by virtue of head (AA) may make any amendment of s 4A(7) that appears to the Secretary of State to be appropriate in consequence of any amendment of s 4A(6): s 4A(12).

**UPDATE**

**278-290 Human Fertilisation and Embryology**

The Authority may charge a fee in respect of any of the following (1) an application for a licence, (2) the grant or renewal of a licence, (3) an application for the revocation or variation of a licence, or (4) the exercise by the Authority of any other function

conferred on it by or under the Human Fertilisation and Embryology Act 1990 or by or under any other enactment (a) in relation to a licence, (b) in relation to premises which are or have been premises to which a licence relates, (c) in relation to premises which are or have been relevant third party premises in relation to a licence, or (d) in relation to premises which, if an application is granted, will be premises to which a licence relates or relevant third party premises: see Human Fertilisation and Embryology Act 1990 s 35B (added by Human Fertilisation and Embryology Act 2008 s 27).



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## **279. Cloning.**

A person who places in a woman a human embryo which has been created otherwise than by fertilisation is guilty of an offence<sup>1</sup>. A person who is guilty of the offence is liable on conviction on indictment to imprisonment for a term not exceeding 10 years or a fine or both<sup>2</sup>. No proceedings for the offence may be instituted except with the consent of the Director of Public Prosecutions<sup>3</sup>.

1 Human Reproductive Cloning Act 2001 s 1(1).

2 Ibid s 1(2).

3 Ibid s 1(3). As to the Director of Public Prosecutions see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARAS 1066, 1079 et seq.

### **UPDATE**

## **278-290 Human Fertilisation and Embryology**

The Authority may charge a fee in respect of any of the following (1) an application for a licence, (2) the grant or renewal of a licence, (3) an application for the revocation or variation of a licence, or (4) the exercise by the Authority of any other function conferred on it by or under the Human Fertilisation and Embryology Act 1990 or by or under any other enactment (a) in relation to a licence, (b) in relation to premises which are or have been premises to which a licence relates, (c) in relation to premises which are or have been relevant third party premises in relation to a licence, or (d) in relation to premises which, if an application is granted, will be premises to which a licence relates or relevant third party premises: see Human Fertilisation and Embryology Act 1990 s 35B (added by Human Fertilisation and Embryology Act 2008 s 27).

## **279 Cloning**

TEXT AND NOTES--Replaced by Human Fertilisation and Embryology Act 1990 s 3ZA (added by Human Fertilisation and Embryology Act 2008 s 3(5)).

The Human Fertilisation and Embryology Act 1990 s 3ZA has effect for the interpretation of s 3(2) (see PARA 278): s 3ZA(1). A permitted egg is one (1) which has been produced by or extracted from the ovaries of a woman, and (2) whose nuclear or mitochondrial DNA has not been altered: s 3ZA(2). For the meaning of 'nuclear DNA' see PARA 278. Permitted sperm are sperm (a) which have been produced by or extracted from the testes of a man, and (b) whose nuclear or mitochondrial DNA has not been altered: s 3ZA(3). In s 3ZA 'woman' and 'man' include respectively a girl and a boy (from birth): s 3ZA(6)(a). An embryo is a permitted embryo if (i) it has been created by the fertilisation of a permitted egg by permitted sperm, (ii) no nuclear or mitochondrial DNA of any cell of the embryo has been altered, and (iii) no cell has been added to it other than by division of the embryo's own cells: s 3ZA(4). Regulations may provide that (A) an egg can be a permitted egg, or (B) an embryo can be a permitted embryo, even though the egg or embryo has had applied to it in prescribed

circumstances a prescribed process designed to prevent the transmission of serious mitochondrial disease: s 3ZA(5). 'Prescribed' means prescribed by regulations: s 3ZA(6)(b).

Regulations may provide for any of the relevant provisions (see Human Fertilisation and Embryology Act 1990 s 35A(2)) to have effect subject to specified modifications in relation to cases where an egg which is a permitted egg for the purposes of s 3(2) by virtue of regulations made under s 3ZA(5), or an embryo which is a permitted embryo for those purposes by virtue of such regulations, has been created from material provided by two women: s 35A(1) (added by Human Fertilisation and Embryology Act 2008 s 26).

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## **280. Human Fertilisation and Embryology Authority.**

The Human Fertilisation and Embryology Authority<sup>1</sup> must: (1) keep under review information about embryos<sup>2</sup>, any subsequent development of embryos, the provision of treatment services<sup>3</sup> and activities, and on request by the Secretary of State advise him about those matters<sup>4</sup>; (2) publicise the services it provides to the public or provides in pursuance of licences<sup>5</sup>; (3) provide, to such extent as it considers appropriate, advice and information for persons to whom licences apply or who are receiving treatment services or providing gametes or embryos for use for the purposes of activities governed by the Human Fertilisation and Embryology Act 1990, or may wish to do so<sup>6</sup>; and (4) perform such other functions as may be specified by regulations<sup>7</sup>.

The Authority must maintain one or more licence committees to exercise its functions relating to the grant, variation, suspension and revocation of licences<sup>8</sup>, and may provide for the discharge of any other functions by other committees or by members or employees<sup>9</sup>. A licence committee must be comprised solely of members of the Authority and must include at least one person who is not authorised to carry on or participate in any licensed activity<sup>10</sup>. Before considering an application to license a person or premises for the carrying on of regulated activities<sup>11</sup>, the licence committee must arrange for the premises where the activity is to be carried on to be inspected on its behalf, and for a report on the inspection to be made to it<sup>12</sup>. A licence committee must also arrange for any premises to which a licence relates to be inspected on its behalf once in each calendar year, and for a report on the inspection to be made to it<sup>13</sup>. These inspections may be carried out by a person who is not a member of a licence committee<sup>14</sup>. The Secretary of State may make regulations as to the proceedings of licence committees, and of the Authority on any appeal from such a committee<sup>15</sup>, including in particular provisions as to the production of documents and admissibility of evidence<sup>16</sup>.

The Authority must keep proper accounts and account records, and must prepare an annual statement of accounts which must comply with any direction of the Secretary of State as to content, form and the principles on which it is to be prepared<sup>17</sup>. A copy must be sent within five months of the end of the accounting year<sup>18</sup> to the Secretary of State and the Comptroller and Auditor General<sup>19</sup>, who may inspect any account records<sup>20</sup>. The Authority must prepare and send to the Secretary of State each year a report dealing with its activities in the preceding 12 months and its intended activities in the following 12 months<sup>21</sup>. The Secretary of State must lay a copy of each such report before each House of Parliament<sup>22</sup>.

1 The Human Fertilisation and Embryology Authority is a body corporate: Human Fertilisation and Embryology Act 1990 s 5(1). The Authority is not a Crown servant or agent, and has no power to borrow money: see s 5(3), Sch 1 paras 1, 2. The Secretary of State may, with the consent of the Treasury, pay the Authority out of money provided by Parliament such sums as he thinks fit towards its expenses: Sch 1 para 3. The Authority consists of a chairman and deputy chairman, both appointed by the Secretary of State, and such number of other members as the Secretary of State appoints: s 5(2), Sch 1 para 4(1). The Secretary of State must have regard to the desirability of having the Authority's proceedings and functions informed by the views of both men and women: Sch 1 para 4(2). The chairman and deputy may not be medical practitioners or persons involved in the keeping or use of gametes or embryos, although there must be such persons among the membership: Sch 1 para 4(3), (4). Members hold office, in accordance with the terms of their appointment, for up to three years at a time; a member may resign, or his office may be declared vacant: Sch 1 para 5. Provision is made as to the remuneration of the chairman; expenses, allowances and other payments to any members; appointment of staff; and the regulation of proceedings and proof of documents: see Sch 1 paras 7-13. Membership of the Authority is a disqualification for membership of the House of Commons: House of Commons Disqualification Act 1975 s 1, Sch 1 Pt II (amended by the Human Fertilisation and Embryology Act 1990 Sch 1 para 6); and see PARLIAMENT vol 78 (2010) PARA 905 et seq. As to the Secretary of State see PARA 5 ante. As to the meaning of 'keeping' see PARA 278 note 3 ante. As to the meaning of 'gametes' see PARA 278 note 5 ante. As to

bodies corporate see COMPANIES; CORPORATIONS. As to Crown servants see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) PARA 388. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

2 For the meaning of 'embryo' see PARA 278 note 2 ante.

3 For the meaning of 'treatment services' see PARA 278 note 14 ante.

4 Human Fertilisation and Embryology Act 1990 s 8(a).

5 Ibid s 8(b). For the meaning of 'licence' see PARA 281 note 2 post.

6 Ibid s 8(c). Like any public body, the Human Fertilisation and Embryology Authority is open to challenge by way of judicial review, but only if it exceeds or abuses the powers and responsibilities given to it by Parliament; it is not the function of the court to enter any scientific debate concerning the merits of proposed treatment: *R (on the application of the Assisted Reproduction and Gynaecology Centre) v Human Fertilisation and Embryology Authority* [2002] EWCA Civ 20, [2003] 1 FCR 266. As to judicial review see CIVIL PROCEDURE vol 12 (2009) PARA 1530; JUDICIAL REVIEW.

7 Human Fertilisation and Embryology Act 1990 s 8(d). At the date at which this volume states the law, no such regulations had been made.

8 Ibid s 9(1). As to the licensing functions see PARA 281 et seq post.

9 Ibid s 9(2). Committees, members or employees discharge such functions in accordance with general directions of the Authority: see s 9(4). Such directions are distinct from rules made by the Authority or licence committee for other purposes of the Act: see s 23(6). As to licence committees see the text and note 10 infra. A committee, other than a licence committee, may appoint sub-committees, and committees or sub-committees, other than a licence committee, may include a minority of persons who are not members of the Authority: s 9(3), (6).

10 Ibid s 9(5). A licence committee has five members, one of whom is appointed chairman by the chairman of the Authority; the quorum is three: Human Fertilisation and Embryology Authority (Licence Committees and Appeals) Regulations 1991, SI 1991/1889, regs 4(1), 5(1). A member who has not been present throughout the committee's deliberations prior to a determination is not entitled to participate and does not count towards the quorum: reg 5(2). Certain determinations, not including a determination to grant a licence, may be written and signed by members instead of being reached at a meeting: see reg 5(4)-(6).

11 Ie the activities referred to in the Human Fertilisation and Embryology Act 1990 ss 3, 4 (see PARA 278 ante).

12 Ibid s 9(7). A licence committee need not inspect where the premises have been inspected in pursuance of s 9(7), (8) (see the text to note 13 infra) at some time during the period of one year ending with the date of the application, and it considers a further inspection to be unnecessary: s 9(10).

13 Ibid s 9(8). Any particular premises need not be inspected in any particular year if the licence committee considers an inspection in that year unnecessary: s 9(9).

14 Ibid s 9(11).

15 Ibid s 10(1).

16 Ibid s 10(2). See note 9 supra. See also the Human Fertilisation and Embryology Authority (Licence Committees and Appeals) Regulations 1991, SI 1991/1889, regs 16-18 (address for service; withdrawal of application or appeal; and powers and functions of the chairman of the Authority). Failure to comply with any requirement under the Human Fertilisation and Embryology Act 1990 s 10(2) imposed by regulations is an offence, punishable on summary conviction by imprisonment for up to six months or a fine not exceeding level 5 on the standard scale, or both: s 41(7), (9). For a defence see PARA 278 text to notes 29-30 ante. As to the standard scale see PARA 185 note 11 ante.

17 See ibid s 6(1), (2).

18 The accounting year ends on 31 March each year: see ibid s 6(6).

19 The Comptroller and Auditor General must examine, certify and report on every statement of accounts and lay such statement and report before each House of Parliament: ibid s 6(4). As to the Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 724-726. As to the laying of documents before Parliament see PARLIAMENT vol 34 (Reissue) PARA 941.

20 See *ibid* s 6(3), (5).

21 See *ibid* s 7(1), (2).

22 *Ibid* s 7(3).

## **278-290 Human Fertilisation and Embryology**

The Authority may charge a fee in respect of any of the following (1) an application for a licence, (2) the grant or renewal of a licence, (3) an application for the revocation or variation of a licence, or (4) the exercise by the Authority of any other function conferred on it by or under the Human Fertilisation and Embryology Act 1990 or by or under any other enactment (a) in relation to a licence, (b) in relation to premises which are or have been premises to which a licence relates, (c) in relation to premises which are or have been relevant third party premises in relation to a licence, or (d) in relation to premises which, if an application is granted, will be premises to which a licence relates or relevant third party premises: see Human Fertilisation and Embryology Act 1990 s 35B (added by Human Fertilisation and Embryology Act 2008 s 27).

## **280 Human Fertilisation and Embryology Authority**

TEXT AND NOTES--The Authority must also communicate to the competent authorities of EEA states other than the United Kingdom or of Gibraltar, and to the European Commission, such information in relation to serious adverse events and serious adverse reactions as is necessary for the purpose of enabling appropriate action to be taken, including where necessary the withdrawal from use of gametes and embryos that are intended for human application but are known or suspected to be unsuitable for such application: Human Fertilisation and Embryology Act 1990 s 8A (added by SI 2007/1522).

Arrangements may be made between the Authority and a government department, a public authority or the holder of a public office ('the other authority') for (1) any functions of the Authority to be exercised by, or by members of the staff of, the other authority, or (2) the provision by the other authority of administrative, professional or technical services to the Authority: see Human Fertilisation and Embryology Act 1990 s 8B (ss 8B-8D added by Human Fertilisation and Embryology Act 2008 s 8). Provision is made as to the contracting out of certain functions of the Authority: see Human Fertilisation and Embryology Act 1990 s 8C. Provision is also made as to the disclosure of information where functions of the Authority are exercised by others: see Human Fertilisation and Embryology Act 1990 s 8D.

The Authority may if it thinks it appropriate to do so provide assistance to any other public authority in the United Kingdom for the purpose of the exercise by that authority of its functions: Human Fertilisation and Embryology Act 1990 s 8E(1) (s 8E added by Human Fertilisation and Embryology Act 2008 s 9). Assistance provided by the Authority under the Human Fertilisation and Embryology Act 1990 s 8E may be provided on such terms, including terms as to payment, as it thinks fit: s 8E(2).

The Authority may (1) delegate a function to a committee, to a member or to staff; and (2) may establish such committees or sub-committees as it thinks fit (whether to advise the Authority or to exercise a function delegated to it by the Authority): see Human Fertilisation and Embryology Act 1990 s 9A (added by Human Fertilisation and Embryology Act 2008 s 10).

NOTE 1--Human Fertilisation and Embryology Act 1990 Sch 1 para 5 amended, Sch 1 para 4A added: Human Fertilisation and Embryology Act 2008 s 5, Sch 1, Sch 8 Pt 1.

Human Fertilisation and Embryology Act 1990 Sch 1 paras 9, 10 amended, Sch 1 para 15 added: Human Fertilisation and Embryology Act 2008 Sch 7 para 15, Sch 8 Pt 1.

Human Fertilisation and Embryology Act 1990 Sch 1 paras 5A, 5B added: Health Act 2009 Sch 3 para 3.

TEXT AND NOTES 4-7--Human Fertilisation and Embryology Act 1990 s 8 renumbered as s 8(1) and amended, s 8(2) added: Human Fertilisation and Embryology Act 2008 s 6, Sch 8 Pt 1.

The Authority must carry out its functions effectively, efficiently and economically: Human Fertilisation and Embryology Act 1990 s 8ZA(1) (s 8ZA added by Human Fertilisation and Embryology Act 2008 s 7). In carrying out its functions, the Authority must, so far as relevant, have regard to the principles of best regulatory practice (including the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed): Human Fertilisation and Embryology Act 1990 s 8ZA(2).

NOTE 9--Human Fertilisation and Embryology Act 1990 s 23(6) repealed: Human Fertilisation and Embryology Act 2008 Sch 7 para 9(b), Sch 8 Pt 1.

NOTES 10, 16--SI 1991/1889 revoked with savings: SI 2009/1891.

TEXT AND NOTES 11, 12--Before considering such an application, the licence committee may also arrange for any premises that will be relevant third party premises for the purposes of the application to be inspected on its behalf and a report on the inspection to be made to it: Human Fertilisation and Embryology Act 1990 s 9(7A) (added by SI 2007/1522).

'Relevant third party premises', in relation to a licence, means any premises, other than premises to which the licence relates (1) on which a third party procures, tests, processes or distributes gametes or embryos on behalf of any person in connection with activities carried out by that person under a licence, or (2) from which a third party provides any goods or services which may affect the quality or safety of gametes or embryos to any person in connection with activities carried out by that person under a licence: Human Fertilisation and Embryology Act 1990 s 2A(2) (added by SI 2007/1522). A 'third party' means a person with whom a person who holds a licence has a third party agreement: Human Fertilisation and Embryology Act 1990 s 2A(2).

NOTE 12--For 'one year' read 'two years': Human Fertilisation and Embryology Act 1990 s 9(10) (amended by SI 2007/1522). A licence committee may arrange for any relevant third party premises to be inspected on its behalf and for a report on the inspection to be made to it: Human Fertilisation and Embryology Act 1990 s 9(10A) (added by SI 2007/1522).

TEXT AND NOTE 13--For 'once in each calendar year' read 'at intervals not exceeding two years': Human Fertilisation and Embryology Act 1990 s 9(8) (amended by SI 2007/1522).

NOTE 13--Human Fertilisation and Embryology Act 1990 s 9(9) repealed: SI 2007/1522.

NOTE 14--Human Fertilisation and Embryology Act 1990 s 9(11) amended: SI 2007/1522.

TEXT AND NOTES 15, 16--Human Fertilisation and Embryology Act 1990 s 10 repealed: Human Fertilisation and Embryology Act 2008 Sch 7 para 4, Sch 8 Pt 1.

NOTE 16--Human Fertilisation and Embryology Act 1990 s 41(7), (9) amended: Human Fertilisation and Embryology Act 2008 s 29(6), (8), Sch 8 Pt 1.

TEXT AND NOTE 21--Human Fertilisation and Embryology Act 1990 s 7(1) now s 7(1), (1A), (1B) (substituted by Human Fertilisation and Embryology Act 2008 Sch 7 para 3).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(7) HUMAN FERTILISATION AND EMBRYOLOGY/281. Scope of licences.

## **281. Scope of licences.**

The Human Fertilisation and Embryology Authority<sup>1</sup> may grant only the following licences<sup>2</sup>: (1) licences authorising activities in the course of providing treatment services<sup>3</sup>; (2) licences authorising the storage of gametes and embryos<sup>4</sup>; and (3) licences authorising activities for the purposes of a project of research<sup>5</sup>.

The following conditions apply to all licences:

- 412 (a) the activities authorised by the licence must be carried on only on the premises to which the licence relates and under the supervision of the person responsible<sup>6</sup>;
- 413 (b) any member or employee of the Authority, on production (if so required) of a document identifying him as such, must at all reasonable times be permitted to enter those premises and inspect them, including inspecting any equipment or records and observing any activity<sup>7</sup>;
- 414 (c) the proper consents to the use of gametes and embryos must be obtained<sup>8</sup>;
- 415 (d) proper records must be maintained in such form as the Authority may specify in directions<sup>9</sup>;
- 416 (e) no money or other benefit may be given or received in respect of any supply of gametes or embryos unless authorised by directions<sup>10</sup>;
- 417 (f) where gametes or embryos are supplied to a person to whom another licence applies, that person must also be provided with information specified by the Authority<sup>11</sup>; and
- 418 (g) the Authority must be provided, in such form and at such intervals as it may specify in directions, with such copies of or extracts from the records, or such other information, as the directions may specify<sup>12</sup>.

A licence may only authorise activities to be carried on on premises specified in the licence and under the supervision of a person designated in the licence<sup>13</sup>. A licence cannot: (i) authorise both treatment and research<sup>14</sup>; (ii) apply to more than one project of research<sup>15</sup>; (iii) authorise activities to be carried on under the supervision of more than one individual<sup>16</sup>; or (iv) apply to premises in different places<sup>17</sup>.

Directions may authorise any person to whom a licence applies to receive gametes or embryos from outside the United Kingdom or to send them outside the United Kingdom<sup>18</sup>.

1 As to the Human Fertilisation and Embryology Authority see PARA 280 ante.

2 A licence is a licence under the Human Fertilisation and Embryology Act 1990 Sch 2 (see the text to notes 13-17 infra; and PARAS 282-284 post): s 2(1).

3 Ibid s 11(1)(a). As to such licences see PARA 282 post. For the meaning of 'treatment services' see PARA 278 note 14 ante.

4 Ibid s 11(1)(b). As to such licences see PARA 283 post. For the meaning of 'embryo' see PARA 278 note 2 ante; as to the meaning of 'gamete' see PARA 278 note 5 ante; and as to the meaning of 'storage' see PARA 278 note 3 ante.

5 Ibid s 11(1)(c). As to such licences see PARA 284 post.

- 6 Ibid s 12(a). As to the person responsible see PARA 286 post.
- 7 Ibid s 12(b).
- 8 le pursuant to ibid s 12, Sch 3 (see PARA 285 post): see s 12(c). As to the meaning of 'use' see PARA 278 note 3 ante.
- 9 Ibid s 12(d). As to directions generally see PARA 288 text and notes 1-4 post.
- 10 Ibid s 12(e). Where a person to whom a licence applies or the nominal licensee (see PARA 287 note 9 post) gives or receives any money or other benefit, not authorised by directions, in respect of any supply of gametes or embryos, he is guilty of an offence punishable on summary conviction by imprisonment for up to six months or a fine not exceeding level 5 on the standard scale, or both: s 41(8), (9). For a defence see PARA 278 text and notes 29-30 ante. As to the standard scale see PARA 185 note 11 ante.
- 11 Ibid s 12(f).
- 12 Ibid s 12(g).
- 13 Ibid s 11(1), Sch 2 para 4(1).
- 14 Ibid Sch 2 para 4(2)(a).
- 15 Ibid Sch 2 para 4(2)(b).
- 16 Ibid Sch 2 para 4(2)(c).
- 17 Ibid Sch 2 para 4(2)(d).
- 18 Ibid s 24(4). In such a case, the provisions of ss 12-14 (see the text to notes 6-12 supra; and PARAS 282, 283 post) may have effect subject to such modifications as may be specified in the directions: s 24(4). For the meaning of 'United Kingdom' see PARA 1 note 3 ante. Only sperm stored with the consent of the donor (see PARA 285 post) is capable of being the subject of export: *R v Human Fertilisation and Embryology Authority, ex p Blood* [1997] 2 All ER 687, [1997] 2 FCR 501, CA. In considering any application for a direction for the export of sperm, the Authority must take account of a woman's right to receive medical treatment in another member state of the European Union pursuant to the Treaty Establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) art 49 (formerly art 59; renumbered by virtue of the Treaty of Amsterdam: see *Treaty Citation (No 2) (Note)* [1999] All ER (EC) 646, ECJ): *R v Human Fertilisation and Embryology Authority, ex p Blood* supra.

## UPDATE

### 278-290 Human Fertilisation and Embryology

The Authority may charge a fee in respect of any of the following (1) an application for a licence, (2) the grant or renewal of a licence, (3) an application for the revocation or variation of a licence, or (4) the exercise by the Authority of any other function conferred on it by or under the Human Fertilisation and Embryology Act 1990 or by or under any other enactment (a) in relation to a licence, (b) in relation to premises which are or have been premises to which a licence relates, (c) in relation to premises which are or have been relevant third party premises in relation to a licence, or (d) in relation to premises which, if an application is granted, will be premises to which a licence relates or relevant third party premises: see Human Fertilisation and Embryology Act 1990 s 35B (added by Human Fertilisation and Embryology Act 2008 s 27).

### 281 Scope of licences

TEXT AND NOTES--The following conditions apply to licences for treatment, licences for non-medical fertility services, licences for storage, so far as authorising the storage of gametes or embryos intended for human application, or licences, so far as authorising activities in connection with the derivation from embryos of stem cells that are



intended for human application (1) that such information as is necessary to facilitate the traceability of gametes and embryos, and (2) any information relating to the quality or safety of gametes or embryos must be recorded and provided to the Authority on request: Human Fertilisation and Embryology Act 1990 s 12(2), (3) (added by SI 2007/1522; and amended by Human Fertilisation and Embryology Act 2008 s 12(3), Sch 8 Pt 1).

TEXT AND NOTES 1-5--Also, head (5) licences authorising activities in the course of providing non-medical fertility services: 1990 Act s 11(1)(aa) (added by SI 2007/1522).

TEXT AND NOTE 4--Head (2) now refers to the storage of gametes, embryos or human admixed embryos: 1990 Act s 11(1)(b) (amended by Human Fertilisation and Embryology Act 2008 s 11(1)).

TEXT AND NOTES 6-12--1990 Act s 12(a)-(g) now s 12(1)(a)-(1)(g) (amended by SI 2007/1522).

TEXT AND NOTE 6--Head (a) for 'the activities authorised by the licence' read 'except to the extent that the activities authorised by the licence fall within the 1990 Act s 12(1)(aa), that those activities': s 12(1)(a) (amended by SI 2007/1522). Also, head (aa) that any activities to which the 1990 Act ss 3(1A)(b), (1B) or 4(1A) applied must be carried on only on the premises to which the licence relates or on relevant third party premises: s 12(1)(aa) (added by SI 2007/1522).

TEXT AND NOTE 8--Now head (c) except in relation to the use of gametes in the course of providing basic partner treatment services, the proper consents to the use of gametes and embryos must be obtained: 1990 Act s 12(1)(c) (amended by the Human Fertilisation and Embryology Act 2008 s 12(2)(a), Sch 8 Pt 1; SI 2007/1522).

TEXT AND NOTES 10, 11--1990 Act s 12(1)(e), (f) amended to include human admixed embryos: Human Fertilisation and Embryology Act 2008 s 12(2)(b).

NOTE 10--1990 Act s 41(8), (9) amended: Human Fertilisation and Embryology Act 2008 s 29(7), (8), Sch 8 Pt 1.

TEXT AND NOTE 18--1990 Act s 24(4) amended to provide for human admixed embryos: Human Fertilisation and Embryology Act 2008 s 22(3). In giving any directions under the 1990 Act s 24(4) authorising any person to whom a licence applies to import into the United Kingdom from a country which is not an EEA state, or to export from the United Kingdom to such a country, gametes or embryos intended for human application, the Authority must include directions specifying the measures that persons to whom a licence applies must take to ensure that all such imports or exports meet standards of quality and safety equivalent to those laid down in the 1990 Act, and must have regard to ensuring traceability: s 24(4A) (added by SI 2007/1522). Regulations may make provision requiring or authorising the giving of directions in relation to particular matters which are specified in the regulations and relate to activities falling within the 1990 Act s 4A(2) (activities involving genetic material of animal origin): s 24(4B) (added by Human Fertilisation and Embryology Act 2008 s 22(4)).

The power of the Authority under the 1990 Act s 24(4) to give directions to send gametes outside the United Kingdom includes the power to give a special direction authorising storage of those gametes pending such a decision: *L v Human Fertilisation and Embryology Authority* [2008] EWHC 2149 (Fam), [2009] 1 FCR 138.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(7) HUMAN FERTILISATION AND EMBRYOLOGY/282. Licences for treatment.

## 282. Licences for treatment.

A licence for treatment may authorise any of the following in the course of providing treatment services<sup>1</sup>:

- 419 (1) bringing about the creation of embryos in vitro<sup>2</sup>;
- 420 (2) keeping embryos<sup>3</sup>;
- 421 (3) using gametes<sup>4</sup>;
- 422 (4) practices to secure that embryos are in a suitable condition to be placed in a woman, or to determine such suitability<sup>5</sup>;
- 423 (5) placing any embryo in a woman<sup>6</sup>;
- 424 (6) mixing sperm<sup>7</sup> with the egg of a hamster or such other animal as is specified by directions, to test fertility, but only where subsequent destruction is provided for<sup>8</sup>; and
- 425 (7) any further practices prescribed by regulations<sup>9</sup>.

A licence is granted for such period not exceeding five years as may be specified in the licence<sup>10</sup>, may be granted subject to such conditions as may be specified therein, and may authorise the performance of any of the activities referred to in heads (1) to (7) above in such manner as may be so specified<sup>11</sup>. A licence cannot authorise any activity unless it appears to the Human Fertilisation and Embryology Authority to be necessary or desirable for the purpose of providing treatment services<sup>12</sup>, and cannot authorise altering the genetic structure of any cell while it forms part of an embryo<sup>13</sup>.

The following must be conditions of every licence for treatment<sup>14</sup>. Such information must be recorded<sup>15</sup> as the Authority may specify in directions about the following: (a) the persons for whom services are provided in pursuance of the licence<sup>16</sup>; (b) the services provided for them<sup>17</sup>; (c) the persons whose gametes are kept or used for the purposes of services provided in pursuance of the licence or whose gametes have been used in bringing about the creation of embryos so kept or used<sup>18</sup>; (d) any child appearing to the person responsible to have been born as a result of treatment in pursuance of the licence<sup>19</sup>; (e) any mixing of egg<sup>20</sup> and sperm and any taking of an embryo from a woman<sup>21</sup> or other acquisition of an embryo<sup>22</sup>; and (f) such other matters as the Authority may specify in directions<sup>23</sup>.

A woman must not be provided with treatment services unless account has been taken of the welfare of any child who may be born as a result of the treatment, including the need of that child for a father, and of any other child who may be affected by the birth<sup>24</sup>. Nor may a woman be given treatment services involving the use of: (i) gametes of any person whose consent to such use is required<sup>25</sup>; (ii) any embryo the creation of which was brought about in vitro<sup>26</sup>; or (iii) any embryo taken from a woman whose consent to such use is required<sup>27</sup>, unless the woman being treated, and, where applicable, the man with whom she is being treated, have been given an opportunity to receive proper counselling about the implications of taking the proposed steps, and have been provided with such relevant information as is proper<sup>28</sup>.

Suitable procedures must be maintained for determining the persons providing gametes or from whom embryos are taken for use in pursuance of the licence<sup>29</sup>, and for securing that consideration is given to the use of practices not requiring the authority of a licence as well as those requiring such authority<sup>30</sup>.

- 1 For the meaning of 'treatment services' see PARA 278 note 14 ante. As to the authorisation of the storage of gametes or embryos by such a licence see PARA 283 post. As to the scope of licences and standard conditions see PARA 281 ante.
- 2 Human Fertilisation and Embryology Act 1990 s 11(1)(a), Sch 2 para 1(1)(a). For the meaning of 'embryo' see PARA 278 note 2 ante.
- 3 Ibid Sch 2 para 1(1)(b). As to the meaning of 'keeping' see PARA 278 note 3 ante.
- 4 Ibid Sch 2 para 1(1)(c). As to the meaning of 'using' see PARA 278 note 3 ante; and as to the meaning of 'gamete' see PARA 278 note 5 ante.
- 5 Ibid Sch 2 para 1(1)(d). The screening of an embryo by pre-implantation genetic diagnosis for genetic defects or for establishing its tissue type constitutes treatment falling within this provision: *R (on the application of Quintavalle) v Human Fertilisation and Embryology Authority (Secretary of State for Health intervening)* [2003] EWCA Civ 667, [2004] QB 168, [2003] 3 All ER 257.
- 6 Human Fertilisation and Embryology Act 1990 Sch 2 para 1(1)(e).
- 7 As to the meaning of 'sperm' see PARA 278 note 5 ante.
- 8 Human Fertilisation and Embryology Act 1990 Sch 2 para 1(1)(f). Where the Human Fertilisation and Embryology Authority proposes to give directions specifying any animal for the purposes of this provision, it must report the proposal to the Secretary of State; and the directions must not be given until the Secretary of State has laid a copy of the report before each House of Parliament: s 24(11). As to the Human Fertilisation and Embryology Authority see PARA 280 ante. As to directions see PARA 288 post. As to the Secretary of State see PARA 5 ante. As to the laying of documents before Parliament see PARLIAMENT vol 34 (Reissue) PARA 941.
- 9 Ibid Sch 2 para 1(1)(g). At the date at which this volume states the law no such regulations had been made.
- 10 Ibid Sch 2 para 1(5).
- 11 Ibid Sch 2 para 1(2).
- 12 Ibid Sch 2 para 1(3).
- 13 Ibid Sch 2 para 1(4).
- 14 Ibid s 13(1). Directions may authorise any person to whom a licence applies to receive gametes or embryos from outside the United Kingdom or to send gametes or embryos outside the United Kingdom in such circumstances and subject to such conditions as may be specified in the directions, and such directions may provide for s 13 to have effect with such modifications as may be specified in the directions: s 24(4). For the meaning of 'United Kingdom' see PARA 1 note 3 ante.
- 15 The records maintained in pursuance of the licence must include any such information and any consent of a person whose consent is required: ibid s 13(3). As to consent see PARA 285 post. No information may be removed from any records maintained in pursuance of the licence before the expiry of such period as may be specified in directions for records of the class in question: s 13(4). If, in the case of any information about persons for whom treatment services were provided, the person responsible does not know that any child was born following the treatment, the period specified must not expire less than 50 years after the information was first recorded: s 24(1). In the case of every licence for treatment, directions must require information to be recorded and given to the Authority about each of the matters referred to in s 13(2)(a)-(e) (see heads (a)-(e) in the text): s 24(2).
- 16 Ibid s 13(2)(a).
- 17 Ibid s 13(2)(b).
- 18 Ibid s 13(2)(c).
- 19 Ibid s 13(2)(d).
- 20 As to the meaning of 'egg' see PARA 278 note 5 ante.
- 21 As to references to the taking of embryos see PARA 278 note 1 ante.

22 Human Fertilisation and Embryology Act 1990 s 13(2)(e).

23 Ibid s 13(2)(f).

24 Ibid s 13(5). The code of practice issued by the Authority must include guidance in this regard: see s 25(2); and PARA 288 post. As to parentage under the Human Fertilisation and Embryology Act 1990 see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 102 et seq.

25 Ibid s 13(6)(a).

26 Ibid s 13(6)(b).

27 Ibid s 13(6)(c).

28 Ibid s 13(6).

29 Ibid s 13(7)(a).

30 Ibid s 13(7)(b).

## UPDATE

### 278-290 Human Fertilisation and Embryology

The Authority may charge a fee in respect of any of the following (1) an application for a licence, (2) the grant or renewal of a licence, (3) an application for the revocation or variation of a licence, or (4) the exercise by the Authority of any other function conferred on it by or under the Human Fertilisation and Embryology Act 1990 or by or under any other enactment (a) in relation to a licence, (b) in relation to premises which are or have been premises to which a licence relates, (c) in relation to premises which are or have been relevant third party premises in relation to a licence, or (d) in relation to premises which, if an application is granted, will be premises to which a licence relates or relevant third party premises: see Human Fertilisation and Embryology Act 1990 s 35B (added by Human Fertilisation and Embryology Act 2008 s 27).

### 282 Licences for treatment

TEXT AND NOTES--The following must be conditions of every licence for non-medical fertility services and the requirements of the 1990 Act s 13(2)-(4), (7) must be complied with: s 13A(1), (2) (s 13A added by SI 2007/1522). A woman must not be provided with any non-medical fertility services involving the use of sperm other than partner-donated sperm she has been given a suitable opportunity to receive proper counselling about the implications of taking the proposed steps, and has been provided with such relevant information as is proper: 1990 Act s 13A(3).

1990 Act Sch 2 para 1 amended, Sch 2 paras 1ZA-1ZC added (embryo testing and sex selection): Human Fertilisation and Embryology Act 2008 Sch 2 paras 2, 3, Sch 8 Pt 1.

As to the circumstances in which an offer of counselling is required as a condition of licence for treatment see 1990 Act Sch 3ZA (added by Human Fertilisation and Embryology Act 2008 s 14(5), Sch 4).

NOTE 8--1990 Act s 24(11) amended: Human Fertilisation and Embryology Act 2008 s 22(6).

TEXT AND NOTES 14-30--See further 1990 Act s 13(8)-(13) (added by Human Fertilisation and Embryology Act 2008 s 14(4)).

NOTE 14--1990 Act s 24(4) amended: Human Fertilisation and Embryology Act 2008 s 22(3). See also 1990 Act s 24(4A), (4B); and PARA 281.

NOTE 15--The reference is now to treatment services, other than basic partner treatment services: 1990 Act s 24(1) (amended by SI 2007/1522). 1990 Act s 24(2) amended: SI 2007/1522.

TEXT AND NOTE 24--1990 Act s 13(5) amended: Human Fertilisation and Embryology Act 2008 s 14(2), Sch 8 Pt 1. See further s 14(6).

TEXT AND NOTES 25-28--1990 Act s 13(6) now s 13(6)-(6E) (substituted by Human Fertilisation and Embryology Act 2008 s 14(3)). See also Human Fertilisation and Embryology Act 1990 s 35A (added by Human Fertilisation and Embryology Act 2008 s 26) (mitochondrial donation).

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### **283. Licences for storage.**

A licence for storage<sup>1</sup>, or a licence for treatment or research<sup>2</sup>, may authorise the storage of gametes<sup>3</sup> or embryos<sup>4</sup> or both<sup>5</sup>. A licence authorising such storage is granted for such period not exceeding five years as may be specified in the licence<sup>6</sup>, may be granted subject to such conditions as may be specified in the licence and may authorise storage in such manner as may be so specified<sup>7</sup>.

The following conditions are attached to every such licence<sup>8</sup>:

- 426 (1) that the gametes of a person or an embryo taken from a woman<sup>9</sup> must be placed in storage only if received from that person or woman or acquired from a person to whom a licence applies, and that an embryo created in vitro<sup>10</sup> otherwise than in pursuance of that licence must be placed in storage only if acquired from a person to whom a licence applies<sup>11</sup>;
- 427 (2) that gametes or embryos which have been stored must not be supplied to a person otherwise than in the provision of treatment services<sup>12</sup> unless that person is a person to whom a licence applies<sup>13</sup>;
- 428 (3) that no gametes or embryos may be stored for longer than the statutory storage period, and if stored at the end of the period must be allowed to perish<sup>14</sup>; and
- 429 (4) that such information as the Human Fertilisation and Embryology Authority<sup>15</sup> may specify in directions<sup>16</sup> as to the persons whose consent is required<sup>17</sup>, the terms of their consent and the circumstances of the storage and as to such other matters as the Authority may so specify, must be included in the records maintained in pursuance of the licence<sup>18</sup>.

1 As to the meaning of 'storage' see PARA 278 note 3 ante.

2 As to licences for treatment see PARA 282 ante; and as to licences for research see PARA 284 post. As to the scope of licences and standard conditions see PARA 281 ante.

3 As to the meaning of 'gamete' see PARA 278 note 5 ante.

4 For the meaning of 'embryo' see PARA 278 note 2 ante.

5 Human Fertilisation and Embryology Act 1990 s 11(1)(b), Sch 2 para 2(1).

6 Ibid Sch 2 para 2(3).

7 Ibid Sch 2 para 2(2).

8 Ibid s 14(1). Directions may authorise any person to whom a licence applies to receive gametes or embryos from outside the United Kingdom or to send gametes or embryos outside the United Kingdom in such circumstances and subject to such conditions as may be specified in the directions, and such directions may provide for s 14 to have effect with such modifications as may be specified in the directions: s 24(4). For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

9 As to references to the taking of embryos see PARA 278 note 1 ante.

10 As to references to embryos created in vitro see PARA 278 note 1 ante.

11 Human Fertilisation and Embryology Act 1990 s 14(1)(a). As to the persons to whom a licence applies see PARA 286 note 16 post.

12 For the meaning of 'treatment services' see PARA 278 note 14 ante.

13 Human Fertilisation and Embryology Act 1990 s 14(1)(b).

14 Ibid s 14(1)(c). The statutory storage period is such period not exceeding ten years in respect of gametes, and five years in respect of embryos, as the licence may specify: s 14(3), (4). However, regulations may provide that the ten year or five year period, as the case may be, be substituted with such shorter period or, in such circumstances as may be specified in the regulations, such longer period, as may be specified in the regulations: see s 14(5). See the Human Fertilisation and Embryology (Statutory Storage Period) Regulations 1991, SI 1991/1540, which provide for the extension of the storage period in respect of gametes, where: (1) the fertility of the person who provided the gametes is likely to have become significantly impaired since providing the gametes; (2) that person was under 45 at the time of providing the gametes; and (3) that person does not consent to the use of the gametes for the provision of treatment services to persons other than that person or that person and another. See also the Human Fertilisation and Embryology (Statutory Storage Period for Embryos) Regulations 1996, SI 1996/375, which provide for the extension of the five year storage period in respect of embryos in circumstances where: (a) the two persons whose gametes are used to bring about the creation of an embryo each confirm in writing that they do not object to storage for such longer period; (b) the woman being treated is aged under 50 on the relevant date and the treatment in question would not result in her being a surrogate mother; and (c) in the written opinion of two registered medical practitioners, one of the consenting persons, or, where she is not one of those persons, the woman being treated, has or is likely to become prematurely and completely infertile; or (d) in the written opinion of a registered medical practitioner such person has, or is likely to develop, significantly impaired fertility, or has a gene or genes such that a child born with that gene or those genes may suffer from such physical or mental abnormalities as to be seriously disabled. For the meaning of 'registered medical practitioner' see PARA 4 ante.

15 As to the Human Fertilisation and Embryology Authority see PARA 280 ante.

16 As to directions see PARA 288 post.

17 Ie under the Human Fertilisation and Embryology Act 1990 Sch 3: see PARA 285 post.

18 Ibid s 14(1)(d). No information may be removed from any records maintained in pursuance of such a licence before the expiry of such period as may be specified in directions for records of the class in question: s 14(2).

## UPDATE

### 278-290 Human Fertilisation and Embryology

The Authority may charge a fee in respect of any of the following (1) an application for a licence, (2) the grant or renewal of a licence, (3) an application for the revocation or variation of a licence, or (4) the exercise by the Authority of any other function conferred on it by or under the Human Fertilisation and Embryology Act 1990 or by or under any other enactment (a) in relation to a licence, (b) in relation to premises which are or have been premises to which a licence relates, (c) in relation to premises which are or have been relevant third party premises in relation to a licence, or (d) in relation to premises which, if an application is granted, will be premises to which a licence relates or relevant third party premises: see Human Fertilisation and Embryology Act 1990 s 35B (added by Human Fertilisation and Embryology Act 2008 s 27).

### 283 Licences for storage

TEXT AND NOTES--The following conditions for human application are attached to licences for treatment, licences non-medical fertility services, licences for storage so far as authorising storage of gametes or embryos intended for human application and licences so far as authorising activities in connection with the derivation from embryos of stem cells that are intended for human application: 1990 Act s 14A(1) (s 14A added by SI 2007/1522; and amended by Human Fertilisation and Embryology Act 2008 Sch 7

para 6, Sch 8 Pt 1). A licence to which the 1990 Act s 14A applies may not authorise the storage, procurement, testing, processing or distribution of gametes or embryos unless it contains the supplementary licence conditions for human application required by Sch 3A (Sch 3A added by SI 2007/1522): 1990 Act s 14A(2). In relation to any gametes or embryos imported into the United Kingdom from an EEA state other than the United Kingdom or from Gibraltar, compliance with the requirements of the laws or other measures adopted in the relevant state or territory for the purpose of implementing European Parliament and EC Council Directive 2004/23 and EC Commission Directives 2006/17, 2006/86 must be taken to be compliance with the supplementary licence conditions required by the 1990 Act Sch 3A: s 14A(3). Section 14A(3) does not apply to any licence conditions imposed by the Human Fertilisation and Embryology Authority which amount to more stringent protective measures: s 14A(4).

TEXT AND NOTES 5-7--1990 Act Sch 2 para 2 amended: Human Fertilisation and Embryology Act 2008 Sch 2 para 5.

TEXT AND NOTE 5--1990 Act s 11(1)(b) amended: Human Fertilisation and Embryology Act 2008 s 11(1).

TEXT AND NOTES 8-18--1990 Act s 14(1), (4), (5) amended, s 14(4A) added: Human Fertilisation and Embryology Act 2008 s 15, Sch 8 Pt 1.

NOTE 8--1990 Act s 24(4) amended: Human Fertilisation and Embryology Act 2008 s 22(3). See also 1990 Act s 24(4A), (4B); and PARA 281.

NOTE 14--SI 1991/1540 and SI 1996/375 replaced: Human Fertilisation and Embryology (Statutory Storage Period for Embryos and Gametes) Regulations 2009, SI 2009/1582 (amended by SI 2009/2581). As to the storage of permitted embryos which have been kept in storage for more than five years, see the Human Fertilisation and Embryology (Supplementary Provision) Order 2009, SI 2009/2478.



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## **284. Licences for research.**

A licence for research may authorise, for the purposes of a project of research specified in the licence<sup>1</sup>, bringing about of the creation of embryos in vitro<sup>2</sup> and keeping or using embryos<sup>3</sup>. Such a licence cannot authorise any activity unless it appears to the Human Fertilisation and Embryology Authority<sup>4</sup> to be necessary or desirable for the purpose of: (1) promoting advances in the treatment of infertility<sup>5</sup>; (2) increasing knowledge about the causes of congenital disease<sup>6</sup>; (3) increasing knowledge about the causes of miscarriages<sup>7</sup>; (4) developing more effective techniques of contraception<sup>8</sup>; (5) developing methods for detecting the presence of gene or chromosome abnormalities in embryos before implantation<sup>9</sup>; or (6) such other purposes as may be specified in regulations<sup>10</sup>. A licence cannot authorise altering the genetic structure of any cell while it forms part of an embryo except in such circumstances, if any, as may be specified in or determined in pursuance of regulations<sup>11</sup>, but it may authorise mixing sperm<sup>12</sup> with the egg of a hamster, or other animal specified in directions<sup>13</sup>, for the purpose of developing more effective techniques for determining the fertility or normality of sperm<sup>14</sup>.

No licence for research may be granted unless the Authority is satisfied that any proposed use of embryos is necessary for the purposes of the research<sup>15</sup>. A licence may be granted for such period not exceeding three years as may be specified in the licence<sup>16</sup>, may be subject to such conditions as may be specified in it<sup>17</sup> and may authorise the performance of any of the activities<sup>18</sup> in such manner as may be so specified<sup>19</sup>.

Every licence for research must have the following conditions<sup>20</sup>: (a) the records maintained in pursuance of the licence must include such information as the Authority may specify in directions about such matters as the Authority may so specify<sup>21</sup>; (b) no information may be removed from any records maintained in pursuance of the licence before the expiry of such period as may be specified in directions for records of the class in question<sup>22</sup>; (c) no embryo appropriated for the purposes of any project of research may be kept or used otherwise than for the purposes of such a project<sup>23</sup>.

1 Human Fertilisation and Embryology Act 1990 Sch 2 para 3(1). As to the authorisation of the storage of gametes or embryos by such a licence see PARA 283 ante. As to the scope of licences and standard conditions see PARA 281 ante. As to directions authorising the receipt of gametes or embryos from outside the United Kingdom or the sending of them outside the United Kingdom see PARA 281 text to note 18 ante. As to the meaning of 'gamete' see PARA 278 note 5 ante. For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

2 Ibid Sch 2 para 3(1)(a). For the meaning of 'embryo' see PARA 278 note 2 ante. As to references to embryos created in vitro see PARA 278 note 1 ante.

3 Ibid Sch 2 para 3(1)(b). As to the meanings of 'keeping' and 'using' see PARA 278 note 3 ante.

4 As to the Human Fertilisation and Embryology Authority see PARA 280 ante.

5 Human Fertilisation and Embryology Act 1990 Sch 2 para 3(2)(a).

6 Ibid Sch 2 para 3(2)(b).

7 Ibid Sch 2 para 3(2)(c).

8 Ibid Sch 2 para 3(2)(d).

9 Ibid Sch 2 para 3(2)(e).

10 Ibid Sch 2 para 3(2). Purposes may only be so specified with a view to the authorisation of projects of research which increase knowledge about the creation and development of embryos, or about disease, or enable such knowledge to be applied: Sch 2 para 3(3). The Authority may issue a licence for research for any of the following purposes: (1) increasing knowledge about the development of embryos; (2) increasing knowledge about serious disease; or (3) enabling any such knowledge to be applied in developing treatments for serious disease: Human Fertilisation and Embryology (Research Purposes) Regulations 2001, SI 2001/188, reg 2(1), (2).

11 Human Fertilisation and Embryology Act 1990 Sch 2 para 3(4). At the date at which this volume states the law no such regulations had been made.

12 As to the meaning of 'sperm' see PARA 278 note 5 ante.

13 As to directions see PARA 288 post.

14 Human Fertilisation and Embryology Act 1990 Sch 2 para 3(5). Anything which forms must be destroyed when the research is complete and, in any event, not later than the two cell stage: see Sch 2 para 3(5). Where the Authority proposes to give directions specifying any animal for these purposes, it must report the proposal to the Secretary of State; and the directions must not be given until the Secretary of State has laid a copy of the report before each House of Parliament: s 24(11). As to the Secretary of State see PARA 5 ante. As to the laying of documents before Parliament see PARLIAMENT vol 34 (Reissue) PARA 941.

15 Ibid Sch 2 para 3(6).

16 Ibid Sch 2 para 3(9).

17 Ibid Sch 2 para 3(7).

18 Ie the activities referred to in ibid Sch 2 para 3(1), (5): see the text to notes 1-3, 12-14 supra.

19 Ibid Sch 2 para 3(8).

20 Ibid s 15(1).

21 Ibid s 15(2).

22 Ibid s 15(3).

23 Ibid s 15(4).

## **UPDATE**

### **278-290 Human Fertilisation and Embryology**

The Authority may charge a fee in respect of any of the following (1) an application for a licence, (2) the grant or renewal of a licence, (3) an application for the revocation or variation of a licence, or (4) the exercise by the Authority of any other function conferred on it by or under the Human Fertilisation and Embryology Act 1990 or by or under any other enactment (a) in relation to a licence, (b) in relation to premises which are or have been premises to which a licence relates, (c) in relation to premises which are or have been relevant third party premises in relation to a licence, or (d) in relation to premises which, if an application is granted, will be premises to which a licence relates or relevant third party premises: see Human Fertilisation and Embryology Act 1990 s 35B (added by Human Fertilisation and Embryology Act 2008 s 27).

### **284 Licences for research**

TEXT AND NOTES 1-19--1990 Act Sch 2 para 3 substituted, Sch 2 para 3A added: Human Fertilisation and Embryology Act 2008 Sch 2 para 6.

NOTE 10--SI 2001/188, which is superseded by the amendments made by the Human Fertilisation and Embryology Act 2008 Sch 2, ceases to have effect: Human Fertilisation and Embryology Act 2008 s 11(3), Sch 8 Pt 2.

NOTE 14--1990 Act s 24(11) amended: Human Fertilisation and Embryology Act 2008 s 22(6).

TEXT AND NOTES 20-23--See further 1990 Act s 15(5) (added by Human Fertilisation and Embryology Act 2008 Sch 7 para 7).

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## **285. Consents.**

A person's gametes<sup>1</sup> must not be used<sup>2</sup> or received for use for the purposes of treatment services<sup>3</sup> unless there is an effective consent<sup>4</sup> by that person to their being so used and they are used in accordance with the terms of the consent<sup>5</sup>. A person's gametes may not be used to bring about the creation of any embryo in vitro<sup>6</sup> except where there is an effective consent by that person to the use of such embryo for a specified purpose<sup>7</sup>. An embryo created in vitro must not be received by any person unless there is an effective consent by each person whose gametes were used to create the embryo to the use of the embryo for a specified purpose<sup>8</sup>. An embryo created in vitro must not be used for any purpose unless there is effective consent by each person whose gametes were used to create the embryo to that use and the embryo is used in accordance with those consents<sup>9</sup>. An embryo taken from a woman<sup>10</sup> must not be used for any purpose, nor received by any person for use for any purpose, unless there is an effective consent by her to its use for that purpose and it is used in accordance with that consent<sup>11</sup>.

A person's gametes must not be kept in storage<sup>12</sup> unless there is an effective consent by that person to their storage and they are stored in accordance with the consent<sup>13</sup>. An embryo taken from a woman must not be kept in storage unless there is an effective consent by her to its storage and it is stored in accordance with the consent<sup>14</sup>. An embryo created in vitro must not be kept in storage unless there is an effective consent, by each person whose gametes were used to bring about the creation of the embryo, to the storage of the embryo and the embryo is stored in accordance with those consents<sup>15</sup>. A consent to the storage of any gametes or embryo must specify the maximum period of storage, if that is to be less than the statutory storage period<sup>16</sup>; must specify what is to be done with the gametes or embryo if the person who gave the consent dies or is unable through incapacity to vary or revoke the consent<sup>17</sup>; and may specify conditions subject to which the gametes or embryo may remain in storage<sup>18</sup>.

A consent may apply to the storage or use of a particular embryo<sup>19</sup>, or in the case of a person providing gametes, to the use or storage of any embryo created using those gametes<sup>20</sup>. A consent must provide for such other matters as the Human Fertilisation and Embryology Authority specifies in directions<sup>21</sup>.

Before a person gives any consent he must be given a suitable opportunity to receive proper counselling about the implications of taking the proposed steps<sup>22</sup>, and be provided with such relevant information as is proper<sup>23</sup>. He must also be informed of the effect of the provisions relating to the variation and withdrawal of consent<sup>24</sup>.

The terms of any consent may from time to time be varied, and the consent may be withdrawn, by notice given by the person who gave the consent to the person keeping the gametes or embryo to which the consent is relevant<sup>25</sup>. However, the terms of any consent to the use of any embryo cannot be varied, and such consent cannot be withdrawn once the embryo has been used in providing treatment services<sup>26</sup> or for the purposes of any project of research<sup>27</sup>.

1 As to the meaning of 'gamete' see PARA 278 note 5 ante.

2 As to the meaning of 'use' see PARA 278 note 3 ante.

3 For the meaning of 'treatment services' see PARA 278 note 14 ante.

4 Consent must be in writing; and 'effective consent' means consent that has not been withdrawn: Human Fertilisation and Embryology Act 1990 s 12(c), Sch 3 para 1. For the meaning of 'writing' see PARA 20 note 22 ante. A person having in his possession a consent form dealing with the matters required by Sch 3 is both entitled and expected to rely upon that form according to its letter, unless and until it can clearly be established that the form does not represent a valid decision by the person apparently giving consent: *Centre for Reproductive Medicine v U* [2002] EWCA Civ 565, [2002] All ER (D) 213 (Apr).

5 See the Human Fertilisation and Embryology Act 1990 Sch 3 para 5(1), (2). This does not apply for the purpose of providing treatment services to that person or that person and another together: Sch 3 para 5(3). As to issues arising concerning valid consent see *R v Human Fertilisation and Embryology Authority, ex p Blood* [1997] 2 All ER 687, [1997] 2 FCR 501, CA. As to the requirement that consent under the Human Fertilisation and Embryology Act 1990 Sch 3 be a condition of every licence see PARA 281 text to note 8 ante; and as to the requirement to maintain records including such consent in relation to licences for treatment see PARA 282 note 15 ante. As to counselling where consent under Sch 3 para 5 is required see PARA 282 text to notes 25-28 ante. As to parentage under the Human Fertilisation and Embryology Act 1990 see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 102 et seq.

6 For the meaning of 'embryo' see PARA 278 note 2 ante; and as to references to embryos created in vitro see PARA 278 note 1 ante.

7 See the Human Fertilisation and Embryology Act 1990 Sch 3 para 6(1). Any such consent is in addition to any consent that may be required by Sch 3 para 5 (see the text to notes 1-5 supra): Sch 3 para 6(4). A consent to the use of any embryo must specify one or more of the following purposes:

- 93 (1) use in providing treatment services to the person giving consent or that person and another specified person together (Sch 3 para 2(1)(a));
- 94 (2) use in providing treatment services to persons not including the person giving consent (Sch 3 para 2(1)(b)); or
- 95 (3) use for the purposes of any project of research (Sch 3 para 2(1)(c)),

and may specify conditions subject to which the embryo may be so used (Sch 3 para 2(1)). Consent to the provision of treatment services 'together' must be consent to each and every stage of the provision of the treatment services; if the parties at any stage cease to act as a joint enterprise the consent is inoperative: *Evans v Amicus Healthcare Ltd* [2004] EWCA (Civ) 727, [2004] 3 All ER 1025, [2004] 2 FLR 766.

8 Human Fertilisation and Embryology Act 1990 Sch 3 para 6(2). Any such consent is in addition to any consent that may be required by Sch 3 para 5 (see the text to notes 1-5 supra): Sch 3 para 6(4). As to the specified purposes see note 7 supra.

9 Ibid Sch 3 para 6(3). Any such consent is in addition to any consent that may be required by Sch 3 para 5 (see the text to notes 1-5 supra): Sch 3 para 6(4).

10 As to references to the taking of embryos see PARA 278 note 1 ante.

11 See the Human Fertilisation and Embryology Act 1990 Sch 3 para 7(1), (2). This does not apply to the use, for the purpose of providing a woman with treatment services, of an embryo taken from her: Sch 3 para 7(3).

12 As to the meaning of 'storage' see PARA 278 note 3 ante.

13 Human Fertilisation and Embryology Act 1990 Sch 3 para 8(1). As to the requirement to maintain records including such consent in relation to licences for storage see PARA 283 text to note 17 ante. As to licences for storage generally see PARA 283 ante.

14 Ibid Sch 3 para 8(3).

15 Ibid Sch 3 para 8(2).

16 Ibid Sch 3 para 2(2)(a). As to the statutory storage period see PARA 283 note 14 ante.

17 Ibid Sch 3 para 2(2)(b).

18 Ibid Sch 3 para 2(2).

19 Ibid Sch 3 para 2(4)(a).

20 Ibid Sch 3 para 2(4)(b). In such a case, the terms of the consent may be varied or the consent may be withdrawn, in accordance with the provisions relating to variation and withdrawal (see the text to notes 25-27 infra), either generally or in relation to a particular embryo or particular embryos: Sch 3 para 2(4).

21 Ibid Sch 3 para 2(3). As to the Human Fertilisation and Embryology Authority see PARA 280 ante. As to directions see PARA 288 post.

22 Ibid Sch 3 para 3(1)(a).

23 Ibid Sch 3 para 3(1)(b).

24 Ie the effect of ibid Sch 3 para 4 (see the text to notes 25-27 infra): Sch 3 para 3(2).

25 Ibid Sch 3 para 4(1). The notice may be given to or served on the person by delivering it to the person, by leaving it at the person's proper address, or by sending it by post to the person at that address: s 46(1), (2). A person's proper address is his last known address (s 46(4)) but, where a person has notified the Authority of an address or a new address at which notices may be given to or served on him, that address is his proper address or, as the case may be, his proper address in substitution for that previously notified: s 46(5). As to service on a body corporate, a partnership, or an unincorporated association see s 46(3), (4).

26 Ibid Sch 3 para 4(2)(a). Embryos cannot be deemed to have been used on the day of their creation, and an embryo is only used once transferred to the woman; the clear policy of the Human Fertilisation and Embryology Act 1990 is to ensure continuing consent from the commencement of treatment to the point of implant and a party is entitled to withdraw his consent at any time before implantation: *Evans v Amicus Healthcare Ltd* [2004] EWCA (Civ) 727, [2004] 3 All ER 1025, [2004] 2 FLR 766.

27 Human Fertilisation and Embryology Act 1990 Sch 3 para 4(2)(b). As to licences for research see PARA 284 ante.

## UPDATE

### 278-290 Human Fertilisation and Embryology

The Authority may charge a fee in respect of any of the following (1) an application for a licence, (2) the grant or renewal of a licence, (3) an application for the revocation or variation of a licence, or (4) the exercise by the Authority of any other function conferred on it by or under the Human Fertilisation and Embryology Act 1990 or by or under any other enactment (a) in relation to a licence, (b) in relation to premises which are or have been premises to which a licence relates, (c) in relation to premises which are or have been relevant third party premises in relation to a licence, or (d) in relation to premises which, if an application is granted, will be premises to which a licence relates or relevant third party premises: see Human Fertilisation and Embryology Act 1990 s 35B (added by Human Fertilisation and Embryology Act 2008 s 27).

### 285 Consents

TEXT AND NOTES--Human Fertilisation and Embryology Act 1990 Sch 3 amended to include provision relating to human admixed embryos: Human Fertilisation and Embryology Act 2008 s 13, Sch 3. See also Human Fertilisation and Embryology Act 1990 s 35A (added by Human Fertilisation and Embryology Act 2008 s 26) (mitochondrial donation).

NOTE 26--For decision of European Court of Human Rights in *Evans*, cited, see Application 6339/05 *Evans v United Kingdom* [2007] 2 FCR 5, ECtHR.

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## **286. Grant of licences.**

Where application is made to the Human Fertilisation and Embryology Authority<sup>1</sup>, a licence<sup>2</sup> may be granted to any person by a licence committee<sup>3</sup> if the following requirements are met<sup>4</sup>. The requirements are that:

- 430 (1) the application is for a licence designating an individual as the person under whose supervision the activities to be authorised by the licence are to be carried on<sup>5</sup>;
- 431 (2) either that individual is the applicant<sup>6</sup> or the application is made with the consent of that individual<sup>7</sup> and the licence committee is satisfied that the applicant is a suitable person to hold the licence<sup>8</sup>;
- 432 (3) the licence committee is satisfied that the character, qualifications and experience of that individual are such as are required for the supervision of the activities and that the individual will discharge his duty as the person responsible<sup>9</sup>;
- 433 (4) the licence committee is satisfied that the premises in respect of which the licence is to be granted are suitable for the activities to be carried on there<sup>10</sup>; and
- 434 (5) all other requirements of the Human Fertilisation and Embryology Act 1990 in relation to the grant of the licence are satisfied<sup>11</sup>.

Where the licence committee is of the opinion that the information supplied in the application is insufficient to enable it to determine the application, it need not consider the application until the applicant has provided it with such further information as it requires<sup>12</sup>. The licence committee must not grant a licence unless a copy of the conditions has been shown to, and acknowledged in writing by, the applicant and, where different, the person under whose supervision the activities are to be carried on<sup>13</sup>. A licence committee may consider and determine together two or more applications made by the same applicant, unless he objects<sup>14</sup>.

It is the duty of the individual under whose supervision the activities authorised by a licence are carried on (the 'person responsible')<sup>15</sup> to secure that:

- 435 (a) the other persons to whom the licence applies<sup>16</sup> are of such character, and are so qualified by training and experience, as to be suitable persons to participate in the activities authorised by the licence<sup>17</sup>;
- 436 (b) proper equipment is used<sup>18</sup>;
- 437 (c) proper arrangements are made for the keeping of gametes<sup>19</sup> and embryos<sup>20</sup> and for the disposal of gametes and embryos that have been allowed to perish<sup>21</sup>;
- 438 (d) suitable practices are used in the course of the activities<sup>22</sup>; and
- 439 (e) the conditions of the licence are complied with<sup>23</sup>.

1 As to the Human Fertilisation and Embryology Authority see PARA 280 ante. The application must be in a form approved for the purpose by the Authority accompanied by the initial fee; any additional fee must also be paid before a licence is granted: see the Human Fertilisation and Embryology Act 1990 s 16(1). 'Initial fee' and 'additional fee' mean a fee of such amount as may be fixed from time to time by the Authority with the approval of the Secretary of State and the Treasury; and in determining any such amount, the Authority may have regard to the costs of performing all its functions: s 16(6). Different fees may be fixed for different circumstances and the fees paid are not repayable: s 16(7). As to the Secretary of State see PARA 5 ante. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

2 For the meaning of 'licence' see PARA 281 note 2 ante.

3 As to licence committees see PARA 280 ante.

4 Human Fertilisation and Embryology Act 1990 s 16(1). The grant of a licence to any person may be by way of renewal of a licence granted to that person, whether on the same or different terms: s 16(3). As to the revocation and variation of licences see PARA 287 post.

5 Ibid s 16(2)(a). As to the activities for which a licence may be granted and as to the scope of licences generally see PARA 281 ante.

6 Ibid s 16(2)(b).

7 Ibid s 16(2)(b)(i).

8 Ibid s 16(2)(b)(ii).

9 Ibid s 16(2)(c). As to the person responsible see the text to note 15 infra.

10 Ibid s 16(2)(d).

11 Ibid s 16(2)(e).

12 Ibid s 16(4). A person who, for the purposes of the grant of a licence, provides information which is false or misleading in a material particular, and either knows it to be so or provides it recklessly, is guilty of an offence, and liable on conviction on indictment to imprisonment for up to two years or a fine or both, and on summary conviction to imprisonment for up to six months or a fine not exceeding the statutory maximum or both: s 41(3), (4). For a defence see PARA 278 text and notes 28-29 ante. As to the statutory maximum see PARA 208 note 14 ante.

13 Ibid s 16(5). Where either the applicant or the person under whose supervision the activities are to be carried on wishes to make representations about the proposed conditions, he must give notice within 28 days of being shown the conditions: Human Fertilisation and Embryology Authority (Licence Committees and Appeals) Regulations 1991, SI 1991/1889, reg 7(1). In such a case, he must be given the opportunity to make representations within 42 days, or more if the committee so consents, of the date of the notice: reg 7(2). Representations may be oral representations made by the person, or by another acting on behalf of the person, at a meeting of the committee, and written representations made by the person: reg 7(3).

14 Ibid reg 6.

15 Human Fertilisation and Embryology Act 1990 s 17(1). As to the revocation or variation where the person responsible has failed to discharge, or is unable because of incapacity to discharge, his duty under s 17 see PARA 287 post.

16 References to the persons to whom a licence applies are references to the person responsible, any person designated in the licence (or in a notice given to the Authority by the licence holder or the person responsible) as a person to whom the licence applies, and any person acting under the direction of the person responsible or of any person so designated: ibid s 17(2).

17 Ibid s 17(1)(a).

18 Ibid s 17(1)(b).

19 As to the meaning of 'keeping' see PARA 278 note 3 ante; and as to the meaning of 'gamete' see PARA 278 note 5 ante.

20 For the meaning of 'embryo' see PARA 278 note 2 ante.

21 Human Fertilisation and Embryology Act 1990 s 17(1)(c).

22 Ibid s 17(1)(d).

23 Ibid s 17(1)(e). As to standard conditions on licences see PARA 281 ante. As to conditions on the respective types of licence see PARAS 282-284 ante.

## UPDATE

### 278-290 Human Fertilisation and Embryology



The Authority may charge a fee in respect of any of the following (1) an application for a licence, (2) the grant or renewal of a licence, (3) an application for the revocation or variation of a licence, or (4) the exercise by the Authority of any other function conferred on it by or under the Human Fertilisation and Embryology Act 1990 or by or under any other enactment (a) in relation to a licence, (b) in relation to premises which are or have been premises to which a licence relates, (c) in relation to premises which are or have been relevant third party premises in relation to a licence, or (d) in relation to premises which, if an application is granted, will be premises to which a licence relates or relevant third party premises: see Human Fertilisation and Embryology Act 1990 s 35B (added by Human Fertilisation and Embryology Act 2008 s 27).

## 286 Grant of licences

NOTE 1--1990 Act s 16(6), (7) repealed: Human Fertilisation and Embryology Act 2008 s 16(6), Sch 8 Pt 1.

TEXT AND NOTE 4--1990 Act s 16(1) substituted: Human Fertilisation and Embryology Act 2008 s 16(2).

TEXT AND NOTES 5-11--In 1990 Act s 16(2) for 'licence committee' read 'Authority' in each place it occurs: Human Fertilisation and Embryology Act 2008 s 16(3)(a).

TEXT AND NOTE 9--Now head (3) in relation to a licence for treatment, licence for non-medical fertility services or licence for storage authorising the storage of gametes or embryos intended for human application or a licence authorising activities in connection with the derivation from embryos of stem cells that are intended for human application, that the individual possess a diploma, certificate or other evidence of formal qualifications in the field of medical or biological sciences, awarded on completion of a university course of study, or other course of study recognised in the United Kingdom as equivalent, or is otherwise considered by the Authority to be suitably qualified on the basis of academic qualifications in the field of nursing, and has at least two years' practical experience which is directly relevant to the activity to be authorised by the licence: 1990 Act s 16(2)(c) (substituted by the Human Fertilisation and Embryology (Quality and Safety) Regulations 2007, SI 2007/1522; amended by Human Fertilisation and Embryology Act 2008 s 16(3)(a), (b)).

TEXT AND NOTE 10--1990 Act s 16(2)(d) amended: Human Fertilisation and Embryology Act 2008 s 16(3)(d).

TEXT AND NOTE 11--Also, heads (6) in relation to a licence authorising storage of gametes, embryos or human admixed embryos not intended for human application or a licence for research authorising activities otherwise than in connection with the derivation from embryos of stem cells that are intended for human application, that the Authority is satisfied that the qualifications and experience of that individual are such as required for the supervision of the activities, and (7) that the Authority is satisfied that the character of that individual is such as is required for the supervision of the activities and that individual will discharge the duty under the 1990 Act s 17: s 16(2)(ca), (cb) (added by SI 2007/1522; amended by Human Fertilisation and Embryology Act 2008 s 16(3)(a), (c)).

TEXT AND NOTES 12, 13--In 1990 Act s 16(4), (5) for 'licence committee' read 'Authority': Human Fertilisation and Embryology Act 2008 s 16(4), (5).

NOTE 11--See Human Fertilisation and Embryology (Procedure on Applications and Execution of Warrants) Regulations 2010, SI 2010/726 (power to require witnesses and documents).

NOTE 12--1990 Act s 41(4) amended: Human Fertilisation and Embryology Act 2008 s 29(4), Sch 8 Pt 1.

NOTES 13, 14--SI 1991/1889 revoked with savings: SI 2009/1891.

TEXT AND NOTE 21--1990 Act s 17(1)(c) amended: Human Fertilisation and Embryology Act 2008 s 17(2).

TEXT AND NOTE 23--Also, heads (f) conditions of third party agreements relating to the procurement, testing, processing or distribution of gametes or embryos are complied with; and (g) the Human Fertilisation and Embryology Authority is notified and provided with a report analysing the cause and the ensuing outcome of any serious adverse event or serious adverse reaction: 1990 Act s 17(1)(f), (g) (added by SI 2007/1522). As to the definitions of 'serious adverse event' and 'serious adverse reaction', see the 1990 Act s 2(1) (added by SI 2007/1522). As to the duties of the Authority in relation to serious adverse events and serious adverse reactions, see the 1990 Act s 15A (added by SI 2007/1522).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(7) HUMAN FERTILISATION AND EMBRYOLOGY/287. Revocation and variation of licences.

## **287. Revocation and variation of licences.**

A licence committee<sup>1</sup> may revoke a licence<sup>2</sup> if it is satisfied that:

- 440 (1) any information given for the purposes of the application for the grant of the licence was in any material respect false or misleading<sup>3</sup>;
- 441 (2) the premises to which the licence relates are no longer suitable for the activities authorised by it<sup>4</sup>;
- 442 (3) the person responsible<sup>5</sup> has failed to discharge, or is unable because of incapacity to discharge, the duty under the Human Fertilisation and Embryology Act 1990<sup>6</sup> or has failed to comply with directions given in connection with any licence<sup>7</sup>; or
- 443 (4) there has been any other material change of circumstances since the licence was granted<sup>8</sup>.

A licence committee may also revoke a licence if: (a) it ceases to be satisfied that the character of the person responsible is such as is required for the supervision of those activities or that the nominal licensee<sup>9</sup> is a suitable person to hold a licence<sup>10</sup>; or (b) the person responsible dies or is convicted of an offence under the Human Fertilisation and Embryology Act 1990<sup>11</sup>. A licence committee may vary or revoke a licence on an application by the person responsible or the nominal licensee<sup>12</sup>. A committee may also, on an application by the nominal licensee, vary the licence so as to designate another individual in place of the person responsible if: (i) it is satisfied that the character, qualifications and experience of the other individual are such as are required for the supervision of the activities authorised by the licence and that the individual will discharge the duty as the person responsible<sup>13</sup>; and (ii) the application is made with the consent of the other individual<sup>14</sup>.

Where a licence committee suspects that there are reasonable grounds for revoking the licence<sup>15</sup> and is of the opinion that the licence must immediately be suspended<sup>16</sup>, it may by notice suspend the licence for a specified period not exceeding three months<sup>17</sup>. While suspended the licence is of no effect but application<sup>18</sup> may be made by the nominal licensee to designate another individual as the person responsible<sup>19</sup>.

A licence committee may from time to time give directions where a licence has been varied or has ceased to have effect, whether by expiry, suspension, revocation or otherwise, or where it is proposing to suspend, revoke or vary a licence<sup>20</sup>. Where a person who holds a licence dies, anything done subsequently by an individual which that individual would have been authorised to do if the licence had continued in force is, until such directions are given, treated as authorised by a licence<sup>21</sup>.

Where a licence committee determines<sup>22</sup> to refuse a licence or to refuse to vary a licence so as to designate another individual in place of the person responsible, the applicant may appeal to the Human Fertilisation and Embryology Authority<sup>23</sup> if notice has been given to the committee and to the Authority before the end of the period of 28 days beginning with the date on which notice of the committee's determination was served on the applicant<sup>24</sup>. Where a licence committee determines to vary or revoke a licence, any person on whom notice of the determination was served, other than the person who applied for the variation or revocation, may also appeal to the Authority provided the same notice requirements are complied with<sup>25</sup>. Where the Authority determines to refuse a licence or to refuse to vary a licence so as to

designate another individual in place of the person responsible<sup>26</sup> or to vary or revoke a licence<sup>27</sup>, any person on whom notice of the determination was served may appeal to the High Court on a point of law<sup>28</sup>.

1 As to licence committees see PARA 280 ante.

2 Where a licence committee has power to revoke a licence, it may instead vary any terms of the licence: Human Fertilisation and Embryology Act 1990 s 18(3). For the meaning of 'licence' see PARA 281 note 2 ante. As to the grant of licences see PARA 286 ante. As to the scope of licences and standard conditions see PARA 281 ante. As to the respective types of licence see PARAS 282-284 ante.

3 Ibid s 18(1)(a). The giving of such information is also an offence: see PARA 286 note 12 ante.

4 Ibid s 18(1)(b).

5 As to the person responsible see PARA 286 ante.

6 Ie the duty under the Human Fertilisation and Embryology Act 1990 s 17: see PARA 286 ante.

7 Ibid s 18(1)(c). As to the duty to comply with directions, and as to directions generally, see PARA 288 post.

8 Ibid s 18(1)(d).

9 A 'nominal licensee' is a person who holds a licence under which a different person is the person responsible: ibid s 17(3).

10 Ibid s 18(2)(a).

11 Ibid s 18(2)(b).

12 Ibid s 18(4). Except on an application under s 18(5) (see the text to notes 13-14 infra), a licence may only be varied so far as it relates to the activities authorised by the licence, the manner in which they are conducted or the conditions of the licence (s 18(6)(a)), or so as to extend or restrict the premises to which the licence relates: (s 18(6)(b)).

13 Ibid s 18(5)(a).

14 Ibid s 18(5)(b).

15 Ie under ibid s 18 (see the text to notes 1-14 supra): s 22(1)(a).

16 Ibid s 22(1)(b).

17 Ibid s 22(1). Such notice must be given to the person responsible or, where the person responsible has died or appears to the licence committee to be unable because of incapacity to discharge his duty as person responsible, to some other person to whom the licence applies or the nominal licensee; and a licence committee may, by a further notice to that person, renew or further renew the notice for such further period not exceeding three months as may be specified in the renewal notice: s 22(2). As to the service of notices see PARA 285 note 25 ante.

18 Ie under ibid s 18(5): see the text to notes 13-14 supra.

19 Ibid s 22(3).

20 Ibid s 24(5), (6). Such directions are directions given for the purpose of securing the continued discharge of the duties of the person responsible under the licence concerned ('the old licence'), and may, in particular:

96 (1) require anything kept or information held in pursuance of the old licence to be transferred to the Human Fertilisation and Embryology Authority or any other person (s 24(7)(a)); or

97 (2) provide for the discharge of the duties in question by any individual, being an individual whose character, qualifications and experience are, in the opinion of the committee, such as are required for the supervision of the activities authorised by the old licence, and authorise those activities to be carried on under the supervision of that individual (s 24(7)(b)),

but cannot require any individual to discharge any of those duties unless the individual has consented in writing to do so (s 24(7)). Directions for the purpose referred to in head (1) supra must be given to the person

responsible under the old licence or, where that person has died or appears to the licence committee to have become unable because of incapacity to discharge the duties in question, to some other person to whom the old licence applies or applied or to the nominal licensee: s 24(8). Directions for the purpose referred to in head (2) supra must be given to the individual who under the directions is to discharge the duty: s 24(9). As to the Human Fertilisation and Embryology Authority see PARA 280 ante.

Failure to comply with directions given under s 24(7)(a) (see head (1) supra) is an offence, punishable on conviction on indictment with imprisonment for up to two years or a fine, or both, and on summary conviction by imprisonment for up to six months or a fine not exceeding the statutory maximum, or both: s 41(2)(d), (4). As to the statutory maximum see PARA 208 note 14 ante.

21 Ibid s 24(10).

22 Where a licence committee proposes to refuse a licence or to refuse to vary a licence so as to designate another individual in place of the person responsible, the committee must give notice of the proposal, the reasons for it and the effect of ibid s 19(3) to the applicant: s 19(1). Where a licence committee proposes to vary or revoke a licence, the committee must give notice of the proposal, the reasons for it and the effect of s 19(3) to the person responsible and the nominal licensee, but not to any person who has applied for the variation or revocation: s 19(2). In either case, if, within the period of 28 days beginning with the day on which notice of the proposal is given, any person to whom notice was given gives notice to the committee of a wish to make to the committee representations about the proposal, the committee must, before making its determination, give the person an opportunity to make such representations: see s 19(3). Representations may be oral representations made by the person, or by another acting on behalf of the person, at a meeting of the committee, and written representations made by the person: s 19(4). A licence committee must: (1) in the case of a determination to grant a licence, give notice of the determination to the person responsible and the nominal licensee (s 19(5)(a)); (2) in the case of a determination to refuse a licence, or to refuse to vary a licence so as to designate another individual in place of the person responsible, give notice of the determination to the applicant (s 19(5)(b)); (3) in the case of a determination to vary or revoke a licence, give notice of the determination to the person responsible and the nominal licensee (s 19(5)(c)). A licence committee giving notice of a determination to refuse a licence or to refuse to vary a licence so as to designate another individual in place of the person responsible, or of a determination to vary or revoke a licence otherwise than on an application by the person responsible or the nominal licensee, must give in the notice the reasons for its decision: s 19(6).

23 An appeal is by way of re-hearing by the Authority, and no member of the Authority who took any part of the proceedings resulting in the determination appealed against may take any part in the proceedings on appeal: ibid s 20(3). The appellant is entitled to appear or be represented, and the members of the committee are entitled to appear or the committee is entitled to be represented; the Authority must consider written representations received from the appellant or any member of the committee and may take into account any matter that could be taken into account by a licence committee; and the Authority may make such determination on the appeal as it thinks fit: s 20(4). The Authority must notify the appellant of its determination and, if the determination is one of refusal, must give its reasons: see s 20(5). The Authority cannot delegate its functions in relation to an appeal: see s 20(6). The quorum of the Authority for the purposes of the appeal is five: s 20(6); Human Fertilisation and Embryology (Licence Committees and Appeals) Regulations 1991, SI 1991/1889, reg 9(1). As to the procedure on an appeal see the Human Fertilisation and Embryology Act 1990 s 10; the Human Fertilisation and Embryology (Licence Committees and Appeals) Regulations 1991, SI 1991/1889, regs 8-18; and PARA 280 ante.

24 Human Fertilisation and Embryology Act 1990 s 20(1).

25 See ibid s 20(2).

26 Ibid s 21(a).

27 Ibid s 21(b).

28 Ibid s 21. As to the High Court of Justice in England and Wales see COURTS vol 10 (Reissue) PARA 602 et seq.

## UPDATE

### 278-290 Human Fertilisation and Embryology

The Authority may charge a fee in respect of any of the following (1) an application for a licence, (2) the grant or renewal of a licence, (3) an application for the revocation or variation of a licence, or (4) the exercise by the Authority of any other function

conferred on it by or under the Human Fertilisation and Embryology Act 1990 or by or under any other enactment (a) in relation to a licence, (b) in relation to premises which are or have been premises to which a licence relates, (c) in relation to premises which are or have been relevant third party premises in relation to a licence, or (d) in relation to premises which, if an application is granted, will be premises to which a licence relates or relevant third party premises: see Human Fertilisation and Embryology Act 1990 s 35B (added by Human Fertilisation and Embryology Act 2008 s 27).

## **287 Revocation and variation of licences**

TEXT AND NOTES 1-14--1990 Act s 18 now ss 18, 18A (substituted by Human Fertilisation and Embryology Act 2008 s 18).

TEXT AND NOTE 8--Also, head (5) any premises which are relevant third party premises in relation to the licence are not suitable for the activities entrusted to the third party by the person who holds the licence: 1990 Act s 18(1)(ba) (added by SI 2007/1522).

NOTE 9--1990 Act s 17(3) repealed: Human Fertilisation and Embryology Act 2008 s 17(3), Sch 8 Pt 1.

TEXT AND NOTES 15-19--1990 Act s 22 repealed: Human Fertilisation and Embryology Act 2008 Sch 7 para 8, Sch 8 Pt 1; see now Human Fertilisation and Embryology Act 1990 s 19C (added by Human Fertilisation and Embryology Act 2008 s 20).

TEXT AND NOTES 20, 21--1990 Act s 24(5)-(10) substituted: Human Fertilisation and Embryology Act 2008 s 22(5).

NOTE 20--1990 Act s 41(2)(d), (4) amended: Human Fertilisation and Embryology Act 2008 s 29(3), (4), Sch 8 Pt 1.

NOTE 22--1990 Act s 19 now ss 19, 19A, 19B (substituted by Human Fertilisation and Embryology Act 2008 s 19). See also Human Fertilisation and Embryology (Procedure for Revocation, Variation or Refusal of Licences) Regulations 2009, SI 2009/1397 (amended by SI 2009/2088); and Human Fertilisation and Embryology (Procedure on Applications and Execution of Warrants) Regulations 2010, SI 2010/726 (power to require witnesses and documents).

TEXT AND NOTES 23-28--1990 Act ss 20, 21 now ss 20, 20A, 20B, 21 (substituted by Human Fertilisation and Embryology Act 2008 s 21). See also Human Fertilisation and Embryology (Appeals) Regulations 2009, SI 2009/1891.

NOTE 23--SI 1991/1889 revoked with savings: SI 2009/1891.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(7) HUMAN FERTILISATION AND EMBRYOLOGY/288. Directions and code of practice.

## **288. Directions and code of practice.**

The Human Fertilisation and Embryology Authority<sup>1</sup> may from time to time give directions for any purpose for which directions may be given under the Human Fertilisation and Embryology Act 1990, or directions varying or revoking such directions<sup>2</sup>. A person<sup>3</sup> to whom any requirement contained in directions is applicable must comply with the requirement<sup>4</sup>.

The Authority must maintain a code of practice giving guidance about the proper conduct of activities carried on in pursuance of a licence<sup>5</sup> under the Act and the proper discharge of the functions of the person responsible<sup>6</sup> and other persons to whom the licence applies<sup>7</sup>. The guidance must include guidance for those providing treatment services<sup>8</sup> about the account to be taken of the welfare of children who may be born as a result of treatment services, including a child's need for a father<sup>9</sup>, and of other children who may be affected by such births<sup>10</sup>. A failure on the part of any person to observe any provision of the code does not of itself render the person liable to any proceedings, but: (1) a licence committee<sup>11</sup>, in considering whether there has been any failure to comply with any conditions of a licence, particularly conditions requiring anything to be 'proper' or 'suitable', must take account of any relevant provisions of the code<sup>12</sup>; and (2) may, in considering whether to vary or revoke a licence, take into account any observance of, or failure to observe, the provisions of the code<sup>13</sup>.

The Authority may from time to time revise the whole or any part of the code<sup>14</sup>, and must publish the code as for the time being in force<sup>15</sup>. If it proposes to revise the code the Authority must send a draft<sup>16</sup> of the revised code to the Secretary of State<sup>17</sup> who, if he approves it, must lay it before Parliament, and if he does not approve it must give his reasons to the Authority<sup>18</sup>. A draft approved by the Secretary of State comes into force in accordance with directions<sup>19</sup>.

1 As to the Human Fertilisation and Embryology Authority see PARA 280 ante.

2 Human Fertilisation and Embryology Act 1990 s 23(1). Section 23 does not apply to directions under s 9(4) (see PARA 280 note 9 ante): s 23(6).

3 Where directions are given to a particular person, notice of them must be served on that person: see *ibid* s 23(4). In any other case, directions may be given: (1) in respect of any licence (including a licence which has ceased to have effect), by serving notice of the directions on the person who is or was the person responsible or the nominal licensee (s 23(5)(a)); or (2) if the directions appear to the Authority to be general directions or it is not practicable to give notice in pursuance of head (1) *supra*, by publishing the directions in such way as, in its opinion, is likely to bring the directions to the attention of the persons to whom they are applicable (s 23(5)(b)). For the meaning of 'person' see PARA 7 note 5 ante. For the meaning of 'nominal licensee' see PARA 287 note 9 ante. As to the service of notices see PARA 285 note 25 ante.

4 *Ibid* s 23(2). Anything done by a person in pursuance of directions is treated as done in pursuance of a licence: s 23(3). As to the revocation or variation of a licence where there is a failure to comply with directions relating to it see PARA 287 ante.

5 For the meaning of 'licence' see PARA 281 note 2 ante.

6 As to the person responsible see PARA 286 ante.

7 Human Fertilisation and Embryology Act 1990 s 25(1).

8 For the meaning of 'treatment services' see PARA 278 note 14 ante.

9 As to parentage under the Human Fertilisation and Embryology Act 1990 see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 102 et seq.

10 Ibid s 25(2). The code may also give guidance about the use of any technique involving the placing of sperm and eggs in a woman: s 25(3). As to the meanings of 'sperm' and 'eggs' see PARA 278 note 5 ante. As to licences for treatment see PARA 282 ante.

11 As to licence committees see PARA 280 ante.

12 Human Fertilisation and Embryology Act 1990 s 25(6)(a). As to the grant of licences see PARA 286 ante. As to the scope of licences and standard conditions see PARA 281 ante. As to the types of licence and conditions on them see PARAS 282-284 ante.

13 Ibid s 25(6)(b). As to the revocation and variation of licences see PARA 287 ante.

14 Ibid s 25(4).

15 Ibid s 25(5).

16 Before preparing any draft, the Authority must consult such persons as the Secretary of State requires, and such other persons, if any, as it considers appropriate: ibid s 26(3). As to the Secretary of State see PARA 5 ante.

17 Ibid s 26(2).

18 Ibid s 26(4). As to the laying of documents before Parliament see PARLIAMENT vol 34 (Reissue) PARA 941.

19 Ibid s 26(5).

## **UPDATE**

### **278-290 Human Fertilisation and Embryology**

The Authority may charge a fee in respect of any of the following (1) an application for a licence, (2) the grant or renewal of a licence, (3) an application for the revocation or variation of a licence, or (4) the exercise by the Authority of any other function conferred on it by or under the Human Fertilisation and Embryology Act 1990 or by or under any other enactment (a) in relation to a licence, (b) in relation to premises which are or have been premises to which a licence relates, (c) in relation to premises which are or have been relevant third party premises in relation to a licence, or (d) in relation to premises which, if an application is granted, will be premises to which a licence relates or relevant third party premises: see Human Fertilisation and Embryology Act 1990 s 35B (added by Human Fertilisation and Embryology Act 2008 s 27).

### **288 Directions and code of practice**

NOTE 2--1990 Act s 23(6) repealed: Human Fertilisation and Embryology Act 2008 Sch 7 para 9(b), Sch 8 Pt 1.

NOTE 3--1990 Act s 23(5)(a) substituted: Human Fertilisation and Embryology Act 2008 Sch 7 para 9(a).

TEXT AND NOTES 10-13--Human Fertilisation and Embryology Act 1990 s 25(2), (6)(a), (b) amended, s 25(2A) added: Human Fertilisation and Embryology Act 2008 s 23.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(7) HUMAN FERTILISATION AND EMBRYOLOGY/289. Conscientious objection.

## **289. Conscientious objection.**

No person who has a conscientious objection to participating in any activity governed by the Human Fertilisation and Embryology Act 1990 is under any duty, however arising, to do so<sup>1</sup>. In any legal proceedings, the burden of proof of conscientious objection rests on the person claiming to rely on it<sup>2</sup>.

1 Human Fertilisation and Embryology Act 1990 s 38(1).

2 Ibid s 38(2).

## **UPDATE**

### **278-290 Human Fertilisation and Embryology**

The Authority may charge a fee in respect of any of the following (1) an application for a licence, (2) the grant or renewal of a licence, (3) an application for the revocation or variation of a licence, or (4) the exercise by the Authority of any other function conferred on it by or under the Human Fertilisation and Embryology Act 1990 or by or under any other enactment (a) in relation to a licence, (b) in relation to premises which are or have been premises to which a licence relates, (c) in relation to premises which are or have been relevant third party premises in relation to a licence, or (d) in relation to premises which, if an application is granted, will be premises to which a licence relates or relevant third party premises: see Human Fertilisation and Embryology Act 1990 s 35B (added by Human Fertilisation and Embryology Act 2008 s 27).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/1. THE MEDICAL PROFESSION AND MEDICAL PRACTICE/(7) HUMAN FERTILISATION AND EMBRYOLOGY/290. Enforcement.

## **290. Enforcement.**

Any member or employee of the Human Fertilisation and Embryology Authority<sup>1</sup> entering and inspecting<sup>2</sup> premises to which a licence<sup>3</sup> relates may:

- 444 (1) take possession<sup>4</sup> of anything<sup>5</sup> which he has reasonable grounds to believe may be required for the purpose of the functions of the Authority relating to the grant, variation, suspension and revocation of licences<sup>6</sup> or for the purpose of being used in evidence in any proceedings for an offence<sup>7</sup>, and retain it for so long as it may be required for the purpose in question<sup>8</sup>; and
- 445 (2) for the purpose in question, take such steps as appear to be necessary for preserving any such thing or preventing interference with it, including requiring any person having the power to do so to give such assistance as may reasonably be required<sup>9</sup>.

However, it is not unlawful for a member or employee of the Authority to keep any embryo<sup>10</sup> or gametes<sup>11</sup> in pursuance of that person's functions as such<sup>12</sup>.

A justice of the peace<sup>13</sup> may issue a warrant if satisfied by the evidence on oath<sup>14</sup> of a member or employee of the Authority that there are reasonable grounds for suspecting that an offence is being, or has been, committed on any premises<sup>15</sup>. A warrant must authorise any named member or employee of the Authority, who must if so required produce a document identifying himself, together with any constables<sup>16</sup>:

- 446 (a) to enter the premises specified in the warrant, using such force as is reasonably necessary for the purpose<sup>17</sup>; and
- 447 (b) to search the premises and take possession of anything<sup>18</sup> which he has reasonable grounds to believe may be required to be used in evidence in any proceedings for an offence<sup>19</sup>, or take such steps as appear necessary for preserving any such thing or preventing interference with it, including requiring any person having the power to do so to give such assistance as may reasonably be required<sup>20</sup>.

A warrant continues in force until the end of the period of one month beginning with the day on which it is issued<sup>21</sup>. Anything of which possession is taken may be retained for a period of six months<sup>22</sup> or, if within that period proceedings to which the thing is relevant are commenced against any person for an offence, until the conclusion of those proceedings<sup>23</sup>.

A person who fails to comply with a requirement relating to assistance or information<sup>24</sup>, or who intentionally obstructs the exercise of any rights conferred by a warrant<sup>25</sup>, is guilty of an offence<sup>26</sup>.

1 As to the Human Fertilisation and Embryology Authority see PARA 280 ante.

2 As to the powers of entry and inspection see the text and notes 13-23 infra.

3 For the meaning of 'licence' see PARA 281 note 2 ante. As to the scope of licences see PARA 281 ante. As to the types of licence see PARAS 282-284 ante.

4 For these purposes, 'taking possession' of anything includes, in the case of information recorded otherwise than in legible form, requiring any person having the power to do so to produce a copy of the information in legible form and taking possession of the copy: Human Fertilisation and Embryology Act 1990 s 39(2)(b). It is an offence to fail to comply with such a requirement: see the text to notes 24-26 *infra*.

5 'Things' includes information recorded in any form: *ibid* ss 39(2)(a), 40(5)(a).

6 *Ibid* s 39(1)(a)(i). As to the grant of licences see PARA 286 *ante*. As to the variation, suspension and revocation of licences see PARA 287 *ante*.

7 It is an offence under the Human Fertilisation and Embryology Act 1990: s 39(1)(a)(ii).

8 *Ibid* s 39(1)(a).

9 *Ibid* s 39(1)(b). It is an offence to fail to comply with such a requirement: see the text to notes 24-26 *infra*.

10 For the meaning of 'embryo' see PARA 278 note 2 *ante*.

11 As to the meaning of 'gamete' see PARA 278 note 5 *ante*.

12 Human Fertilisation and Embryology Act 1990 s 39(3).

13 As to justices of the peace see MAGISTRATES vol 29(2) (Reissue) PARA 501 *et seq*.

14 For the meaning of 'oath' see PARA 153 note 4 *ante*. As to oaths, affirmations and declarations see CIVIL PROCEDURE vol 11 (2009) PARA 1021 *et seq*.

15 Human Fertilisation and Embryology Act 1990 s 40(1).

16 As to the office of constable see POLICE vol 36(1) (2007 Reissue) PARA 101 *et seq*.

17 Human Fertilisation and Embryology Act 1990 s 40(2)(a).

18 For these purposes, 'taking possession' of anything includes, in the case of information recorded otherwise than in legible form, requiring any person having the power to do so to produce a copy of the information in legible form, or in a form from which it can readily be produced in visible and legible form, and taking possession of the copy: *ibid* s 40(5)(b) (amended by the Criminal Justice and Police Act 2001 s 70, Sch 2 Pt 2 para 16(1), (2)(e)). It is an offence to fail to comply with such a requirement: see the text to notes 24-26 *infra*.

19 Human Fertilisation and Embryology Act 1990 s 40(2)(b)(i). As to additional powers of seizure from premises see the Criminal Justice and Police Act 2001 s 50, Sch 1 Pt 1 para 52; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 890.

20 Human Fertilisation and Embryology Act 1990 s 40(2)(b)(ii). It is an offence to fail to comply with such a requirement: see the text to notes 24-26 *infra*.

21 *Ibid* s 40(3).

22 *Ibid* s 40(4)(a).

23 *Ibid* s 40(4)(b).

24 It is a requirement made by virtue of *ibid* s 39(1)(b) (see the text to note 9 *supra*), s 39(2)(b) (see note 4 *supra*), s 40(2)(b)(ii) (see the text to note 20 *supra*), s 40(5)(b) (as amended) (see note 18 *supra*): s 41(6)(a).

25 *Ibid* s 41(6)(b).

26 *Ibid* s 41(6). The penalty on summary conviction is imprisonment for up to six months or a fine not exceeding level 5 on the standard scale, or both: see s 41(9). As to the standard scale see PARA 185 note 11 *ante*.

## UPDATE

### 278-290 Human Fertilisation and Embryology

The Authority may charge a fee in respect of any of the following (1) an application for a licence, (2) the grant or renewal of a licence, (3) an application for the revocation or variation of a licence, or (4) the exercise by the Authority of any other function conferred on it by or under the Human Fertilisation and Embryology Act 1990 or by or under any other enactment (a) in relation to a licence, (b) in relation to premises which are or have been premises to which a licence relates, (c) in relation to premises which are or have been relevant third party premises in relation to a licence, or (d) in relation to premises which, if an application is granted, will be premises to which a licence relates or relevant third party premises: see Human Fertilisation and Embryology Act 1990 s 35B (added by Human Fertilisation and Embryology Act 2008 s 27).

## **290 Enforcement**

TEXT AND NOTES 1-23--Human Fertilisation and Embryology Act 1990 ss 39, 40 repealed: Human Fertilisation and Embryology Act 2008 s 28(3), Sch 8 Pt 1. For provision as to inspection, entry, search and seizure see the Human Fertilisation and Embryology Act 1990 s 38A(1), Sch 3B (added by the Human Fertilisation and Embryology Act 2008 s 28(1), (2), Sch 5). Nothing in the Human Fertilisation and Embryology Act 1990 makes it unlawful for a member or employee of the Authority to keep any embryo, human admixed embryo or gametes in pursuance of that person's functions as such: s 38A(2).

TEXT AND NOTES 13-26--See Human Fertilisation and Embryology (Procedure on Applications and Execution of Warrants) Regulations 2010, SI 2010/726.

NOTE 18--Criminal Justice and Police Act 2001 Sch 2 para 16(2)(e) repealed: Human Fertilisation and Embryology Act 2008 Sch 8 Pt 1.

TEXT AND NOTES 24-26--1990 Act s 41(6) repealed, s 41(9) repealed in part: Human Fertilisation and Embryology Act 2008 s 29(8), (10), Sch 8 Pt 1.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/2. THE REGULATION OF THE HEALTH CARE PROFESSIONS/(1) REGULATION UNDER THE HEALTH ACT 1999/291. Power to make orders.

## **2. THE REGULATION OF THE HEALTH CARE PROFESSIONS**

### **(1) REGULATION UNDER THE**

#### **291. Power to make orders.**

Her Majesty may by Order in Council<sup>1</sup> make provision:

- 448 (1) modifying the regulation of any profession to which these provisions apply, so far as appears to be necessary or expedient for the purpose of securing or improving the regulation of the profession or the services which the profession provides or to which it contributes<sup>2</sup>;
- 449 (2) regulating any other profession which appears to be concerned, wholly or partly, with the physical or mental health of individuals and to require regulation in pursuance of these provisions<sup>3</sup>;
- 450 (3) modifying the functions, powers or duties of the Council for the Regulation of Health Care Professionals<sup>4</sup>;
- 451 (4) modifying the list of regulatory bodies<sup>5</sup> in relation to which the Council for the Regulation of Health Care Professionals performs its functions<sup>6</sup>;
- 452 (5) modifying, as respects any such regulatory body, the range of functions of that body in relation to which the Council for the Regulation of Health Care Professionals performs its functions<sup>7</sup>.

The powers conferred by these provisions may be exercised so as to regulate<sup>8</sup> a profession which is not regulated by any enactment, whether established before or after the passing of the Health Act 1999<sup>9</sup>.

The professions to which these provisions apply are those regulated by the Pharmacy Act 1954<sup>10</sup>; the Medical Act 1983<sup>11</sup>; the Dentists Act 1984<sup>12</sup>; the Opticians Act 1989<sup>13</sup>; the Osteopaths Act 1993<sup>14</sup>; the Chiropractors Act 1994<sup>15</sup>; the Nursing and Midwifery Order 2001<sup>16</sup>; the Health Professions Order 2001<sup>17</sup>; and any other profession regulated by an Order in Council<sup>18</sup>.

<sup>1</sup> Any power to make an order is exercisable by statutory instrument: Health Act 1999 s 62(1). The National Health Service Act 1977 s 126(4), (5) (supplementary provisions about subordinate legislation) apply in relation to any power conferred by the Health Act 1999 to make Orders in Council as they apply in relation to the powers which may be exercised as mentioned in the National Health Service Act 1977 s 126(4)(a), (b): Health Act 1999 s 62(4). A statutory instrument containing subordinate legislation under the Health Act 1999 is to be subject to annulment in pursuance of a resolution of either House of Parliament: s 62(6). No recommendation is to be made to Her Majesty to make an Order in Council unless a draft has been laid before, and approved by resolution of, each House of Parliament: s 62(9). As to Orders in Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 907.

The Nursing and Midwifery Order 2002, SI 2002/253 (see PARA 691 et seq post) and the Health Professions Order 2001, SI 2002/254 (as amended) (see PARA 308 et seq post) have been made under the Health Act 1999 s 60. As to the scope of and procedure for making orders see PARAS 292-293 post.

<sup>2</sup> Health Act 1999 s 60(1)(a).

<sup>3</sup> Ibid s 60(1)(b).

4 Ibid s 60(1)(c) (s 60(1)(c)-(e) added by the National Health Service Reform and Health Care Professions Act 2002 s 26(9)). As to the Council for the Regulation of Health Care Professionals see PARA 294 et seq post.

5 Ie the bodies set out in the National Health Service Reform and Health Care Professions Act 2002 s 25(3): see PARA 294 note 8 post.

6 Health Act 1999 s 60(1)(d) (as added: see note 4 supra). As to the functions of the Council for the Regulation of Health Care Professionals see PARA 303 et seq post.

7 Ibid s 60(1)(e) (as added: see note 4 supra).

8 References to regulation in relation to a profession in ibid s 60 and Sch 3 include:

98 (1) the regulation of persons seeking admission to practice or who were, but are no longer, allowed to practise as members of the profession (Sch 3 para 11(2)(a));

99 (2) the regulation of activities carried on by persons who are not members of the profession but which are carried on in connection with the practice of the profession (Sch 3 para 11(2)(b));

100 (3) in the case of the profession of medical practitioner, the regulation of the qualifications or experience required for a medical practitioner to perform primary medical services under the National Health Service Act 1977 Pt I (ss 1-28Y) (as amended) (Health Act 1999 Sch 3 para 11(2)(c) (amended by the Health and Social Care (Community Health and Standards) Act 2003 s 184, Sch 11 para 67(a));

101 (4) in the case of the profession of dental practitioner, the regulation of the qualifications or experience required for a dental practitioner to provide, or assist in the provision of, general dental services under the National Health Service Act 1977 (Health Act 1999 Sch 3 para 11(2)(d)).

As from a day to be appointed, the Health Act 1999 Sch 3 para 11(2)(d) (see head (4) supra) is amended so as to refer, in the case of the profession of dental practitioner, to the regulation of the qualifications or experience required for a dental practitioner to perform primary dental services under the National Health Service Act 1977 Pt I (as amended): see the Health Act 1999 Sch 3 para 11(2)(d) (prospectively amended by the Health and Social Care (Community Health and Standards) Act 2003 Sch 11 para 67(b)). At the date at which this volume states the law no such day had been appointed.

At the date at which this volume states the law the Health Act 1999 Sch 3 para 11(2)(c) (as amended) (see head (3) supra) applies in relation to England only. In relation to Wales this provision refers, in the case of the profession of medical practitioner, to the regulation of the qualifications or experience required for a medical practitioner to provide, or assist in the provision of, general medical services under the National Health Service Act 1977: Health Act 1999 Sch 3 para 11(2)(c). In this connection, the reference to the provision of general medical services includes the performance of personal medical services and the reference to the National Health Service Act 1977 includes arrangements under s 28C (as added): Health Act 1999 Sch 3 para 11(3) (repealed in relation to England by the Health and Social Care (Community Health and Standards) Act 2003 s 196, Sch 14 Pt 4).

As to the provision of primary medical services and dental services under the National Health Service Act 1977 see HEALTH SERVICES vol 54 (2008) PARA 241 et seq.

9 Health Act 1999 s 60(4), Sch 3 para 11(1). The Health Act 1999 was passed on 30 June 1999.

10 As to the Pharmacy Act 1954 see PARA 880 et seq post.

11 As to the Medical Act 1983 see PARA 1 et seq ante.

12 As to the Dentists Act 1984 see PARA 385 et seq post.

13 As to the Opticians Act 1989 see PARA 803 et seq post.

14 As to the Osteopaths Act 1993 see PARA 499 et seq post.

15 Health Act 1999 s 60(2)(a). As to the Chiropractors Act 1994 see PARA 591 et seq post.

16 Ie the Nursing and Midwifery Order 2001, SI 2002/253 (see PARA 691 et seq post): Health Act 1999 s 60(2)(b) (amended by the Nursing and Midwifery Order 2001, SI 2002/253, art 54(3), Sch 5 para 16(a)).

17 Ie the Health Professions Order 2001, SI 2002/254 (as amended) (see PARA 308 et seq post): Health Act 1999 s 60(2)(c) (amended by the Health Professions Order 2001, SI 2002/254, art 48(3), Sch 4 para 8(a)).

18     le an Order in Council made under the Health Act 1999 s 60: s 60(2)(d).

## **UPDATE**

### **291 Power to make orders**

TEXT AND NOTES--Her Majesty may also by Order in Council make provision relating to, or connected with, the functions of the relevant regulatory body in relation to the registration of premises under the Medicines Act 1968 Pt IV (ss 69-84) (pharmacies); the regulation of the use of premises for the purposes of a retail pharmacy business, within the meaning of the Medicines Act 1968; compliance with the provisions of the Medicines Act 1968; compliance with the provisions of the Poisons Act 1972 by persons admitted to practice and persons carrying on a retail pharmacy business; and the grant of authorisations under the Regulation of Investigatory Powers Act 2000 s 28 (authorisation of directed surveillance): Health Act 1999 s 60(2A) (s 60(2A), (2B) added by the Health and Social Care Act 2008 Sch 8 para 1(4)). For these purposes 'the relevant regulatory body' means the body (or main body) responsible for the regulation of the professions referred to in the Health Act 1999 s 60(2)(aa) (ie those professions regulated by the Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289): Health Act 1999 s 60(2B).

TEXT AND NOTES 1-7--Now head (6) modifying the constitution, functions, powers or duties of the Office of the Health Professions Adjudicator: Health Act 1999 s 60(1)(f) (added by the Health and Social Care Act 2008 Sch 8 para 1(2)).

NOTE 1--1999 Act s 62 amended and repealed in part: National Health Service (Consequential Provisions) Act 2006 Sch 1 para 197, Sch 4 (partly in force: see s 8); Health and Social Care Act 2008 Sch 8 para 2, Sch 10 para 11.

TEXT AND NOTE 4--For 'the Council for the Regulation of Health Care Professionals' read 'the Council for Healthcare Regulatory Excellence': 1999 Act s 60(1)(c) (amended by the Health and Social Care Act 2008 Sch 10 para 10).

NOTE 8--1999 Act Sch 3 para 11(2)(c), (d) further amended: Health and Social Care Act 2008 Sch 8 para 9.

TEXT AND NOTES 10-18--The professions to which these provisions apply no longer include those regulated by the Pharmacy Act 1954, but now include those regulated by the Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289, and so much of the Hearing Aid Council Act 1968 as relates to dispensers of hearing aids: Health Act 1999 s 60(2) (amended by the Health and Social Care Act 2008 Sch 8 para 1(3)).

The standard of proof applicable to any proceedings before the Office of the Health Professions Adjudicator, or a committee of a body, or main body, responsible for the regulation of a profession to which the Health Act 1999 s 60(2) applies, which relate to a person's fitness to practise such a profession, is that applicable to civil proceedings: s 60A(1)-(3) (s 60A added by the Health and Social Care Act 2008 s 112) (in force for the purpose of 'new proceedings': see SI 2008/2717). An Order in Council under the Health Act 1999 s 60 may not amend s 60A or make any provision that is inconsistent with s 60A(1): s 60A(4).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/2. THE REGULATION OF THE HEALTH CARE PROFESSIONS/(1) REGULATION UNDER THE HEALTH ACT 1999/292. Scope of orders.

## 292. Scope of orders.

An order<sup>1</sup> may make provision, in relation to any profession, for any of the following matters, among others:

- 453 (1) the establishment and continuance of a regulatory body<sup>2</sup>;
- 454 (2) keeping a register of members admitted to practice<sup>3</sup>,
- 455 (3) education and training before and after admission to practice<sup>4</sup>;
- 456 (4) privileges of members admitted to practice<sup>5</sup>;
- 457 (5) standards of conduct and performance<sup>6</sup>;
- 458 (6) discipline and fitness to practise<sup>7</sup>;
- 459 (7) investigation and enforcement by or on behalf of the regulatory body<sup>8</sup>;
- 460 (8) appeals<sup>9</sup>;
- 461 (9) default powers exercisable by a person other than the regulatory body<sup>10</sup>.

An order may not: (a) abolish a regulatory body<sup>11</sup>; (b) impose any requirement which would have the effect that a majority of the members of the regulatory body of any profession would be persons not included in the register of members admitted to practice<sup>12</sup>; (c) provide for any function conferred on the Privy Council<sup>13</sup> to be exercised by a different person<sup>14</sup>; or (d) confer any additional powers of direction over the Council for the Regulation of Health Care Professionals<sup>15</sup>. Where an enactment provides, in relation to any profession, for certain functions<sup>16</sup> to be exercised by the regulatory body or any of its committees or officers, an order may not provide for any person other than that regulatory body or any of its committees or officers to exercise that function<sup>17</sup>.

1    Ie an Order in Council made under the Health Act 1999 s 60 (see PARA 291 ante): s 60(4), Sch 3 para 10.

2    Ibid Sch 3 para 1(a). 'Regulatory body', in relation to any profession, means the body (or main body) responsible for the regulation of the profession: Sch 3 para 10. As to the professions to which s 60 applies see PARA 291 ante. As to the meaning of 'regulation' see PARA 291 note 8 ante.

3    Ibid Sch 3 para 1(b).

4    Ibid Sch 3 para 1(c).

5    Ibid Sch 3 para 1(d).

6    Ibid Sch 3 para 1(e).

7    Ibid Sch 3 para 1(f).

8    Ibid Sch 3 para 1(g).

9    Ibid Sch 3 para 1(h).

10   Ibid Sch 3 para 1(i).

11   Ie a regulatory body of any profession to which ibid s 60(2)(a) applies (see PARA 291 text to notes 10-15 ante), any regulatory body established by an order as the successor to the Council for Professions Supplementary to Medicine or the United Kingdom Central Council for Nursing, Midwifery and Health Visiting, or any other regulatory body established by an order: Sch 3 para 7(1). The successor body to the Council for Professions Supplementary to Medicine is the Health Professions Council: see PARA 308 et seq post. The



successor body to the United Kingdom Central Council for Nursing, Midwifery and Health Visiting is the Nursing and Midwifery Council: see PARA 691 et seq post.

12 Ibid Sch 3 para 7(2).

13 le in relation to any profession to which ibid s 60(2)(a) applies (see PARA 291 text to notes 10-15 ante). As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

14 Ibid Sch 3 para 7(3).

15 Ibid Sch 3 para 7(4) (added by the National Health Service Reform and Health Care Professions Act 2002 s 26(10)). As to the Council for the Regulation of Health Care Professionals see PARA 294 et seq post.

16 The functions are: (1) keeping the register of members admitted to practice; (2) determining standards of education and training for admission to practice; (3) giving advice about standards of conduct and performance; (4) administering procedures (including making rules) relating to misconduct, unfitness to practise and similar matters: Health Act 1999 Sch 3 para 8(2)(a)-(d).

17 Ibid Sch 3 para 8(1).

## **UPDATE**

### **292 Scope of orders**

TEXT AND NOTES 11-14--Health Act 1999 Sch 3 para 7(1) substituted, Sch 3 para 7(1A) added, Sch 3 para 7(2), (3) repealed: Health and Social Care Act 2008 Sch 8 para 5, Sch 15 Pt 2.

TEXT AND NOTE 15--For 'the Council for the Regulation of Health Care Professionals' read 'the Council for Healthcare Regulatory Excellence': Health Act 1999 Sch 3 para 7(4) (amended by the Health and Social Care Act 2008 Sch 10 para 12).

NOTE 16--Health Act 1999 Sch 3 para 8(2)(d) repealed, Sch 3 para 8(2A), (2B) added: Health and Social Care Act 2008 Sch 8 para 6.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/2. THE REGULATION OF THE HEALTH CARE PROFESSIONS/(1) REGULATION UNDER THE HEALTH ACT 1999/293. Exercise of power to make orders; procedure for making orders.

### **293. Exercise of power to make orders; procedure for making orders.**

The power to make an order<sup>1</sup> may be exercised by amending or repealing any enactment<sup>2</sup> or prerogative instrument<sup>3</sup> and any other instrument or document<sup>4</sup>. The power may be exercised so as to make provision for the delegation of functions, including provision conferring power to make, confirm or approve subordinate legislation<sup>5</sup>. The power may be exercised so as to make provision for the charging of fees<sup>6</sup>; to confer functions, including power to pay grants, on Ministers of the Crown<sup>7</sup> or the National Assembly for Wales<sup>8</sup>; or to modify their functions<sup>9</sup>. The power may not be exercised so as to create any criminal offence, except an offence punishable on summary conviction with a fine not exceeding the amount specified as level 5 on the standard scale<sup>10</sup>.

If it is proposed to lay a draft of an order before Parliament<sup>11</sup>, the Secretary of State<sup>12</sup> must first publish a draft of an order<sup>13</sup>, and invite representations to be made to him about the draft by persons appearing to him appropriate to represent the profession to be regulated, persons appearing to him appropriate to represent those provided with services by the profession and any other persons appearing to him appropriate to consult about the draft<sup>14</sup>. After the end of the period of three months beginning with the publication of the draft, he may lay the draft as published, or that draft with any modifications he considers appropriate, together with a report about the consultation before Parliament<sup>15</sup>.

1 For the meaning of 'order' see PARA 292 note 1 ante.

2 I.e. whether or not mentioned in the Health Act 1999 s 60: see PARA 291 ante.

3 As to the royal prerogative see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 367 et seq; CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 46 et seq.

4 Health Act 1999 s 60(4), Sch 3 para 2(1). An order may not amend the Medicines Act 1968 except in connection with the regulation of the profession regulated by the Pharmacy Act 1954: Health Act 1999 Sch 3 para 2(2) (substituted by the National Health Service Reform and Health Care Professions Act 2002 s 35). As to the regulation of the pharmaceutical profession see PARA 880 et seq post.

5 Health Act 1999 Sch 3 para 3.

6 Ibid Sch 3 para 4.

7 As to Ministers of the Crown see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 354 et seq.

8 Health Act 1999 Sch 3 para 5(a). As to the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

9 Ibid Sch 3 para 5(b).

10 Ibid Sch 3 para 6. As to the standard scale see PARA 185 note 11 ante.

11 As to the laying of documents before Parliament see PARLIAMENT vol 34 (Reissue) PARA 941.

12 As to the Secretary of State see PARA 5 ante.

13 Health Act 1999 Sch 3 para 9(1)(a).

14 Ibid Sch 3 para 9(1)(b).

15 Ibid Sch 3 para 9(2).

**UPDATE**

**293 Exercise of power to make orders; procedure for making orders**

NOTE 4--1999 Act Sch 3 para 2(2) repealed: Health Act 2006 s 33.

TEXT AND NOTE 8--1999 Act Sch 3 para 5(a) amended: Health and Social Care Act 2008 Sch 8 para 4.

TEXT AND NOTES 11-15--1999 Act Sch 3 para 9(1A) added: Health and Social Care Act 2008 Sch 8 para 7(3).

TEXT AND NOTE 14--1999 Act Sch 3 para 9(1)(b) amended: Health and Social Care Act 2008 Sch 8 para 7(2).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/2. THE REGULATION OF THE HEALTH CARE PROFESSIONS/(2) THE COUNCIL FOR THE REGULATION OF HEALTH CARE PROFESSIONALS/(i) Constitution/294. Constitution of the Council for the Regulation of Health Care Professionals.

## **(2) THE COUNCIL FOR THE REGULATION OF HEALTH CARE PROFESSIONALS**

### **(i) Constitution**

#### **294. Constitution of the Council for the Regulation of Health Care Professionals.**

The Council for the Regulation of Health Care Professionals<sup>1</sup> is a body corporate<sup>2</sup>. The Council is not to be regarded as the servant or agent of the Crown<sup>3</sup> or as enjoying any status, immunity or privilege of the Crown, and the Council's property is not to be regarded as property of, or property held on behalf of, the Crown<sup>4</sup>. The Council consists of: (1) a member appointed by the National Assembly for Wales<sup>5</sup>; (2) a member appointed by the Scottish Ministers<sup>6</sup>; (3) a member appointed by the Department of Health, Social Services and Public Safety in Northern Ireland<sup>7</sup>; (4) a member appointed by each regulatory body<sup>8</sup>; and (5) other members appointed by the Secretary of State<sup>9</sup>. Any member of the Council to be appointed under heads (1) to (3) or (5) above must be a lay person<sup>10</sup>.

The members of the Council elect one of their number as chairman<sup>11</sup>. The Secretary of State may by regulations provide for: (a) the election of the chairman and the appointment of other members of the Council, including any conditions to be fulfilled for appointment<sup>12</sup>; (b) the tenure of office of the chairman and other members of the Council, including the circumstances in which they cease to hold office or may be removed or suspended from office<sup>13</sup>; and (c) the appointment of, constitution of, and exercise of functions by committees and sub-committees of the Council, including committees and sub-committees which consist of or include persons who are not members of the Council<sup>14</sup>.

The Council may regulate its own procedure<sup>15</sup>. The validity of any proceedings of the Council is not affected by a vacancy amongst its members or by a defect in the appointment of a member<sup>16</sup>. The Council must establish and maintain a system for the declaration and registration of private interests of its members<sup>17</sup>, and must publish entries recorded in the register of members' interests<sup>18</sup>. The Council may appoint such employees as it considers appropriate on such terms and conditions as it may determine<sup>19</sup>. The application of the seal of the Council must be authenticated by the signature of any member of the Council<sup>20</sup>, or any other person who has been authorised by the Council, whether generally or specially, for that purpose<sup>21</sup>. A document purporting to be duly executed under the seal of the Council or to be signed on its behalf is to be received in evidence and, unless the contrary is proved, is to be taken to be so executed or signed<sup>22</sup>.

Members of the Council are disqualified from membership of the House of Commons<sup>23</sup>. The Council is a public authority for the purposes of the Freedom of Information Act 2000<sup>24</sup> and the records of the Council are public records<sup>25</sup>.

1 In the National Health Service Reform and Health Care Professions Act 2002 ss 26-29 and Sch 7, the Council for the Regulation of Health Care Professionals is referred to as 'the Council': s 25(1), (5). The Council now calls itself the Council for Healthcare Regulatory Excellence, stating that it considers this name better reflects its role and purpose and avoids possible confusion with bodies of a similar name to its previous name.

The National Health Service Reform and Health Care Professions Act 2002 ss 26-29 and Sch 7 extend to the whole of the United Kingdom (see s 42(5)) and to the Isles of Scilly (see the National Health Service Reform and

Health Care Professions Act 2002 (Isles of Scilly) Order 2003, SI 2003/50, art 2). For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

2 National Health Service Reform and Health Care Professions Act 2002 s 25(1). As to bodies corporate see COMPANIES; CORPORATIONS.

3 As to the Crown see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 353.

4 National Health Service Reform and Health Care Professions Act 2002 s 25(4), Sch 7 para 1.

5 Ibid Sch 7 para 4(1)(a). As to the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

6 Ibid Sch 7 para 4(1)(b). As to the Scottish Ministers see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

7 National Health Service Reform and Health Care Professions Act 2002 Sch 7 para 4(1)(c).

8 Ibid Sch 7 para 4(1)(d). Such a member need not be a member of a regulatory body: Sch 7 para 4(1)(d). The number of members to be appointed under this head is to be one fewer than the total number of other members: Sch 7 para 4(4). 'Regulatory body' means:

102 (1) the General Medical Council (s 25(3)(a));

103 (2) the General Dental Council (s 25(3)(b));

104 (3) the General Optical Council (s 25(3)(c));

105 (4) the General Osteopathic Council (s 25(3)(d));

106 (5) the General Chiropractic Council (s 25(3)(e));

107 (6) subject to s 26(5) (see PARA 303 post), the Royal Pharmaceutical Society of Great Britain (s 25(3)(f));

108 (7) subject to s 26(6) (see PARA 303 post), the Pharmaceutical Society of Northern Ireland (s 25(3)(g));

109 (8) the Health Professions Council and the Nursing and Midwifery Council (s 25(3)(i)); and

110 (9) any other regulatory body within the meaning of the Health Act 1999 Sch 3 (see PARA 292 note 2 ante) established by an Order in Council under s 60 (see PARA 291 ante) (National Health Service Reform and Health Care Professions Act 2002 s 25(3)(j)).

As to the General Medical Council see PARA 13 et seq ante; as to the General Dental Council see PARA 389 et seq post; as to the General Optical Council see PARA 813 et seq post; as to the General Osteopathic Council see PARA 499 et seq post; as to the General Chiropractic Council see PARA 591 et seq post; as to the Royal Pharmaceutical Society of Great Britain see PARA 881 et seq post; as to the Health Professions Council see PARA 308 et seq post; and as to the Nursing and Midwifery Council see PARA 691 et seq post.

9 Ibid Sch 7 para 4(1)(e). The Secretary of State may direct a special health authority to exercise his function of appointing members of the Council under Sch 7 para 4(1)(e): Sch 7 para 5(1). If he does so, the National Health Service Act 1977 has effect as if the directions were directions of the Secretary of State under s 16D (as added), and, accordingly, the function was exercisable by the special health authority under s 16D (as added): National Health Service Reform and Health Care Professions Act 2002 Sch 7 para 5(2). As to special health authorities see HEALTH SERVICES vol 54 (2008) PARA 136 et seq. As to the Secretary of State see PARA 5 ante.

10 Council for the Regulation of Health Care Professionals (Appointment etc) Regulations 2002, SI 2002/2376, reg 4(1). A person is a lay person if he: (1) is not a chairman or member of a regulatory body (reg 4(2)(a)); or (2) is not and never has been a member of the professions regulated by the Pharmacy Act 1954 (see PARA 880 et seq post), the Pharmacy (Northern Ireland) Order 1976, SI 1976/1213, the Medical Act 1983 (see PARA 1 et seq ante), the Dentists Act 1984 (see PARA 385 et seq post), the Opticians Act 1989 (see PARA 803 et seq post), the Osteopaths Act 1993 (see PARA 499 et seq post), the Chiropractors Act 1994 (see PARA 591 et seq post), the Nursing and Midwifery Order 2001, SI 2002/253 (see PARA 691 et seq post) or the Health Professions Order 2001, SI 2002/254 (as amended) (see PARA 308 et seq post): Council for the Regulation of Health Care Professionals (Appointment etc) Regulations 2002, SI 2002/2376, reg 4(2)(b).

11 National Health Service Reform and Health Care Professions Act 2002 Sch 7 para 4(2). The first chairman is appointed as such from among the members by the Secretary of State: Sch 7 para 4(3). As to the election of subsequent chairmen see PARA 297 post.

12 Ibid Sch 7 para 6(a).

13 Ibid Sch 7 para 6(b).

14 Ibid Sch 7 para 6(c). As to the regulations made see the Council for the Regulation of Health Care Professionals (Appointment etc) Regulations 2002, SI 2002/2376; the text to note 10 supra; and PARAS 295-299 post.

15 National Health Service Reform and Health Care Professions Act 2002 Sch 7 para 7.

16 Ibid Sch 7 para 8.

17 Ibid Sch 7 para 9(1).

18 Ibid Sch 7 para 9(2).

19 Ibid Sch 7 para 11.

20 Ibid Sch 7 para 17(a).

21 Ibid Sch 7 para 17(b).

22 Ibid Sch 7 para 18.

23 See the House of Commons Disqualification Act 1975 s 1, Sch 1 Pt II (both as amended); and PARLIAMENT vol 78 (2010) PARA 905 et seq.

24 See the Freedom of Information Act 2000 s 1, Sch 1 Pt 6 (Sch 1 Pt 6 as amended); and CONFIDENCE AND DATA PROTECTION vol 8(1) (2003 Reissue) PARA 583 et seq.

25 See the Public Records Act 1958 s 10, Sch 1 Pt II (Sch Pt II as amended); and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 835 et seq.

## **UPDATE**

### **294-299 Constitution**

SI 2002/2376 revoked: SI 2008/2927. The Council for Healthcare Regulatory Excellence (Appointment, Procedure etc) Regulations 2008, SI 2008/2927, make provision in relation to the constitution of the renamed Council for Healthcare Regulatory Excellence (see the Health and Social Care Act 2008 s 113(1)), and in particular with regard to (1) the conditions of appointment for the chair and non-executive members of the Council (SI 2008/2927 reg 2); (2) the tenure of appointment of the chair and non-executive members (reg 3); (3) deputising arrangements in respect of the chair (reg 4); (4) circumstances in which the chair and non-executive members may be suspended (reg 5); (5) circumstances in which the chair and non-executive members may be removed from office; and (6) committees (reg 7).

### **294 Constitution of the Council for [Healthcare Regulatory Excellence]**

TEXT AND NOTES 1, 2--The Council for the Regulation of Health Care Professionals is to be known instead as the Council for Healthcare Regulatory Excellence: Health and Social Care Act 2008 s 113(1). 2002 Act s 25(1) amended accordingly: Health and Social Care Act 2008 s 113(2).

TEXT AND NOTES 5-9, 11--2002 Act Sch 7 para 4 substituted: Health and Social Care Act 2008 s 114(2).

NOTE 8--2002 Act s 25(3) amended: Health and Social Care Act 2008 Sch 10 para 17.

NOTE 9--2002 Act Sch 7 para 5 repealed: Health Act 2006 Sch 9.

TEXT AND NOTES 12-14--2002 Act Sch 7 para 6(a) substituted, Sch 7 para 6(b) amended, Sch 7 para 6(ba) added: Health and Social Care Act 2008 s 114(3).

TEXT AND NOTE 19--2002 Act Sch 7 para 11 substituted: Health and Social Care Act 2008 s 114(5).

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## **295. Conditions relating to membership.**

It is a condition for appointment as a member<sup>1</sup> of the Council<sup>2</sup> that the member lives or works wholly or mainly in the United Kingdom<sup>3</sup>. A person is disqualified for appointment as a member of the Council if he:

- 462 (1) has been convicted in the United Kingdom of any offence, or convicted elsewhere for an offence which, if committed in any part of the United Kingdom would constitute a criminal offence in that part, and in either case has had passed on him a sentence of imprisonment, whether suspended or not, for a period of not less than three months without the option of a fine, and which has not been quashed on appeal<sup>4</sup>;
- 463 (2) has been adjudged bankrupt or had sequestration of his estate awarded unless, in either case, he has been discharged or the bankruptcy order has been annulled or rescinded<sup>5</sup>; or has made a composition or arrangement with, or granted a trust deed for, his creditors unless he has been discharged in respect of it<sup>6</sup>;
- 464 (3) is a person whose tenure of office as the chairman, convener, member or director of any public body<sup>7</sup> has been terminated on the grounds that it was not in the interests, or conducive to the good management, of that body that he should continue to hold that office<sup>8</sup>;
- 465 (4) has been subject to any investigation or proceedings concerning his professional conduct by any licensing body<sup>9</sup> anywhere in the world, where the outcome was adverse<sup>10</sup>;
- 466 (5) is currently subject to any investigation or proceedings concerning his professional conduct by any licensing body anywhere in the world<sup>11</sup>;
- 467 (6) is subject to certain orders<sup>12</sup>;
- 468 (7) has been removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commissioners or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which he was responsible or to which he was privy, or which he by his conduct contributed to or facilitated<sup>13</sup>; or
- 469 (8) has previously served as a member of the Council for two consecutive terms of office<sup>14</sup>.

Subject to earlier resignation<sup>15</sup> and the provisions relating to removal from office<sup>16</sup>, the term of office of a member is for a period of four years<sup>17</sup>. A member is, at the end of his term of office, eligible for re-appointment<sup>18</sup>.

A member must be suspended from office as a member of the Council in any period during which he is subject to any investigation or proceedings concerning his professional conduct by any licensing body anywhere in the world<sup>19</sup>.

1 'Member' in relation to the Council (see note 2 infra) includes the chairman; and 'chairman' means, unless the context otherwise requires, the chairman of the Council: Council for the Regulation of Health Care Professionals (Appointment etc) Regulations 2002, SI 2002/2376, reg 1(2). As to the membership of the Council see PARA 294 ante.

2 For the meaning of 'the Council' see PARA 294 note 1 ante.



3 Council for the Regulation of Health Care Professionals (Appointment etc) Regulations 2002, SI 2002/2376, reg 3. For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

4 Ibid reg 2(a).

5 Ibid reg 2(b)(i). As to bankruptcy see BANKRUPTCY AND INDIVIDUAL INSOLVENCY.

6 Ibid reg 2(b)(ii). As to compositions and arrangements with creditors see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 859 et seq.

7 'Public body' means a body established by or under any enactment including an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament: ibid reg 1(2).

8 Ibid reg 2(c).

9 'Licensing body' means any body that licenses or regulates any profession: ibid reg 1(2).

10 Ibid reg 2(d).

11 Ibid reg 2(e).

12 Ibid reg 2(f). The orders are a disqualification order under the Company Directors Disqualification Act 1986 (see COMPANIES vol 15 (2009) PARA 1575 et seq) or the Companies (Northern Ireland) Order 1986, SI 1986/1032 (NI 6), or an order made under the Insolvency Act 1986 s 429(2)(b) (failure to pay under county court administration order: see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 910).

13 Council for the Regulation of Health Care Professionals (Appointment etc) Regulations 2002, SI 2002/2376, reg 2(g)(i). As to the removal from office of a charity trustee or trustee for a charity see CHARITIES vol 8 (2010) PARAS 294, 566. As to the Charity Commissioners see CHARITIES vol 8 (2010) PARA 538 et seq.

This provision also refers to the removal of persons under the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 s 7 (powers of Court of Session to deal with management of charities) from being concerned in the management or control of any body: Council for the Regulation of Health Care Professionals (Appointment etc) Regulations 2002, SI 2002/2376, reg 2(g)(ii).

14 Ibid reg 2(h).

15 A member may resign at any time by giving notice in writing to the Council, and to the person or body that appointed him: ibid reg 5(3). As to the appointing persons and bodies see PARA 294 ante. For the meaning of 'writing' see PARA 20 note 22 ante.

16 As to the provisions relating to removal from office see ibid reg 10; and PARA 298 post.

17 Ibid reg 5(1). Where a member ceases to be a member, the person or body that appointed him appoints a member to replace him, and the term of office of that new member is for the period specified in reg 5(1): reg 5(4).

18 Ibid reg 5(2). See, however, the restriction on appointment in reg 2(h) (see the text to note 14 supra).

19 Ibid reg 9.

## UPDATE

### 294-299 Constitution

SI 2002/2376 revoked: SI 2008/2927. The Council for Healthcare Regulatory Excellence (Appointment, Procedure etc) Regulations 2008, SI 2008/2927, make provision in relation to the constitution of the renamed Council for Healthcare Regulatory Excellence (see the Health and Social Care Act 2008 s 113(1)), and in particular with regard to (1) the conditions of appointment for the chair and non-executive members of the Council (SI 2008/2927 reg 2); (2) the tenure of appointment of the chair and non-executive members (reg 3); (3) deputising arrangements in respect of the chair (reg 4); (4) circumstances in which the chair and non-executive members may be suspended (reg 5); (5) circumstances in which the chair and non-executive members may be removed from office; and (6) committees (reg 7).



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## **296. Chairman and deputy chairman.**

The election of a chairman<sup>1</sup>, after the first chairman of the Council<sup>2</sup>, must be conducted in accordance with the specified procedure<sup>3</sup>. The term of office of a chairman is for a period of three years<sup>4</sup> and a member<sup>5</sup> is not prevented from being elected chairman merely because he has previously been chairman<sup>6</sup>. The chairman holds office until he resigns by giving notice in writing to the Council<sup>7</sup>, he ceases to be a member of the Council<sup>8</sup>, or he is removed from office by a majority vote of the other members of the Council<sup>9</sup>.

The members may appoint one of the members, other than the chairman, to be deputy chairman for such period, not exceeding the remainder of his term as a member<sup>10</sup>, as they may specify on making the appointment<sup>11</sup>. The deputy chairman holds office until he resigns by giving notice in writing to the Council<sup>12</sup>, he ceases to be a member of the Council before the remainder of his term as a member expires<sup>13</sup>, or he is removed from office by a majority vote of the other members of the Council<sup>14</sup>. The deputy chairman performs the duties of chairman in any period during which the chairman is suspended from office<sup>15</sup>.

1 For the meaning of 'chairman' see PARA 295 note 1 ante.

2 For the meaning of 'the Council' see PARA 294 note 1 ante. As to the appointment of the first chairman of the Council see PARA 294 note 11 ante.

3 I.e. the procedure set out in the Council for the Regulation of Health Care Professionals (Appointment etc) Regulations 2002, SI 2002/2376, Schedule (see PARA 297 post): reg 6.

4 Ibid reg 7(1). This provision is subject to reg 7(2): see the text to notes 7-9 infra.

5 For the meaning of 'member' see PARA 295 note 1 ante.

6 Council for the Regulation of Health Care Professionals (Appointment etc) Regulations 2002, SI 2002/2376, reg 7(3).

7 Ibid reg 7(2)(a). For the meaning of 'writing' see PARA 20 note 22 ante.

8 Ibid reg 7(2)(b).

9 Ibid reg 7(2)(c). As to the membership of the Council see PARA 294 ante.

10 As to a member's term of membership see PARA 295 ante.

11 Council for the Regulation of Health Care Professionals (Appointment etc) Regulations 2002, SI 2002/2376, reg 8(1). A member is not prevented from being appointed deputy chairman merely because he has previously been deputy chairman: reg 8(4).

12 Ibid reg 8(2)(a).

13 Ibid reg 8(2)(b).

14 Ibid reg 8(2)(c).

15 I.e. under ibid reg 9 (see PARA 295 text to note 19 ante): reg 8(3).

## **UPDATE**

### **294-299 Constitution**

SI 2002/2376 revoked: SI 2008/2927. The Council for Healthcare Regulatory Excellence (Appointment, Procedure etc) Regulations 2008, SI 2008/2927, make provision in relation to the constitution of the renamed Council for Healthcare Regulatory Excellence (see the Health and Social Care Act 2008 s 113(1)), and in particular with regard to (1) the conditions of appointment for the chair and non-executive members of the Council (SI 2008/2927 reg 2); (2) the tenure of appointment of the chair and non-executive members (reg 3); (3) deputising arrangements in respect of the chair (reg 4); (4) circumstances in which the chair and non-executive members may be suspended (reg 5); (5) circumstances in which the chair and non-executive members may be removed from office; and (6) committees (reg 7).

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## **297. Election of chairman.**

The election of the chairman<sup>1</sup> takes place at a meeting of the Council<sup>2</sup>, known as 'the relevant meeting'<sup>3</sup>, and each member<sup>4</sup> who is present at the meeting at which the election takes place is entitled to one vote<sup>5</sup>. Where a vacancy in the office of chairman occurs the Council must appoint a person who is not a member of the Council as the returning officer for the holding of an election to fill the vacancy<sup>6</sup>.

At least 21 days before the relevant meeting, the returning officer must give notice to the members of the Council inviting nominations for the office of chairman and stating<sup>7</sup> that a member of the Council who wishes to be nominated as a candidate for election as chairman must give to the returning officer, not later than seven days before the relevant meeting, a notice of nomination signed by himself and by two other members<sup>8</sup>. If only one person is nominated seven days before the relevant meeting, at that meeting the returning officer declares the nominee elected<sup>9</sup>. If more than one person is nominated seven days before the relevant meeting, a ballot is conducted<sup>10</sup>.

The election takes place by secret ballot and, if necessary, by successive secret ballots until one candidate has an overall majority of the votes cast<sup>11</sup>. If no candidate receives an overall majority of the votes cast in the first ballot, the name of the candidate who received the smallest number of votes in the first ballot and that of any candidate who wishes to withdraw is omitted and a further ballot is held<sup>12</sup>. If there is a tie in a final ballot, the returning officer declares the election to have been inconclusive and the election process begins again<sup>13</sup>. The returning officer declares the number of votes cast for each candidate and must declare and publish the result of the election<sup>14</sup>.

1 For the meaning of 'chairman' see PARA 295 note 1 ante.

2 For the meaning of 'the Council' see PARA 294 note 1 ante.

3 Council for the Regulation of Health Care Professionals (Appointment etc) Regulations 2002, SI 2002/2376, reg 6, Schedule para 2.

4 For the meaning of 'member' see PARA 295 note 1 ante.

5 Council for the Regulation of Health Care Professionals (Appointment etc) Regulations 2002, SI 2002/2376, reg 6, Schedule para 7.

6 Ibid Schedule para 1.

7 Ibid Schedule para 3.

8 Ibid Schedule para 4.

9 Ibid Schedule para 5.

10 Ibid Schedule para 6.

11 Ibid Schedule para 8.

12 Ibid Schedule para 9. If no candidate receives an overall majority of the votes cast in the second ballot, the procedure described in Sch para 9 is followed and successive ballots are held in the same way until one candidate receives an overall majority of the votes cast in a ballot: Schedule para 10. In any inconclusive ballot, if more than one candidate receives the lowest number of votes, a subsidiary ballot is held between them and

the candidate with the lowest number of votes in that subsidiary ballot is the candidate whose name is omitted from the subsequent main ballot. In a subsidiary ballot if more than one candidate receives the lowest number of votes, further subsidiary ballots are held between the candidates tying with the lowest number of votes until one of them is eliminated: Schedule para 11.

13 Ibid Schedule para 12.

14 Ibid Schedule para 13.

## **UPDATE**

### **294-299 Constitution**

SI 2002/2376 revoked: SI 2008/2927. The Council for Healthcare Regulatory Excellence (Appointment, Procedure etc) Regulations 2008, SI 2008/2927, make provision in relation to the constitution of the renamed Council for Healthcare Regulatory Excellence (see the Health and Social Care Act 2008 s 113(1)), and in particular with regard to (1) the conditions of appointment for the chair and non-executive members of the Council (SI 2008/2927 reg 2); (2) the tenure of appointment of the chair and non-executive members (reg 3); (3) deputising arrangements in respect of the chair (reg 4); (4) circumstances in which the chair and non-executive members may be suspended (reg 5); (5) circumstances in which the chair and non-executive members may be removed from office; and (6) committees (reg 7).

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## **298. Removal of members from office.**

A member<sup>1</sup> must be removed from office as a member of the Council<sup>2</sup> if:

- 470 (1) he fails to attend any meeting of the Council for a period of three consecutive months<sup>3</sup> without the permission of the Council unless the Council is satisfied<sup>4</sup> that the absence was due to a reasonable cause<sup>5</sup> and the person in question will be able to attend meetings of the Council within such period as the Council considers reasonable<sup>6</sup>;
- 471 (2) the Council is satisfied that he has become incapable of performing his duties by reason of his physical or mental health<sup>7</sup>;
- 472 (3) any of certain provisions relating to disqualification for appointment<sup>8</sup> becomes applicable to him<sup>9</sup>;
- 473 (4) he has been suspended from office<sup>10</sup> and the outcome of the investigation or proceedings is adverse to him<sup>11</sup>;
- 474 (5) he ceases to live or work wholly or mainly in the United Kingdom<sup>12</sup>; or
- 475 (6) he has been appointed under specified provisions<sup>13</sup> and he ceases to be a lay person<sup>14</sup>.

1 For the meaning of 'member' see PARA 295 note 1 ante.

2 For the meaning of 'the Council' see PARA 294 note 1 ante.

3 For the meaning of 'month' see PARA 13 note 14 ante.

4 Council for the Regulation of Health Care Professionals (Appointment etc) Regulations 2002, SI 2002/2376, reg 10(a).

5 Ibid reg 10(a)(i).

6 Ibid reg 10(a)(ii).

7 Ibid reg 10(b).

8 Ie the provisions of ibid reg 2(a)-(d) or reg 2(f)-(h): see PARA 295 ante.

9 Ibid reg 10(c).

10 Ie under ibid reg 9: see PARA 295 text to note 19 ante.

11 Ibid reg 10(d).

12 Ibid reg 10(e). For the meaning of 'United Kingdom' see PARA 1 note 3 ante. As to the necessity for a member to live or work in the United Kingdom see PARA 295 text to notes 1-3 ante.

13 Ie under the National Health Service Reform and Health Care Professions Act 2002 Sch 7 para 4(1)(a)-(c) or Sch 7 para 4(1)(e): see PARA 294.

14 Council for the Regulation of Health Care Professionals (Appointment etc) Regulations 2002, SI 2002/2376, reg 10(f). For the meaning of 'lay person' see PARA 294 note 10 ante.

## **UPDATE**

### **294-299 Constitution**

SI 2002/2376 revoked: SI 2008/2927. The Council for Healthcare Regulatory Excellence (Appointment, Procedure etc) Regulations 2008, SI 2008/2927, make provision in relation to the constitution of the renamed Council for Healthcare Regulatory Excellence (see the Health and Social Care Act 2008 s 113(1)), and in particular with regard to (1) the conditions of appointment for the chair and non-executive members of the Council (SI 2008/2927 reg 2); (2) the tenure of appointment of the chair and non-executive members (reg 3); (3) deputising arrangements in respect of the chair (reg 4); (4) circumstances in which the chair and non-executive members may be suspended (reg 5); (5) circumstances in which the chair and non-executive members may be removed from office; and (6) committees (reg 7).



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## **299. Committees and sub-committees.**

The Council<sup>1</sup> may appoint committees of the Council consisting wholly or partly of members<sup>2</sup> of the Council or wholly of persons who are not members of the Council<sup>3</sup>. Such a committee may appoint sub-committees consisting wholly or partly of members of the committee, whether or not they are members of the Council, or wholly of persons who are not members of the Council or the committee<sup>4</sup>.

1 For the meaning of 'the Council' see PARA 294 note 1 ante.

2 For the meaning of 'member' see PARA 295 note 1 ante.

3 Council for the Regulation of Health Care Professionals (Appointment etc) Regulations 2002, SI 2002/2376, reg 11(1).

4 Ibid reg 11(2). Regulation 2(a)-(g) (see PARA 295 heads (1)-(7) ante) applies to the appointment of members of committees and sub-committees appointed under reg 11 as it applies to the appointment of members of the Council: reg 11(3).

## **UPDATE**

### **294-299 Constitution**

SI 2002/2376 revoked: SI 2008/2927. The Council for Healthcare Regulatory Excellence (Appointment, Procedure etc) Regulations 2008, SI 2008/2927, make provision in relation to the constitution of the renamed Council for Healthcare Regulatory Excellence (see the Health and Social Care Act 2008 s 113(1)), and in particular with regard to (1) the conditions of appointment for the chair and non-executive members of the Council (SI 2008/2927 reg 2); (2) the tenure of appointment of the chair and non-executive members (reg 3); (3) deputising arrangements in respect of the chair (reg 4); (4) circumstances in which the chair and non-executive members may be suspended (reg 5); (5) circumstances in which the chair and non-executive members may be removed from office; and (6) committees (reg 7).

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## **(ii) Finance and Reports**

### **300. Remuneration and allowances.**

The Council<sup>1</sup> may pay to its chairman<sup>2</sup>, and to any other member of the Council<sup>3</sup>, such remuneration and allowances as the Secretary of State<sup>4</sup> may determine<sup>5</sup>. The Council may pay to any member of a committee or sub-committee of the Council<sup>6</sup> such allowances as the Secretary of State may determine<sup>7</sup>. If the Secretary of State so determines, the Council must provide for the payment of such pension, allowance or gratuities as the Secretary of State may determine to or in respect of a person who is or has been the chairman or any other member of the Council<sup>8</sup>. If the Secretary of State determines that there are special circumstances that make it right for a person ceasing to hold office as chairman of the Council to receive compensation, the Council must pay to him such compensation as the Secretary of State may determine<sup>9</sup>.

1 For the meaning of 'the Council' see PARA 294 note 1 ante.

2 As to the chairman of the Council see PARA 296 ante.

3 As to the membership of the Council see PARA 294 ante.

4 As to the Secretary of State see PARA 5 ante.

5 National Health Service Reform and Health Care Professions Act 2002 s 25(4), Sch 7 para 10(1).

6 As to committees and sub-committees of the Council see PARA 299 ante.

7 National Health Service Reform and Health Care Professions Act 2002 Sch 7 para 10(2).

8 Ibid Sch 7 para 10(3).

9 Ibid Sch 7 para 10(4).

## **UPDATE**

### **300 Remuneration and allowances**

TEXT AND NOTES--National Health Service Reform and Health Care Professions Act 2002 Sch 7 para 10 amended: Health and Social Care Act 2008 s 114(4).

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### **301. Finance and accounts.**

The Secretary of State<sup>1</sup> may make payments out of money provided by Parliament<sup>2</sup> to the Council<sup>3</sup> of such amounts, at such times and on such conditions, if any, as he considers appropriate<sup>4</sup>. An appropriate authority<sup>5</sup> may make payments to the Council of such amounts, at such times and on such conditions, if any, as it considers appropriate<sup>6</sup>. The Council has no power to borrow money except that<sup>7</sup> the Secretary of State may make loans out of money provided by Parliament to the Council on such terms, including terms as to repayment and interest, as he may determine<sup>8</sup>, and an appropriate authority may make loans to the Council on such terms, including terms as to repayment and interest, as it may determine<sup>9</sup>.

The Council must keep accounts in such form as the Secretary of State may determine<sup>10</sup> and must prepare annual accounts in respect of each financial year<sup>11</sup> in such form as the Secretary of State may determine<sup>12</sup>. The Council must send copies of the annual accounts to the Secretary of State and the Comptroller and Auditor General<sup>13</sup> within such period after the end of the financial year to which the accounts relate as the Secretary of State may determine<sup>14</sup>. The Comptroller and Auditor General must examine, certify and report on the annual accounts and must lay copies of the accounts and of his report before Parliament<sup>15</sup>.

1 As to the Secretary of State see PARA 5 ante.

2 As to Parliamentary control over public expenditure see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 230.

3 For the meaning of 'the Council' see PARA 294 note 1 ante.

4 National Health Service Reform and Health Care Professions Act 2002 s 25(4), Sch 7 para 14(1). The Secretary of State may give directions to the Council as to the application of any sums received by it under Sch 7 para 14(1) or Sch 7 para 14(3) (see the text to note 8 infra): Sch 7 para 14(7). The Council must comply with any such directions: Sch 7 para 14(9).

5 For these purposes, 'appropriate authority' means the National Assembly for Wales, the Scottish Ministers or the Department of Health, Social Services and Public Safety in Northern Ireland: *ibid* Sch 7 para 14(10). As to the National Assembly for Wales and the Scottish Ministers see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

6 *Ibid* Sch 7 para 14(2). An appropriate authority may give directions to the Council as to the application of any sums received by it from the authority under Sch 7 para 14(2) or Sch 7 para 14(4) (see the text to note 9 infra): Sch 7 para 14(8). The Council must comply with any such directions: Sch 7 para 14(9).

7 *Ibid* Sch 7 para 14(6).

8 *Ibid* Sch 7 para 14(3). See also note 4 supra. The approval of the Treasury is required as to the amount and terms of any loan under this provision: Sch 7 para 14(5). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

9 *Ibid* Sch 7 para 14(4). See also note 6 supra.

10 *Ibid* Sch 7 para 15(1).

11 'Financial year' means the period beginning with the date on which the Council is established and ending with the next 31 March following that date, and each successive period of 12 months ending with 31 March: *ibid* Sch 7 para 15(7). The provisions establishing the Council were brought into force on 1 December 2002: see the National Health Service Reform and Health Care Professions Act 2002 (Commencement No 1) Order 2002, SI 2002/2202.

12 National Health Service Reform and Health Care Professions Act 2002 Sch 7 para 15(2).

13 As to the Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 724-726.

14 National Health Service Reform and Health Care Professions Act 2002 Sch 7 para 15(3). Within that period, the Council must also send copies of the annual accounts to the Scottish Ministers, the National Assembly for Wales, and the Department of Health, Social Services and Public Safety in Northern Ireland: Sch 7 para 15(4).

15 Ibid Sch 7 para 15(5). As to the laying of documents before Parliament see PARLIAMENT vol 34 (Reissue) PARA 941. A copy of the accounts must be laid before the Scottish Parliament by the Scottish Ministers, and before the Northern Ireland Assembly by the Department of Health, Social Services and Public Safety, and the National Assembly for Wales must publish the accounts: Sch 7 para 15(6).

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### **302. Reports and information.**

The Council<sup>1</sup> must prepare a report on the exercise of its functions<sup>2</sup> during each financial year<sup>3</sup>. As soon as possible after the end of each financial year, the Council must lay a copy of its report for that year before Parliament<sup>4</sup> and the National Assembly for Wales<sup>5</sup>. The Council must comply with any request by Parliament to prepare, and lay before it, other reports or to provide Parliament with other information<sup>6</sup>.

1 For the meaning of 'the Council' see PARA 294 note 1 ante.

2 As to the functions of the Council see PARA 303 post.

3 National Health Service Reform and Health Care Professions Act 2002 s 25(4), Sch 7 para 16(1). For the meaning of 'financial year' see PARA 301 note 11 ante.

4 As to the laying of documents before Parliament see PARLIAMENT vol 34 (Reissue) PARA 941.

5 National Health Service Reform and Health Care Professions Act 2002 Sch 7 para 16(2). The Council must also lay a copy of its report before the Scottish Parliament and the Northern Ireland Assembly: Sch 7 para 16(2). As to the National Assembly for Wales, the Scottish Parliament and the Northern Ireland Assembly see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

6 Ibid Sch 7 para 16(3). The Council must also comply with any corresponding request by the Scottish Parliament, in relation to matters which concern a subject for which any member of the Scottish Executive has general responsibility, and the Northern Ireland Assembly, in relation to transferred matters concerning Northern Ireland ('transferred matters' having the meaning given by the Northern Ireland Act 1998 s 4(1)): National Health Service Reform and Health Care Professions Act 2002 Sch 7 para 16(4).

### **UPDATE**

### **302 Reports and information**

TEXT AND NOTES--National Health Service Reform and Health Care Professions Act 2002 Sch 7 para 16(1A) added: Health and Social Care Act 2008 s 114(6).

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### (iii) Functions

#### 303. Functions, powers and duties.

The general functions of the Council<sup>1</sup> are:

- 476 (1) to promote the interests of patients and other members of the public in relation to the performance of their functions by the regulatory bodies<sup>2</sup> and by their committees and officers<sup>3</sup>;
- 477 (2) to promote best practice in the performance of those functions<sup>4</sup>;
- 478 (3) to formulate principles relating to good professional self-regulation, and to encourage regulatory bodies to conform to them<sup>5</sup>; and
- 479 (4) to promote co-operation between regulatory bodies, and between them, or any of them, and other bodies performing corresponding functions<sup>6</sup>.

With certain exceptions<sup>7</sup> the Council may do anything which appears to it to be necessary or expedient for the purpose of, or in connection with, the performance of its functions<sup>8</sup>. The Council may, for example, do any of the following: (a) investigate, and report on, the performance by each regulatory body of its functions<sup>9</sup>; (b) where a regulatory body performs functions corresponding to those of another body, including another regulatory body, investigate and report on how the performance of such functions by the bodies in question compares<sup>10</sup>; (c) recommend to a regulatory body changes to the way in which it performs any of its functions<sup>11</sup>. The Council may arrange for the discharge of any of its functions by a committee, sub-committee<sup>12</sup>, member<sup>13</sup> or employee<sup>14</sup> of the Council<sup>15</sup>, or any other person<sup>16</sup>. The Council may arrange for such persons as it thinks fit to assist it in the discharge of any of its functions in relation to a particular case or class of case<sup>17</sup>.

The Secretary of State<sup>18</sup> or the National Assembly for Wales<sup>19</sup> may ask the Council for advice on any matter connected with a profession appearing to be a health care profession<sup>20</sup>. The Council must comply with such a request<sup>21</sup>.

1 For the meaning of 'the Council' see PARA 294 note 1 ante.

2 For the meaning of 'regulatory body' see PARA 294 note 8 ante.

3 National Health Service Reform and Health Care Professions Act 2002 s 25(2)(a).

4 Ibid s 25(2)(b).

5 Ibid s 25(2)(c).

6 Ibid s 25(2)(d).

7 The Council may not do anything in relation to the case of any individual in relation to whom: (1) there are, are to be, or have been proceedings before a committee of a regulatory body, or the regulatory body itself or any officer of the body (s 26(3)(a)); or (2) an allegation has been made to the regulatory body, or one of its committees or officers, which could result in such proceedings (s 26(3)(b)). However, this provision does not prevent the Council from taking action under s 28 or s 29 (see PARAS 305-307 post), but action under s 29 may be taken only after the regulatory body's proceedings have ended: s 26(4). For the purposes of s 26(3), (4), 'proceedings', in relation to a regulatory body, or one of its committees or officers, includes a process of decision-making by which a decision could be made affecting the registration of the individual in question: s

26(11). The Council may exercise its right to refer the case of a health care practitioner to the court after a relevant disciplinary decision has been taken by his professional body notwithstanding an allegation that may lead to other disciplinary proceedings or any other such proceedings: *Council for the Regulation of Health Care Professionals v General Medical Council* [2004] EWHC 527 (Admin), [2004] All ER (D) 541 (Mar).

The Council may not do anything in relation to the functions of the Royal Pharmaceutical Society of Great Britain (or its Council, or an officer or committee of the Society) unless those functions are: (a) conferred on the Society (or its Council, or an officer or committee of the Society) by or by virtue of any provision of the Pharmacy Act 1954, other than s 17 (the benevolent fund); (b) conferred as mentioned in the National Health Service Reform and Health Care Professions Act 2002 s 26(5)(a) by, or by virtue of, an Order in Council under the Health Act 1999 s 60 (see PARA 291 ante); or (c) otherwise conferred as mentioned in the National Health Service Reform and Health Care Professions Act 2002 s 26(5)(a) and relate to the regulation of the profession regulated by the Pharmacy Act 1954: National Health Service Reform and Health Care Professions Act 2002 s 26(5)(a)-(c). As to the Royal Pharmaceutical Society of Great Britain and its functions see PARA 881 et seq post.

As to the Pharmaceutical Society of Northern Ireland see the National Health Service Reform and Health Care Professions Act 2002 s 26(6).

8 Ibid s 26(1). The power in s 26(1) includes the power to acquire and dispose of land and other property, and to enter into contracts: s 25(4), Sch 7 para 3.

9 Ibid s 26(2)(a).

10 Ibid s 26(2)(b).

11 Ibid s 26(2)(c).

12 As to the appointment of committees and sub-committees see PARA 299 ante.

13 As to members of the Council see PARAS 294-295 ante.

14 As to the appointment of employees of the Council see PARA 294 ante.

15 National Health Service Reform and Health Care Professions Act 2002 Sch 7 para 12(1)(a).

16 Ibid Sch 7 para 12(1)(b). If the Council does arrange for the discharge of any function by any such person, the arrangements may include provision with respect to the payment of remuneration and allowances to, or amounts in respect of, such persons: Sch 7 para 12(2).

17 Ibid Sch 7 para 13(1). Such arrangements may include provision with respect to the payment of remuneration and allowances to, or amounts in respect of, such persons: Sch 7 para 13(2).

18 As to the Secretary of State see PARA 5 ante.

19 As to the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

20 National Health Service Reform and Health Care Professions Act 2002 s 26(7). This provision also applies to the Scottish Ministers and the Department of Health, Social Services and Public Safety in Northern Ireland: see s 26(7). 'Health care profession' means a profession (whether or not regulated by or by virtue of any enactment) which is concerned (wholly or partly) with the physical or mental health of individuals: s 26(12).

21 Ibid s 26(8).

## UPDATE

### 303 Functions, powers and duties

TEXT AND NOTES--The Secretary of State and the Welsh Ministers may require the Council to provide advice and investigate and report on matters relating to the regulation of the health care professions: see the National Health Service Reform and Health Care Professions Act 2002 s 26A (added by the Health and Social Care Act 2008 s 116).

For the purpose of ensuring that members of the public are informed about the Council and the exercise by it of its functions, the Council must publish or provide in such manner as it thinks fit information about the Council and the exercise of its functions: National Health Service Reform and Health Care Professions Act 2002 s 26B(1) (s 26B

added by the Health and Social Care Act 2008 s 117). Nothing in the National Health Service Reform and Health Care Professions Act 2002 26B(1) authorises or requires the publication or provision of information if the publication or provision of that information is prohibited by any enactment, or would constitute or be punishable as a contempt of court; and for these purposes 'enactment' has the same meaning as in the Health and Social Care Act 2008 Pt 2 (ss 98-128): National Health Service Reform and Health Care Professions Act 2002 s 26B(2), (3). The Council must from time to time seek the views of members of the public, and bodies which appear to the Council to represent the interests of patients, on matters relevant to the exercise by it of its functions: s 26B(4).

TEXT AND NOTES 1-6--The main objective of the Council in exercising its functions under the 2002 Act s 25(2)(b)-(d) is to promote the health, safety and well-being of patients and other members of the public: s 25(2A) (added by the Health and Social Care Act 2008 s 113(3)).

NOTE 7--2002 Act s 26(3)(a) amended as from a day to be appointed: Health and Social Care Act 2008 Sch 10 para 18. 2002 Act s 26(4) substituted: Health and Social Care Act 2008 s 115. 2002 Act s 26(5)(a)-(c) amended: SI 2007/289.

TEXT AND NOTES 18-21--2002 Act s 26(7), (8) repealed: Health and Social Care Act 2008 s 116(2), Sch 15 Pt 2.



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### **304. Regulatory bodies and the Council.**

Each regulatory body<sup>1</sup> must in the exercise of its functions co-operate with the Council<sup>2</sup>. If the Council considers that it would be desirable to do so for the protection of members of the public it may give directions requiring a regulatory body to make rules<sup>3</sup>, under any power the body has to do so, to achieve an effect which must be specified in the directions<sup>4</sup>. The Secretary of State<sup>5</sup> must make provision in regulations as to the procedure to be followed in relation to the giving of such directions<sup>6</sup>. The regulations must, in particular, make provision requiring the Council to consult a regulatory body before giving directions relating to it<sup>7</sup>.

The Council must send a copy of any directions to the relevant authority<sup>8</sup>, and the directions do not come into force until the date specified in an order made by the relevant authority<sup>9</sup>. The Secretary of State must lay before both Houses of Parliament<sup>10</sup> a draft of an order setting out any directions he receives<sup>11</sup>, and specifying the date on which the directions are to come into force<sup>12</sup>. These provisions<sup>13</sup> apply also to directions varying earlier directions<sup>14</sup>, and directions revoking earlier directions and given after both Houses of Parliament have resolved to approve the draft order specifying the date on which the earlier directions are to come into force<sup>15</sup>.

A regulatory body must comply with any directions which have come into force and have not been revoked<sup>16</sup>. A regulatory body is not to be taken to have failed to comply with such directions merely because a court determines that the rules made pursuant to the directions are to be construed in such a way that the effect for which the directions were given is not achieved<sup>17</sup>.

1 For the meaning of 'regulatory body' see PARA 294 note 8 ante.

2 National Health Service Reform and Health Care Professions Act 2002 s 27(1). For the meaning of 'the Council' see PARA 294 note 1 ante.

3 For the purposes of ibid s 27, 'making' rules includes amending or revoking rules; and 'rules' includes regulations, byelaws and schemes: s 27(15)(a), (b).

4 Ibid s 27(2). The Council may give such directions only in relation to rules which must be approved by the Privy Council (whether by order or not) before coming into force: s 27(3). As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

5 As to the Secretary of State see PARA 5 ante.

6 National Health Service Reform and Health Care Professions Act 2002 s 27(13). At the date at which this volume states the law no such regulations had been made.

7 Ibid s 27(14).

8 Ibid s 27(4). The relevant authority is the Secretary of State: s 27(5). The provisions of s 27(4), (5) apply also to directions revoking earlier directions (s 27(9)(a)), but which do not fall within s 27(8)(b)(i) (see the text to note 15 infra) (s 27(9)(b)); but the provisions of s 27(6), (7) (see the text to notes 9-12 infra) do not apply to such directions (s 27(9)). If the Council gives directions which fall within s 27(9), the earlier directions which those directions revoke are treated as if s 27(6), (7) had never applied to them, and as never in force: s 27(10).

9 Ibid s 27(6). See also note 8 supra.

10 As to the laying of documents before Parliament see PARLIAMENT vol 34 (Reissue) PARA 941.

11     le pursuant to the National Health Service Reform and Health Care Professions Act 2002 s 27(4) (see the text to note 8 supra): s 27(7)(a). See also note 8 supra.

12     Ibid s 27(7)(b). See also note 8 supra.

13     le ibid s 27(4)-(7): see the text to notes 8-12 supra.

14     Ibid s 27(8)(a).

15     Ibid s 27(8)(b)(i).

16     Ibid s 27(11).

17     Ibid s 27(12).

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### **305. Complaints about regulatory bodies.**

The Secretary of State<sup>1</sup> may make provision in regulations about the investigation by the Council<sup>2</sup> of complaints made to it about the way in which a regulatory body<sup>3</sup> has exercised any of its functions<sup>4</sup>. The regulations may, in particular, make provision as to:

- 480 (1) who, or what description of person, is entitled to complain<sup>5</sup>;
- 481 (2) the nature of complaints which the Council must, or need not, investigate<sup>6</sup>;
- 482 (3) matters which are excluded from investigation<sup>7</sup>;
- 483 (4) requirements to be complied with by a person who makes a complaint<sup>8</sup>;
- 484 (5) the procedure to be followed by the Council in investigating complaints<sup>9</sup>;
- 485 (6) the making of recommendations or reports by the Council following investigations<sup>10</sup>;
- 486 (7) the confidentiality, or disclosure, of any information supplied to the Council or acquired by it in connection with an investigation<sup>11</sup>;
- 487 (8) the use which the Council may make of any such information<sup>12</sup>;
- 488 (9) the making of payments to any persons in connection with investigations<sup>13</sup>;
- 489 (10) privilege<sup>14</sup> in relation to any matter published by the Council in the exercise of its functions under the regulations<sup>15</sup>.

The regulations may also make provision: (a) empowering the Council to require persons to attend before it<sup>16</sup>; (b) empowering the Council to require persons to give evidence or produce documents to it<sup>17</sup>; (c) about the admissibility of evidence<sup>18</sup>; (d) enabling the Council to administer oaths<sup>19</sup>. No person may be required by or by virtue of such regulations to give any evidence or produce any document or other material to the Council which he could not be compelled to give or produce in civil proceedings before the High Court<sup>20</sup>.

1 As to the Secretary of State see PARA 5 ante.

2 For the meaning of 'the Council' see PARA 294 note 1 ante.

3 For the meaning of 'regulatory body' see PARA 294 note 8 ante.

4 National Health Service Reform and Health Care Professions Act 2002 s 28(1). At the date at which this volume states the law s 28 is in force only in so far as it confers any power to make an order or regulations: see s 42(3)(b). Section 28 is to come into force for remaining purposes as from a day to be appointed under s 42(3). At the date at which this volume states the law no such day had been appointed.

5 Ibid s 28(2)(a).

6 Ibid s 28(2)(b).

7 Ibid s 28(2)(c).

8 Ibid s 28(2)(d).

9 Ibid s 28(2)(e).

10 Ibid s 28(2)(f).

11 Ibid s 28(2)(g).

12 Ibid s 28(2)(h).

13 Ibid s 28(2)(i).

14 As to privilege in relation to the production of documents in civil proceedings see CIVIL PROCEDURE vol 11 (2009) PARA 555 et seq.

15 National Health Service Reform and Health Care Professions Act 2002 s 28(2)(j).

16 Ibid s 28(3)(a).

17 Ibid s 28(3)(b).

18 Ibid s 28(3)(c).

19 Ibid s 28(3)(d). For the meaning of 'oath' see PARA 153 note 4 ante.

20 Ibid s 28(4). As to evidence from witnesses in civil proceedings see CIVIL PROCEDURE vol 11 (2009) PARA 966 et seq. As to the production of documents in civil proceedings see CIVIL PROCEDURE vol 11 (2009) PARAS 538-583.

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### **306. Relevant decisions of regulatory bodies.**

The following are relevant decisions that may be referred to the relevant court<sup>1</sup>:

- 490 (1) a direction of the statutory committee of the Royal Pharmaceutical Society of Great Britain<sup>2</sup> relating to the control of registrations<sup>3</sup>, or to disqualification and removal from the register of premises<sup>4</sup>;
- 491 (2) a direction<sup>5</sup> by a fitness to practise panel of the General Medical Council<sup>6</sup> that the fitness to practise of a medical practitioner was impaired otherwise than by reason of his physical or mental health<sup>7</sup>;
- 492 (3) a determination<sup>8</sup> by the professional conduct committee of the General Dental Council<sup>9</sup> relating to erasure or suspension of registration for crime or misconduct<sup>10</sup>;
- 493 (4) a disciplinary order<sup>11</sup> made by the disciplinary committee of the General Optical Council<sup>12</sup>;
- 494 (5) any step<sup>13</sup> taken by the professional conduct committee of the General Osteopathic Council<sup>14</sup>;
- 495 (6) any step<sup>15</sup> taken by the professional conduct committee of the General Chiropractic Council<sup>16</sup>;
- 496 (7) any corresponding measure taken in relation to a nurse or midwife<sup>17</sup>;
- 497 (8) any corresponding measure taken in relation to a member of a profession regulated by any regulatory body established<sup>18</sup> under the Health Act 1999<sup>19</sup>.

The following are also relevant decisions:

- 498 (a) a final decision of the relevant committee not to take any disciplinary measure<sup>20</sup>;
- 499 (b) any corresponding decision taken in relation to a nurse or midwife<sup>21</sup>, or to any person regulated as mentioned in head (8) above<sup>22</sup>; and
- 500 (c) a decision of the relevant regulatory body, or one of its committees or officers, to restore a person to the register following his removal from it<sup>23</sup>.

1 The things to which the National Health Service Reform and Health Care Professions Act 2002 s 29 applies by virtue of s 29(1), (2) (see *infra*) are referred to as 'relevant decisions': see s 29(3). As to reference to the relevant court see PARA 307 post.

2 As to the statutory committee of the Royal Pharmaceutical Society of Great Britain see PARA 917 et seq post.

3 *Ie* under the Pharmacy Act 1954 s 8 (as amended): see PARA 920 post.

4 *Ie* under the Medicines Act 1968 s 80 (as amended) (see PARA 922 post): National Health Service Reform and Health Care Professions Act 2002 s 29(1)(a).

5 *Ie* under the Medical Act 1983 s 35D (as added): see PARAS 144-145 ante.

6 As to the General Medical Council see PARA 13 et seq ante. As to the constitution of fitness to practise panels see PARAS 138-140 ante. As to fitness to practise panels as statutory committees see PARA 26 ante. As to the functions of fitness to practise panels see PARA 144 et seq ante. As to proceedings relating to fitness to practise, and the procedure before fitness to practise panels, see PARA 151 et seq ante.

- 7 National Health Service Reform and Health Care Professions Act 2002 s 29(1)(c) (substituted by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135 art 16(1), Sch 1 para 13).
- 8 le under the Dentists Act 1984 s 27: see PARA 456 post.
- 9 As to the professional conduct committee of the General Dental Council see PARA 460 post.
- 10 National Health Service Reform and Health Care Professions Act 2002 s 29(1)(e).
- 11 le under the Opticians Act 1989 s 17: see PARAS 846-852 post.
- 12 National Health Service Reform and Health Care Professions Act 2002 s 29(1)(f). As from a day to be appointed, this provision is substituted so as to refer to a direction by the fitness to practise committee of the General Optical Council, instead of referring to a disciplinary order made by the disciplinary committee: see s 29(1)(f) (prospectively substituted by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, Sch 1 para 13). At the date at which this volume states the law, no such day had been appointed. As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 post. As to the disciplinary committee of the General Optical Council see PARA 857 post.
- 13 le under the Osteopaths Act 1993 s 22: see PARA 550 post.
- 14 National Health Service Reform and Health Care Professions Act 2002 s 29(1)(g). As to the professional conduct committee of the General Osteopathic Council see PARA 514 post.
- 15 le under the Chiropractors Act 1994 s 22: see PARA 649 post.
- 16 National Health Service Reform and Health Care Professions Act 2002 s 29(1)(h). As to the professional conduct committee of the General Chiropractic Council see PARA 609 post.
- 17 le under the Nursing and Midwifery Order 2001, SI 2002/253 (see PARA 691 et seq post): National Health Service Reform and Health Care Professions Act 2002 s 29(1)(i) (amended by the Health Act 1999 (Consequential Amendments) (Nursing and Midwifery) Order 2004, SI 2004/1771, art 3, Sch para 1(a)).
- 18 le a body established by an Order in Council under the Health Act 1999 s 60: see PARA 291 ante.
- 19 National Health Service Reform and Health Care Professions Act 2002 s 29(1)(j).
- 20 le under the provision referred to in whichever of *ibid* s 29(1)(a)-(h) applies (see heads (1)-(6) in the text): s 29(2)(a).
- 21 le under the Nursing and Midwifery Order 2001, SI 2002/253: see PARA 691 et seq post.
- 22 le as is mentioned in the National Health Service Reform and Health Care Professions Act 2002 s 29(1)(j) (see head (8) in the text): s 29(2)(b) (amended by the Health Act 1999 (Consequential Amendments) (Nursing and Midwifery) Order 2004, SI 2004/1771, Sch para 1(b)).
- 23 le in accordance with any of the measures referred to in the National Health Service Reform and Health Care Professions Act 2002 s 29(1)(a)-(j) (s 29(1)(i) as amended) (see heads (1)-(8) in the text): s 29(2)(c).

## UPDATE

### 306 Relevant decisions of regulatory bodies

TEXT AND NOTES 1-4--2002 Act s 29(1)(a) substituted: Health and Social Care Act 2008 s 118(2)(a).

TEXT AND NOTES 5-7--2002 Act s 29(1)(c) repealed as from a day to be appointed: Health and Social Care Act 2008 s 118(2)(b), Sch 15 Pt 2. For transitional provision see s 118(5).

TEXT AND NOTES 8-10--Now, head (3) a direction by the professional conduct committee, the professional performance committee or the health committee of the general dental council under any of the Dentists Act 1984 s 27B, 27C, 36P or 36Q following a determination that a person's fitness to practise as a dentist or as a member of a profession complementary to dentistry, or class of members of such a profession, is

impaired: 2002 Act s 29(1)(e) (substituted by the Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011; and amended by the Health and Social Care Act 2008 s 118(2)(c), Sch 15 Pt 2. As to the committees of the General Dental Council see PARA 395.

TEXT AND NOTES 11, 12--2002 Act s 29(1)(f) repealed as from a day to be appointed: Health and Social Care Act 2008 s 118(2)(d). For transitional provision see s 118(6).

NOTE 12--Appointed day is 30 June 2005: London Gazette, 3 June 2005.

TEXT AND NOTES 13, 14--Now head (5) any step taken by the Professional Conduct Committee of the General Osteopathic Council under the Osteopaths Act 1993 s 22 (which relates to action to be taken in cases of allegations referred to the Professional Conduct Committee), or by the Health Committee of the General Osteopathic Council under s 23 (which relates to action to be taken in cases of allegations referred to the Health Committee): 2002 Act s 29(1)(g) (substituted by the Health and Social Care Act 2008 s 118(2)(e)).

TEXT AND NOTES 15, 16--Now head (6) any step taken by the Professional Conduct Committee of the General Chiropractic Council under the Chiropractors Act 1994 s 22 (which relates to action to be taken in cases of allegations referred to the Professional Conduct Committee), or by the Health Committee of the General Chiropractic Council under s 23 (which relates to action to be taken in cases of allegations referred to the Health Committee): 2002 Act s 29(1)(h) (substituted by the Health and Social Care Act 2008 s 118(2)(f)).

TEXT AND NOTES 18, 19--Now head (8) any corresponding measure taken in relation to a member of a profession regulated by the Health Professions Order 2001, SI 2002/254, under that order: 2002 Act s 29(1)(j) (substituted by the Health and Social Care Act 2008 s 118(2)(g)).

NOTE 20--A decision of a fitness to practise panel to stay misconduct proceedings as an abuse of process constitutes a 'final decision' within the meaning of the 2002 Act s 29(2)(a): *Re Saluja (Reference of decision by General Medical Council in disciplinary proceedings); Council for the Regulation of Healthcare Professionals v General Medical Council* [2006] EWHC 2784 (Admin), [2007] 2 All ER 905.

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### **307. Reference of relevant decisions to court.**

If the Council<sup>1</sup> considers<sup>2</sup> that:

- 501 (1) a relevant decision<sup>3</sup> has been unduly lenient<sup>4</sup> whether as to any finding of professional misconduct or fitness to practise on the part of the practitioner concerned, or lack of such a finding, or as to any penalty imposed, or both<sup>5</sup>; or
- 502 (2) a relevant decision<sup>6</sup> should not have been made<sup>7</sup>,

and that it would be desirable for the protection of members of the public for the Council to take action<sup>8</sup>, the Council may refer the case to the relevant court<sup>9</sup>.

The Council may not so refer a case after the end of the period of four weeks beginning with the last date on which the practitioner concerned has the right to appeal against the relevant decision<sup>10</sup>.

If the Council does so refer a case:

- 503 (a) the case is to be treated by the court to which it has been referred as an appeal by the Council against the relevant decision, even though the Council was not a party to the proceedings resulting in the relevant decision<sup>11</sup>; and
- 504 (b) the body which made the relevant decision is to be a respondent<sup>12</sup>.

The court may<sup>13</sup>:

- 505 (i) dismiss the appeal<sup>14</sup>;
- 506 (ii) allow the appeal and quash the relevant decision<sup>15</sup>;
- 507 (iii) substitute for the relevant decision any other decision which could have been made by the committee or other person concerned<sup>16</sup>; or
- 508 remit the case to the committee or other person concerned to dispose of the case in accordance with the directions of the court<sup>17</sup>.

The court may make such order as to costs as it thinks fit<sup>18</sup>.

1 For the meaning of 'the Council' see PARA 294 note 1 ante.

2 Where all material evidence has been placed before the disciplinary tribunal and it has given due consideration to the relevant factors, the Council should place weight on the expertise brought to bear in evaluating how best the needs of the public and the profession should be protected; where, however, there has been a failure of process, or evidence is taken into account that was not placed before the disciplinary tribunal, the decision reached by that tribunal will inevitably need to be reassessed: *Ruscillo v Council for the Regulation of Health Care Professionals, Council for the Regulation of Health Care Professionals v Nursing and Midwifery Council* [2004] EWCA Civ 1356.

If the Council is led to believe that a case has been 'under prosecuted' or that relevant evidence has not been put before the tribunal with the consequence that the tribunal's decision is flawed, the Council should, in the first instance, make inquiries of the relevant health care regulatory body as to what occurred, and the body in question should co-operate with the Council and make available any material that was not before the disciplinary tribunal, although arrangements protecting the interests of complainants and witnesses should not be disturbed without good reason; there will, however, be cases where it is in the public interest that additional



evidence should be placed before the court: *Ruscillo v Council for the Regulation of Health Care Professionals*, *Council for the Regulation of Health Care Professionals v Nursing and Midwifery Council* supra; and see also *Council for the Regulation of Healthcare Professionals v General Medical Council* [2004] EWHC 1850 (Admin) at [15], [2004] All ER (D) 562 (Jul) at [15] per Collins J; *Council for the Regulation of Health Care Professionals v Health Professions Council* [2005] EWHC 93 (Admin), [2005] All ER (D) 64 (Feb). See also note 13 infra.

3 le a relevant decision falling within the National Health Service Reform and Health Care Professions Act 2002 s 29(1): see PARA 306 heads (1)-(8) ante. For the meaning of 'relevant decision' see PARA 306 note 1 ante.

4 As to the test of whether a penalty is unduly lenient see note 13 infra.

National Health Service Reform and Health Care Professions Act 2002 s 29(4)(a). The Council may refer a case to the High Court under s 29(4)(a) if it is concerned that: (1) the decision in relation to the imposition of a penalty is unduly lenient, whether because the findings of professional misconduct are inadequate, or because the penalty does not adequately reflect the findings of professional misconduct that have been made, or both; and (2) it is desirable in the interests of the public to take action in respect that decision: *Ruscillo v Council for the Regulation of Health Care Professionals*, *Council for the Regulation of Health Care Professionals v Nursing and Midwifery Council* [2004] EWCA Civ 1356.

The National Health Service Reform and Health Care Professions Act 2002 s 29(4)(a) deals with all possible outcomes of a disciplinary hearing including acquittals: *Ruscillo v Council for the Regulation of Health Care Professionals*, *Council for the Regulation of Health Care Professionals v Nursing and Midwifery Council* supra; *Council for the Regulation of Healthcare Professionals v General Medical Council* [2004] EWHC 1850 (Admin), [2004] All ER (D) 562 (Jul).

It is important that the grounds of appeal specify clearly which of the provisions in the National Health Service Reform and Health Care Professions Act 2002 s 29(4) are being relied on. If it is intended to argue that any finding was unduly lenient, whether or not in addition to the contention that the penalty was unduly lenient, the particular finding must be identified and the matters relied on in support of the argument specified. In cases where relevant aggravating material was not put before the regulatory body, the material must be identified. If the appeal is based solely on a claim that the penalty was unduly lenient, the appellant can only rely on what was put before the regulatory body: *Council for the Regulation of Healthcare Professionals v Nursing and Midwifery Council* supra at [9] per Collins J.

6 le a relevant decision falling within the National Health Service Reform and Health Care Professions Act 2002 s 29(2): see PARA 306 ante.

7 Ibid s 29(4)(b). Although s 29(4)(b) says nothing about undue leniency, it is implicit that the Council will not refer a case to the High Court unless it considers that the failure of the disciplinary tribunal to impose any penalty is unduly lenient to the practitioner: *Ruscillo v Council for the Regulation of Health Care Professionals*, *Council for the Regulation of Health Care Professionals v Nursing and Midwifery Council* [2004] EWCA Civ 1356. This principle also applies in relation to a decision to restore a practitioner to the register: *Council for the Regulation of Health Care Professionals v Health Professions Council* [2005] EWHC 93 (Admin), [2005] All ER (D) 64 (Feb). See also note 5 supra.

8 le under the National Health Service Reform and Health Care Professions Act 2002 s 29.

9 Ibid s 29(4). The 'relevant court', in the case of a person whose address in the register of practitioners in question is (or if he were registered would be) in Scotland, means the Court of Session; in the case of a person whose address in the register of practitioners in question is (or if he were registered would be) in Northern Ireland, means the High Court of Justice in Northern Ireland; and in the case of any other person (including one who is not registered and is not seeking registration or restoration to the register), means the High Court of Justice in England and Wales: s 29(5). As to the High Court of Justice in England and Wales see COURTS vol 10 (Reissue) PARA 602 et seq.

The Council may exercise its right to refer a case to the court after a relevant disciplinary decision has been taken by the professional body notwithstanding an allegation that may lead to other disciplinary proceedings or any other such proceedings: *Council for the Regulation of Health Care Professionals v General Medical Council* [2004] EWHC 527 (Admin), [2004] All ER (D) 541 (Mar).

10 National Health Service Reform and Health Care Professions Act 2002 s 29(6).

11 Ibid s 29(7)(a).

12 Ibid s 29(7)(b). The person who was dealt with in the relevant decision should also be joined as respondent: *Council for the Regulation of Healthcare Professionals v Nursing and Midwifery Council* [2004] EWHC 585 (Admin) at [5], [2004] All ER (D) 581 (Mar) at [5] per Collins J.

13 On an appeal, the court is concerned with the decision as to the penalty, and its role is to consider whether the disciplinary tribunal has properly performed its task so as to reach a correct decision as to the imposition of a penalty. In doing this the court's role is no different from that of the Council in considering whether a relevant decision has been unduly lenient: *Ruscillo v Council for the Regulation of Health Care Professionals, Council for the Regulation of Health Care Professionals v Nursing and Midwifery Council* [2004] EWCA Civ 1356. The test of whether a penalty is unduly lenient is whether it is one which a disciplinary tribunal, having regard to the relevant facts and to the object of the disciplinary proceedings, could reasonably have imposed, and in this context must involve considering whether, having regard to the material facts, the decision reached has due regard for the safety of the public and the reputation of the profession: *Ruscillo v Council for the Regulation of Health Care Professionals, Council for the Regulation of Health Care Professionals v Nursing and Midwifery Council* supra. See also *Council for the Regulation of Health Care Professionals v General Medical Council* [2005] EWHC 579 (Admin), [2005] All ER (D) 169 (Apr). Where all material evidence has been placed before the disciplinary tribunal and it has given due consideration to the relevant factors, the court should place weight on the expertise brought to bear in evaluating how best the needs of the public and the profession should be protected; where, however, there has been a failure of process, or evidence is taken into account on appeal that was not placed before the disciplinary tribunal, the decision reached by that tribunal will inevitably need to be reassessed: *Ruscillo v Council for the Regulation of Health Care Professionals, Council for the Regulation of Health Care Professionals v Nursing and Midwifery Council* supra. The object of the scheme of the statutory provisions being the protection of the public, the principle of double jeopardy does not apply to cases referred to the court by the Council: *Ruscillo v Council for the Regulation of Health Care Professionals, Council for the Regulation of Health Care Professionals v Nursing and Midwifery Council* supra. As to double jeopardy (otherwise known as the doctrines of *autrefois acquit* and *autrefois convict*) see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1272 et seq. Findings of fact may be attacked on appeal provided that the attack forms part of a challenge to the penalty imposed, but the court will exercise caution in such circumstances and is likely to interfere with underlying findings of fact only in exceptional cases and where a finding of fact is manifestly wrong: *Council for the Regulation of Healthcare Professionals v General Medical Council* [2005] EWHC 68 (Admin), [2005] All ER (D) 304 (Jan). A court may also quash a decision for inadequacy of reasons (*Council for the Regulation of Healthcare Professionals v General Medical Council* supra at [55] per Richards J); but inadequacy of reasons should not lead to remission to the disciplinary tribunal if the court may confidently reach its own decision on the merits (*Council for the Regulation of Healthcare Professionals v General Dental Council* [2005] EWHC 87 (Admin), [2005] All ER (D) 47 (Feb)).

As to appeals generally see CPR Pt 52; and CIVIL PROCEDURE vol 12 (2009) PARA 1657 et seq. Where an application is made to the court to adduce additional evidence pursuant to CPR 52.11(2), the court should not apply the principle in *Ladd v Marshall* [1954] 3 All ER 745, [1954] 1 WLR 1489, CA (as to which see CIVIL PROCEDURE vol 12 (2009) PARA 1676). The fact that the evidence could have been, but was not, placed before the disciplinary tribunal can have no bearing on whether it should be admitted by the court. The court will, however, be concerned, just as the Council should be, to be sure that the introduction of such evidence is truly in the public interest: *Ruscillo v Council for the Regulation of Health Care Professionals, Council for the Regulation of Health Care Professionals v Nursing and Midwifery Council* supra. It makes no difference whether it is the Council or the practitioner who seeks to adduce fresh evidence to the court on an appeal by the Council; the correct approach should depend on the nature of the case rather than the identity of the party and the test relates to whether it can properly be regarded as being in the public interest to admit further evidence on the appeal: *Council for the Regulation of Health Care Professionals v Health Professions Council* [2005] EWHC 93 (Admin), [2005] All ER (D) 64 (Feb).

14 National Health Service Reform and Health Care Professions Act 2002 s 29(8)(a).

15 Ibid s 29(8)(b).

16 Ibid s 29(8)(c). See *Council for the Regulation of Healthcare Professionals v General Dental Council* [2005] EWHC 87 (Admin), [2005] All ER (D) 47 (Feb).

17 National Health Service Reform and Health Care Professions Act 2002 s 29(8)(d). See *Council for the Regulation of Healthcare Professionals v General Medical Council* [2004] EWHC 1850 (Admin), [2004] All ER (D) 562 (Jul); *Council for the Regulation of Health Care Professionals v Health Professions Council* [2005] EWHC 93 (Admin), [2005] All ER (D) 64 (Feb).

18 National Health Service Reform and Health Care Professions Act 2002 s 29(8). Where the Council for the Regulation of Health Care Professionals is not successful on an appeal, two sets of costs may be awarded against it in respect of the costs of the regulatory body and any individual defendant: *Council for the Regulation of Healthcare Professionals v Nursing and Midwifery Council* [2004] All ER (D) 582 (Mar). As to the award of more than one set of costs in a claim see JUDICIAL REVIEW vol 61 (2010) PARA 684. As to costs generally see CIVIL PROCEDURE vol 12 (2009) PARA 1729 et seq.

## UPDATE

### 307 Reference of relevant decisions to court

NOTE 9--Definition of the 'relevant court' substituted: Health and Social Care Act 2008 s 118(3).

TEXT AND NOTE 10--Now a period of 40 days beginning with the day which is the last day on which the practitioner concerned can appeal against the relevant decision: National Health Service Reform and Health Care Professions Act 2002 s 29(6) (amended by the Health and Social Care Act 2008 s 118(4)).

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### **(3) REGULATION BY THE HEALTH PROFESSIONS COUNCIL**

#### **(i) The Council**

##### **A. CONSTITUTION**

##### **308. Membership.**

The Health Professions Council<sup>1</sup> is a body corporate<sup>2</sup>, consisting of: 13 members, known as 'registrant members', who are appointed by the Council on being elected under the election scheme made by the Council<sup>3</sup>; 12 members, known as 'lay members', who are appointed by the Privy Council<sup>4</sup>; and a further 13 members, known as 'alternate members', appointed by the Council on being elected under the election scheme<sup>5</sup>. The Council must appoint an elected candidate to be a registrant member or alternate member in accordance with criteria set out in the election scheme made under the following provisions<sup>6</sup>.

The Council must provide in rules<sup>7</sup> for an election scheme to elect the registrant members and alternate members and may provide in the rules for by-elections<sup>8</sup>. The election scheme must provide that:

- 509 (1) a person seeking election:  
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- 146. (a) is registered in the part of the register<sup>9</sup> for which he seeks election but no person may be elected for more than one part of the register at a time<sup>10</sup>;
- 147. (b) lives or works wholly or mainly in the United Kingdom<sup>11</sup>;
- 148. (c) is not the subject of any allegation, investigation or proceedings concerning his fitness to practise<sup>12</sup>; and
- 149. (d) is wholly or mainly engaged in the practice, teaching or management of the profession in respect of which he is registered and seeks election, or in research in those fields<sup>13</sup>;
- 103
- 510 (2) at least one registrant member and one alternate member is appointed from each part of the register and the number of members from each part is equal<sup>14</sup>;
- 511 (3) of the registrant and alternate members, at least one member is selected from each of the countries of the United Kingdom<sup>15</sup> and that member lives or works wholly or mainly in the country concerned<sup>16</sup>;
- 512 (4) a person may only vote in respect of one part of the register<sup>17</sup>, for candidates who represent a part of the register in which he is registered at the time of the election<sup>18</sup>;
- 513 (5) a person may vote even if he lives or works outside the United Kingdom<sup>19</sup>;
- 514 (6) where someone ceases to be a registrant member or alternate member a replacement is appointed by the Council<sup>20</sup>.

The Council must provide such information and advice for voters and candidates about the purpose and conduct of the elections as it considers appropriate<sup>21</sup>.

On a proposal from the Council or otherwise, the Privy Council may by order<sup>22</sup> vary the size or composition of the Council<sup>23</sup>, provided that: (i) the number of registrant members constitutes no

less than half the total number of members and the number of registrant members does not exceed the number of lay members by more than one<sup>24</sup>; (ii) the members live or work wholly or mainly in the United Kingdom<sup>25</sup>; (iii) there is at least one registrant member and one alternate member from each part of the register, and the number of registrant and alternate members from each part is equal<sup>26</sup>; (iv) in respect of the registrant and alternate members<sup>27</sup>, and the lay members<sup>28</sup>, at least one member is appointed from each of the countries of the United Kingdom and that member lives or works, wholly or mainly, in the country concerned<sup>29</sup>.

No proceedings of the Council are invalidated by any defect in the election or appointment of a member<sup>30</sup>. No person who is a member of the Council or any of its committees<sup>31</sup> or sub-committees<sup>32</sup> by virtue of his membership of any profession may take part in any proceedings of the Council in any period during which he is the subject of any investigations, proceedings or determination against him concerning his fitness to practise his profession<sup>33</sup>.

The Council must establish and maintain a system for the declaration and registration of private interests of its members and of other members of its committees and sub-committees<sup>34</sup>, and publish entries recorded in a register of members' interests<sup>35</sup>.

1 In the Health Professions Order 2001, SI 2002/254 (as amended), the Health Professions Council is referred to as 'the Council': arts 2, 3(1), Sch 3 para 1.

2 Ibid art 3(1). As to bodies corporate see COMPANIES; CORPORATIONS.

3 Ibid art 3(8), Sch 1 para 1(1)(a) (Sch 1 paras 1(1)(a)-(c), 3 amended by SI 2004/2033). As to the election scheme see the text to notes 6-20 infra.

As to the transitional provisions relating to the membership of the Council see PARA 312 post.

4 Health Professions Order 2001, SI 2002/254, Sch 1 para 1(1)(b) (as amended: see note 3 supra). 'Lay member' means, in relation to the Council or a statutory committee, any member who is not and never has been a registered member of one of the relevant professions: Sch 3 para 1. As to the statutory committees see PARA 313 post. For the meaning of 'relevant professions' see PARA 318 note 2 post.

Having consulted such persons as it considers appropriate, the Privy Council must appoint lay members from among persons who are not and never have been on the register or any of the registers kept under the Professions Supplementary to Medicine Act 1960 or Part 1 of the register of operating department practitioners maintained by the Association of Operating Department Practitioners and who have such qualifications, interests and experience as, in the opinion of the Privy Council, will be of value to the Council in the performance of its functions: Health Professions Order 2001, SI 2002/254, Sch 1 para 3 (as amended: see note 3 supra). Of the members appointed by the Privy Council, there must be at least one appointed from each country of the United Kingdom and that member must live or work wholly or mainly in the country concerned: Sch 1 para 4. Where the president is a registrant member, the Privy Council must in addition to the registrant members appointed under Sch 1 para 1(1)(a) (as amended) (see the text to note 3 supra) appoint one from the same profession as the president, and appoint one lay member in addition to those appointed under Sch 1 para 1(1)(b) (as amended): Sch 1 para 6. As to the president see PARA 310 post. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526. As to the exercise by the Privy Council of its powers under the Health Professions Order 2001, SI 2002/254 (as amended) see PARA 323 post.

If the Secretary of State has given a direction under the Health and Social Care (Community Health and Standards) Act 2003 s 187 to a special health authority to exercise any function of a Minister of the Crown relating to the making of appointments to a body mentioned in s 187, the Privy Council may direct the special health authority to exercise to the extent specified in the direction its functions under the Health Professions Order 2001, SI 2002/254, Sch 1 paras 1-16A (as amended) in relation to the appointment, replacement and removal of members of the Council: Sch 1 para 16A (added by the Health and Social Care (Community Health and Standards) Act 2003 s 187(8), Sch 12 para 8). As to special health authorities see HEALTH SERVICES vol 54 (2008) PARA 136 et seq.

5 Ibid Sch 1 para 1(1)(c) (as amended: see note 3 supra), Sch 3 para 1. The Council must appoint an alternate member for each registrant member: Sch 1 para 1(2). An alternate member has the same functions as a registrant member but he may attend a Council meeting in his capacity as an alternate member, and vote, only if his corresponding registrant member is unable to do so: Sch 1 para 1(3).

6 I.e. under ibid Sch 1 para 2 (see the text to notes 7-20 infra): Sch 1 para 1(4).

7 As to the making of rules see PARA 320 post.

8 Health Professions Order 2001, SI 2002/254, Sch 1 para 2(1). The Council must provide in rules for an election scheme in accordance with the provisions of Sch 1 para 2 no later than six months before the end of the second transitional period: Sch 2 para 7. For the meaning of 'second transitional period' see PARA 312 note 4 post. As to the election scheme see the Health Professions Council (Election Scheme) Rules 2004, approved by the Health Professions Council (Election Scheme) Rules Order of Council 2004, SI 2004/3318.

9 As to the meaning of 'part of the register' see PARA 325 note 12 post. For the meaning of 'register' see PARA 325 note 2 post.

10 Health Professions Order 2001, SI 2002/254, Sch 1 para 2(2)(a)(i).

11 Ibid Sch 1 para 2(2)(a)(ii). For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

12 Ibid Sch 1 para 2(2)(a)(iii). As to fitness to practise see PARA 343 et seq post.

13 Ibid Sch 1 para 2(2)(a)(iv).

14 Ibid Sch 1 para 2(2)(b).

15 'United Kingdom country' means England, Scotland, Wales and Northern Ireland: ibid Sch 3 para 1.

16 Ibid Sch 1 para 2(2)(c).

17 Ibid Sch 1 para 2(2)(d)(i).

18 Ibid Sch 1 para 2(2)(d)(ii).

19 Ibid Sch 1 para 2(2)(e).

20 Ibid Sch 1 para 2(2)(f). This provision is stated to be subject to Sch 1 para 8(3) which provides that if the unexpired term is less than 12 months, the vacancy need not be filled: see Sch 1 paras 2(2)(f), 8(3).

21 Ibid Sch 1 para 2(3).

22 As to the making of orders by the Privy Council see PARA 323 post.

23 Health Professions Order 2001, SI 2002/254, Sch 1 para 5.

24 Ibid Sch 1 para 5(a).

25 Ibid Sch 1 para 5(b).

26 Ibid Sch 1 para 5(c).

27 Ibid Sch 1 para 5(d)(i).

28 Ibid Sch 1 para 5(d)(ii).

29 Ibid Sch 1 para 5(d).

30 Ibid Sch 1 para 16(7).

31 As to committees see PARA 313 et seq post.

32 As to the power of the Council to establish sub-committees see PARA 319 post.

33 Health Professions Order 2001, SI 2002/254, Sch 1 para 16(8).

34 Ibid Sch 1 para 14(4)(a).

35 Ibid Sch 1 para 14(4)(b).

## **UPDATE**

### **308-312 Membership ... Transitional provisions**

The Health Professions Council must now be constituted as provided for by order of the Privy Council, subject to SI 2002/254 Sch 1 Pt 1: SI 2002/254 art 3(7A) (added by SI 2009/1182). All Council members must now be appointed and the system of alternate members for the registrant members is discontinued: see SI 2002/254 Sch 1 paras 1A, 1B, 13 (substituted for Sch 1 paras 1-13 by SI 2009/1182). For transitional provisions and the cancellation of elections to the Council see Health Care and Associated Professions (Miscellaneous Amendments and Practitioner Psychologists) Order 2009, SI 2009/1182, art 8, Sch 2 paras 17, 18. In exercise of the power so conferred, the Privy Council has made the Health Professions Council (Constitution) Order 2009, SI 2009/1345. The order reduces the size of the Council to 20 members, consisting of 10 registrant members and 10 lay members (art 2), provides for the determination of members' terms of office (art 3), and empowers the Council to make provision for members' education and training (art 4). Specified categories of persons are disqualified from appointment as members (art 5) and the circumstances in which members can be removed or suspended from office are prescribed (arts 6, 7). Provision is also made for the appointment of the chair of the Council (art 8), deputising arrangements in the chair's absence (art 9), and the effect of vacancies and defects in the appointment of members on the validity of the Council's proceedings (art 11). The quorum of the Council is 11 persons: art 10.

### **308 Membership**

TEXT AND NOTES 4, 5--Definitions of 'alternate member', 'corresponding registrant member', 'lay member' and 'registrant member' omitted: SI 2002/254 Sch 3 para 1 (amended by SI 2009/1182).

NOTE 4--SI 2002/254 Sch 1 para 16A revoked: Health Act 2006 Sch 9.

TEXT AND NOTE 30--SI 2002/254 Sch 1 para 16(7) revoked: SI 2009/1182.

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### **309. Tenure of office.**

The term of office of each member of the Council<sup>1</sup> is for a period of four years<sup>2</sup>. No member may be appointed for more than three consecutive terms<sup>3</sup>. A member may resign at any time by notice in writing addressed to the registrar<sup>4</sup>. Where a member appointed by the Privy Council<sup>5</sup> ceases to be a member, the Council must inform the Privy Council and the Privy Council must replace him<sup>6</sup>. Where a member does not complete his term of office, his successor is appointed for the remainder of the unexpired term<sup>7</sup>; he is appointed, in the case of registrant<sup>8</sup> and alternate<sup>9</sup> members, by the Council<sup>10</sup> or, in the case of lay members<sup>11</sup>, by the Privy Council<sup>12</sup>.

A person must be removed from office as a Council member if: (1) there is a change in his qualifications, interests or experience such that it appears to the Privy Council<sup>13</sup> that he will no longer contribute to the Council's exercise of its functions<sup>14</sup> in such a manner as justifies his continued membership<sup>15</sup>; (2) he ceases to live or work wholly or mainly in the United Kingdom<sup>16</sup> or, if he has been appointed as a member in respect of one of the countries of the United Kingdom, in that country<sup>17</sup>; (3) he ceases to be registered in the part of the register in respect of which he was appointed<sup>18</sup>; (4) he ceases to be wholly or mainly engaged in the practice, teaching or management of the profession for which he is registered and in respect of which he was appointed, or in research<sup>19</sup> in those fields<sup>20</sup>; (5) an order has been made against him by a practice committee<sup>21</sup>; (6) he is removed by a majority of at least two-thirds of the other members of the Council because of a serious and persistent deficiency in his attendance at meetings or in his conduct or performance at meetings<sup>22</sup>; (7) such other circumstances as may be provided for by the Council in standing orders occur<sup>23</sup>.

1 For the meaning of 'the Council' see PARA 308 note 1 ante. As to the membership of the Council see PARA 308 ante.

2 Health Professions Order 2001, SI 2002/254, art 3(8), Sch 1 para 9(1). As to the transitional provisions relating to the tenure of members of the Council see PARA 312 post.

3 Ibid Sch 1 para 11.

4 Ibid Sch 1 para 10. As to the registrar see PARA 324 post. For the meaning of 'writing' see PARA 20 note 22 ante.

5 As to members appointed by the Privy Council see PARA 308 ante. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

6 Health Professions Order 2001, SI 2002/254, Sch 1 para 7. This provision is expressed to be subject to Sch 1 para 8(3): see note 7 infra.

7 'The unexpired term' means the period beginning with the date on which the member ceased to be a member and ending with the date on which his full term of office would have expired: *ibid* Sch 1 para 8(2). If the unexpired term is less than 12 months, the vacancy need not be filled: Sch 1 para 8(3).

8 For the meaning of 'registrant member' see PARA 308 ante.

9 For the meaning of 'alternate member' see PARA 308 ante.

10 Health Professions Order 2001, SI 2002/254, Sch 1 para 8(1)(a). The person appointed for the unexpired term must, in the case of a registrant member or alternate member, be registered in the same part of the register as the member he is to replace and, in any case, must live or work wholly or mainly in the same country of the United Kingdom: Sch 1 para 8(4). As to the meaning of 'part of the register' see PARA 325 note 12



post. For the meaning of 'register' see PARA 325 note 2 post. For the meaning of 'United Kingdom country' see PARA 308 note 15 ante.

11 For the meaning of 'lay member' see PARA 308 ante.

12 Health Professions Order 2001, SI 2002/254, Sch 1 para 8(1)(b).

13 As to the exercise by the Privy Council of its powers under the Health Professions Order 2001, SI 2002/254 (as amended) see PARA 323 post.

14 As to the functions of the Council see PARA 318 post.

15 Health Professions Order 2001, SI 2002/254, Sch 1 para 9(2)(a).

16 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

17 Health Professions Order 2001, SI 2002/254, Sch 1 para 9(2)(b).

18 Ibid Sch 1 para 9(2)(c).

19 Ie the research mentioned in ibid Sch 1 para 2(2)(a)(iv): see PARA 308 head (1)(d) ante.

20 Health Professions Order 2001, SI 2002/254, Sch 1 para 9(2)(d).

21 Ibid Sch 1 para 9(2)(e). As to the practice committees see PARA 315 post.

22 Ibid Sch 1 para 9(2)(f).

23 Ibid Sch 1 para 9(2)(g). As to the making of standing orders see PARA 311 post.

## **UPDATE**

### **308-312 Membership ... Transitional provisions**

The Health Professions Council must now be constituted as provided for by order of the Privy Council, subject to SI 2002/254 Sch 1 Pt 1: SI 2002/254 art 3(7A) (added by SI 2009/1182). All Council members must now be appointed and the system of alternate members for the registrant members is discontinued: see SI 2002/254 Sch 1 paras 1A, 1B, 13 (substituted for Sch 1 paras 1-13 by SI 2009/1182). For transitional provisions and the cancellation of elections to the Council see Health Care and Associated Professions (Miscellaneous Amendments and Practitioner Psychologists) Order 2009, SI 2009/1182, art 8, Sch 2 paras 17, 18. In exercise of the power so conferred, the Privy Council has made the Health Professions Council (Constitution) Order 2009, SI 2009/1345. The order reduces the size of the Council to 20 members, consisting of 10 registrant members and 10 lay members (art 2), provides for the determination of members' terms of office (art 3), and empowers the Council to make provision for members' education and training (art 4). Specified categories of persons are disqualified from appointment as members (art 5) and the circumstances in which members can be removed or suspended from office are prescribed (arts 6, 7). Provision is also made for the appointment of the chair of the Council (art 8), deputising arrangements in the chair's absence (art 9), and the effect of vacancies and defects in the appointment of members on the validity of the Council's proceedings (art 11). The quorum of the Council is 11 persons: art 10.

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### **310. The president.**

The members of the Council<sup>1</sup> elect a president from among themselves for a term of four years<sup>2</sup>. The president holds office until whichever of the following first occurs<sup>3</sup>: (1) he resigns as president<sup>4</sup>; (2) he ceases to be a member of the Council<sup>5</sup>; (3) he is removed by a majority vote of the other members of the Council<sup>6</sup>. A person is not prevented from being elected president merely because he has previously been president<sup>7</sup>. The president may resign the office of president at any time by notice in writing addressed to the registrar<sup>8</sup>.

1 For the meaning of 'the Council' see PARA 308 note 1 ante. As to the membership of the Council see PARA 308 ante. As to the tenure of office of members see PARA 309 ante.

2 Health Professions Order 2001, SI 2002/254, art 3(8), Sch 1 para 12(1). As to the transitional provisions relating to the appointment of the first president of the Council see PARA 312 post.

3 Ibid Sch 1 para 12(2).

4 Ibid Sch 1 para 12(2)(a).

5 Ibid Sch 1 para 12(2)(b).

6 Ibid Sch 1 para 12(2)(c).

7 Ibid Sch 1 para 12(3).

8 Ibid Sch 1 para 12(4). As to the registrar see PARA 324 post. For the meaning of 'writing' see PARA 20 note 22 ante.

## **UPDATE**

### **308-312 Membership ... Transitional provisions**

The Health Professions Council must now be constituted as provided for by order of the Privy Council, subject to SI 2002/254 Sch 1 Pt 1: SI 2002/254 art 3(7A) (added by SI 2009/1182). All Council members must now be appointed and the system of alternate members for the registrant members is discontinued: see SI 2002/254 Sch 1 paras 1A, 1B, 13 (substituted for Sch 1 paras 1-13 by SI 2009/1182). For transitional provisions and the cancellation of elections to the Council see Health Care and Associated Professions (Miscellaneous Amendments and Practitioner Psychologists) Order 2009, SI 2009/1182, art 8, Sch 2 paras 17, 18. In exercise of the power so conferred, the Privy Council has made the Health Professions Council (Constitution) Order 2009, SI 2009/1345. The order reduces the size of the Council to 20 members, consisting of 10 registrant members and 10 lay members (art 2), provides for the determination of members' terms of office (art 3), and empowers the Council to make provision for members' education and training (art 4). Specified categories of persons are disqualified from appointment as members (art 5) and the circumstances in which members can be removed or suspended from office are prescribed (arts 6, 7). Provision is also made for the appointment of the chair of the Council (art 8), deputising arrangements in the chair's absence (art 9), and the effect of vacancies and defects in the appointment of members on the validity of the Council's proceedings (art 11). The quorum of the Council is 11 persons: art 10.



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### **311. Council and committee decisions; standing orders.**

Decisions of the Council<sup>1</sup>, except those relating to appeals against decisions of the education and training committee<sup>2</sup>, and decisions of committees<sup>3</sup> other than the statutory committees<sup>4</sup>, are made by a majority vote of the members present and voting<sup>5</sup>. In the event of a tie, the chairman has an additional casting vote<sup>6</sup>.

Subject to certain provisions<sup>7</sup>, the Council must make standing orders in respect of the Council, its committees and sub-committees<sup>8</sup>, but not in respect of any of the statutory committees, to provide for<sup>9</sup>:

- 515 (1) the quorum at meetings<sup>10</sup>;
- 516 (2) the procedure at meetings<sup>11</sup>;
- 517 (3) establishing standards for the education and training, attendance and performance of members<sup>12</sup>;
- 518 (4) the composition of any of its committees and sub-committees<sup>13</sup>;
- 519 (5) the chairman of each of its committees to be a Council member<sup>14</sup>;
- 520 (6) the procedure by which a person is removed from office<sup>15</sup>;
- 521 (7) the functions of its officers<sup>16</sup>; and
- 522 (8) circumstances in which meetings are to be in private<sup>17</sup>.

1 For the meaning of 'the Council' see PARA 308 note 1 ante.

2 I.e. decisions under the Health Professions Order 2001, SI 2002/254, art 37 (see PARA 376 post): art 3(8), Sch 1 para 15(3). As to the education and training committee see PARA 314 post.

3 As to committees see PARA 313 et seq post.

4 Health Professions Order 2001, SI 2002/254, Sch 1 para 15(3). For the meaning of 'the statutory committees' see PARA 313 note 1 post.

5 Ibid Sch 1 para 15(1).

6 Ibid Sch 1 para 15(2).

7 I.e. subject to any provision made by or under the Health Professions Order 2001, SI 2002/254 (as amended), and subject to Sch 1 para 17 (see PARA 314 post): Sch 1 para 13(1).

8 As to the power of the Council to establish sub-committees see PARA 319 post.

9 Health Professions Order 2001, SI 2002/254, Sch 1 para 13(1).

10 Ibid Sch 1 para 13(1)(a).

11 Ibid Sch 1 para 13(1)(b).

12 Ibid Sch 1 para 13(1)(c).

13 Ibid Sch 1 para 13(1)(d).

14 Ibid Sch 1 para 13(1)(e). As to the membership of the Council see PARA 308 ante.

15 I.e. under ibid Sch 1 para 9(2) (see PARA 309 ante): Sch 1 para 13(1)(f).

16 Ibid Sch 1 para 13(1)(g). As to the power of the Council to appoint officers see PARA 319 post.

17 Ibid Sch 1 para 13(1)(h).

## **UPDATE**

### **308-312 Membership ... Transitional provisions**

The Health Professions Council must now be constituted as provided for by order of the Privy Council, subject to SI 2002/254 Sch 1 Pt 1: SI 2002/254 art 3(7A) (added by SI 2009/1182). All Council members must now be appointed and the system of alternate members for the registrant members is discontinued: see SI 2002/254 Sch 1 paras 1A, 1B, 13 (substituted for Sch 1 paras 1-13 by SI 2009/1182). For transitional provisions and the cancellation of elections to the Council see Health Care and Associated Professions (Miscellaneous Amendments and Practitioner Psychologists) Order 2009, SI 2009/1182, art 8, Sch 2 paras 17, 18. In exercise of the power so conferred, the Privy Council has made the Health Professions Council (Constitution) Order 2009, SI 2009/1345. The order reduces the size of the Council to 20 members, consisting of 10 registrant members and 10 lay members (art 2), provides for the determination of members' terms of office (art 3), and empowers the Council to make provision for members' education and training (art 4). Specified categories of persons are disqualified from appointment as members (art 5) and the circumstances in which members can be removed or suspended from office are prescribed (arts 6, 7). Provision is also made for the appointment of the chair of the Council (art 8), deputising arrangements in the chair's absence (art 9), and the effect of vacancies and defects in the appointment of members on the validity of the Council's proceedings (art 11). The quorum of the Council is 11 persons: art 10.

### **311 Council and committee decisions; standing orders**

TEXT AND NOTE 6--Reference to 'chairman' replaced by reference to 'chair': SI 2002/254 Sch 1 para 15(2) (amended by SI 2009/1182).

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### **312. Transitional provisions.**

When first constituted and thereafter until the end of the second transitional period<sup>1</sup>, the membership of the Council<sup>2</sup> is to be determined in accordance with transitional provisions<sup>3</sup>.

During the transitional periods<sup>4</sup>, the Council consists of: 13 members appointed by the Privy Council<sup>5</sup>, known as 'practitioner members'<sup>6</sup>; 12 members appointed by the Privy Council, known as 'lay members'<sup>7</sup>; and 13 members appointed by the Privy Council, known as 'alternate members'<sup>8</sup>. The number of practitioner members must constitute no less than half the total number of members but must not exceed the number of lay members by more than one<sup>9</sup>. There must be at least one practitioner member and one alternate member from each part of the register<sup>10</sup>, and the number of practitioner and alternate members from each part must be equal<sup>11</sup>. The members must live or work wholly or mainly in the United Kingdom<sup>12</sup>.

Unless he resigns or is removed<sup>13</sup>, each member holds office until the end of the second transitional period<sup>14</sup>. The Privy Council must determine the duration, which may not exceed four years, of the first term of office for members whose appointments take effect on the ending of the second transitional period<sup>15</sup> and must ensure that: (1) the terms of office of equal proportions of registrant and lay members, being one quarter or the nearest whole even number above one quarter, of the Council membership, expire at the end of one, two and three years respectively beginning with the day after the end of the second transitional period<sup>16</sup>; and (2) the terms of office of the remaining members expire at the end of four years beginning with the day after the end of the second transitional period<sup>17</sup>.

The first president of the Council must be appointed by the Privy Council from among the members of the Council<sup>18</sup>. Where the president is a practitioner member, the Privy Council must in addition to the practitioner members<sup>19</sup> appoint one from the same profession as the president, and must appoint one additional lay member<sup>20</sup>.

1 See note 4 infra.

2 For the meaning of 'the Council' see PARA 308 note 1 ante.

3 I.e. the provisions of the Health Professions Order 2001, SI 2002/254, Sch 2 (as amended): art 48(1), Sch 2 para 1 (Sch 2 paras 1, 3(1), (6) amended, and Sch 2 para 3(4A) added, by SI 2004/2033). The Privy Council may by order make such further transitional provisions as it considers appropriate: Health Professions Order 2001, SI 2002/254, art 48(2). As to the orders that have been made see the Council for Professions Supplementary to Medicine (Transfer of Staff and Property etc) Order 2002, SI 2002/922; the Health Professions Order 2001 (Transitional Provisions) Order 2002, SI 2002/1124; and the Health Professions Order 2001 (Transitional Provisions) Order of Council 2003, SI 2003/1700.

4 'The first transitional period' means the period beginning with the coming into force of the Health Professions Order 2001, SI 2002/254, art 3 and ending on the date of coming into force of the first order made by the Privy Council under art 6(1); and 'the second transitional period' means the period beginning with the day after the coming into force of the first order made by the Privy Council under art 6(1) and ending on the second anniversary of that date, unless ended earlier by the Privy Council on a proposal received by it from the Council: Sch 2 para 2. Article 3 first came into force on 1 April 2002: see the London Gazette (25 March 2002). The first order made by the Privy Council under art 6(1) was the Health Professions (Parts of and Entries in the Register) Order of Council 2003, SI 2003/1571, which came into force on 9 July 2003: see the Health Professions (Parts of and Entries in the Register) Order of Council 2003, SI 2003/1571, art 1(1).

5 As to the exercise by the Privy Council of its powers see PARA 323 post. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

6 Health Professions Order 2001, SI 2002/254, Sch 2 para 3(1)(a) (as amended: see note 3 supra). Following consultation of persons who appear to it to be representative of the relevant professions, the Privy Council must appoint, from among persons who are registered under the Professions Supplementary to Medicine Act 1960, or, if s 2 has been repealed, who were so registered immediately before that provision was repealed, one practitioner member from each of the professions regulated under that Act as at 1 April 2001: Health Professions Order 2001, SI 2002/254, Sch 2 para 3(4). Following consultation of persons who appear to it to be representative of operating department practitioners, the Privy Council must appoint one practitioner member from among persons who were registered in Part 1 of the register of operating department practitioners maintained by the Association of Operating Department Practitioners immediately before 18 October 2004, or who were removed from that register on transfer to the register: Sch 2 para 3(4A) (as added: see note 3 supra). For the meaning of 'register' see PARA 325 note 2 post. No person may be appointed as a practitioner member while he is the subject of fitness to practise investigations or proceedings whether under the Health Professions Order 2001, SI 2002/254 (as amended), or under the Professions Supplementary to Medicine Act 1960: Health Professions Order 2001, SI 2002/254, Sch 2 para 3(5). For the meaning of 'the relevant professions' see PARA 318 note 2 post.

7 Ibid Sch 2 para 3(1)(b) (as amended: see note 3 supra). For the meaning of 'lay member' see PARA 308 ante. Having consulted such persons as it considers appropriate, the Privy Council must appoint lay members from among persons who are not and never have been on the register or any of the registers kept under the Professions Supplementary to Medicine Act 1960 or Part 1 of the register of operating department practitioners maintained by the Association of Operating Department Practitioners and who have such qualifications, interests and experience as, in the opinion of the Privy Council, will be of value to the Council in the performance of its functions: Health Professions Order 2001, SI 2002/254, Sch 2 para 3(6) (as amended: see note 3 supra). As to the functions of the Council see PARA 318 post.

8 Ibid Sch 2 para 3(1)(c) (as amended: see note 3 supra). The Privy Council must appoint an alternate member for each practitioner member: Sch 2 para 3(2). An alternate member has the same functions as a practitioner member but he may attend a Council meeting in his capacity as an alternate member, and vote, only if his corresponding practitioner member is unable to do so: Sch 2 para 3(3).

9 Ibid Sch 3 para 3(7).

10 As to the meaning of 'part of the register' see PARA 325 note 12 post. For the meaning of 'register' see PARA 325 note 2 post.

11 Health Professions Order 2001, SI 2002/254, Sch 3 para 3(9).

12 Ibid Sch 3 para 3(8). For the meaning of 'United Kingdom' see PARA 1 note 3 ante. In respect of: (1) the practitioner and alternate members (Sch 3 para 3(10)(a)); and (2) the lay members (Sch 3 para 3(10)(b)), at least one member must be appointed from each of the countries of the United Kingdom and that member must live or work wholly or mainly in the country concerned: Sch 3 para 3(10). For the meaning of 'United Kingdom country' see PARA 308 note 15 ante.

13 Ie in such circumstances as are set out in ibid Sch 1 para 9(2): see PARA 309 ante.

14 Ibid Sch 3 para 4. Where a member ceases to be a member, the Privy Council may replace him; and the successor's term of office begins with the day after that on which the member ceases to be a member and ends at the end of the second transitional period: Sch 3 para 5.

15 Ibid Sch 3 para 6.

16 Ibid Sch 3 para 6(a).

17 Ibid Sch 3 para 6(b).

18 Ibid Sch 3 para 8.

19 Ie appointed under ibid Sch 3 para 3(1)(a): see the text to notes 4-6 supra.

20 Ie in addition to those appointed under ibid Sch 3 para 3(1)(b) (see the text to note 7 supra): Sch 3 para 9.

## UPDATE

### 308-312 Membership ... Transitional provisions

The Health Professions Council must now be constituted as provided for by order of the Privy Council, subject to SI 2002/254 Sch 1 Pt 1: SI 2002/254 art 3(7A) (added by SI 2009/1182). All Council members must now be appointed and the system of alternate members for the registrant members is discontinued: see SI 2002/254 Sch 1 paras 1A, 1B, 13 (substituted for Sch 1 paras 1-13 by SI 2009/1182). For transitional provisions and the cancellation of elections to the Council see Health Care and Associated Professions (Miscellaneous Amendments and Practitioner Psychologists) Order 2009, SI 2009/1182, art 8, Sch 2 paras 17, 18. In exercise of the power so conferred, the Privy Council has made the Health Professions Council (Constitution) Order 2009, SI 2009/1345. The order reduces the size of the Council to 20 members, consisting of 10 registrant members and 10 lay members (art 2), provides for the determination of members' terms of office (art 3), and empowers the Council to make provision for members' education and training (art 4). Specified categories of persons are disqualified from appointment as members (art 5) and the circumstances in which members can be removed or suspended from office are prescribed (arts 6, 7). Provision is also made for the appointment of the chair of the Council (art 8), deputising arrangements in the chair's absence (art 9), and the effect of vacancies and defects in the appointment of members on the validity of the Council's proceedings (art 11). The quorum of the Council is 11 persons: art 10.



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## **B. COMMITTEES**

### **313. Committees.**

There are four statutory committees<sup>1</sup> of the Council<sup>2</sup> known as the education and training committee<sup>3</sup>, the investigating committee<sup>4</sup>, the conduct and competence committee<sup>5</sup>, and the health committee<sup>6</sup>. Each of the statutory committees has the functions conferred on it<sup>7</sup>. The Council may establish such other committees as it considers appropriate in connection with the discharge of its functions<sup>8</sup>, and may, in particular, establish professional advisory committees whose function is to advise the Council and its statutory committees, whether on the request of the Council or otherwise, on matters affecting any relevant profession<sup>9</sup>. The Council may delegate any of its functions to such other committees, other than any power to make rules<sup>10</sup>. The Council must establish and maintain a system for the declaration and registration of private interests of members of its committees and sub-committees<sup>11</sup>, and publish entries recorded in a register of members' interests<sup>12</sup>.

1 The four committees are referred to as 'the statutory committees': Health Professions Order 2001, SI 2002/254, art 3(10). As to the powers of the Council (see note 2 *infra*) to establish sub-committees and regulate their procedure and to abolish its committees and sub-committees, and as to its powers where it considers any statutory committee is failing to perform its functions adequately, see PARA 319 post.

2 For the meaning of 'the Council' see PARA 308 note 1 *ante*.

3 Health Professions Order 2001, SI 2002/254, art 3(9)(a). As to the education and training committee see PARA 314 post.

4 *Ibid* art 3(9)(b). As to the investigating committee see PARA 351 *et seq post*.

5 *Ibid* art 3(9)(c). As to the conduct and competence committee see PARA 355 *et seq post*.

6 *Ibid* art 3(9)(d). As to the health committee see PARA 361 *et seq post*.

7 *Ie* conferred on it by the Health Professions Order 2001, SI 2002/254 (as amended): art 3(11).

8 *Ibid* art 3(12)(a). As to the functions of the Council see PARA 318 post. In appointing non-Council members to any committee set up under art 3(12), the Council must have regard, where appropriate and subject to the other provisions of the Health Professions Order 2001, SI 2002/254 (as amended), to the guidance issued by the Commissioner for Public Appointments: Sch 1 para 14(1). The Council must ensure that such members of the committee who are not Council members have such qualifications, interests or experience as, in the opinion of the Council, are relevant to the field with which the committee is mainly concerned: Sch 1 para 14(2). As to the Commissioner for Public Appointments see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 953.

9 *Ibid* art 3(12)(b). See also note 8 *supra*. For the meaning of 'relevant professions' see PARA 318 note 2 post. The majority of members of a professional advisory committee must be members of the profession concerned and the chairman must be a Council member: Sch 1 para 14(3).

10 *Ibid* art 3(12). As to the making of rules see PARA 320 post.

11 See *ibid* Sch 1 para 14(4)(a).

12 See *ibid* Sch 1 para 14(4)(b).

## **UPDATE**

### **313 Committees**

NOTE 9--SI 2002/254 Sch 1 para 14(3) revoked: SI 2009/1182.

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### **314. Education and training committee.**

The Council<sup>1</sup> must by standing orders provide in respect of the education and training committee for: (1) its composition<sup>2</sup>; (2) the appointment of members<sup>3</sup>; (3) its procedure<sup>4</sup>; (4) standards for the education and training, attendance and performance of its members;<sup>5</sup> and (5) the performance of its functions<sup>6</sup>. The standing orders must, in particular, provide for:

- 523 (a) the chairman of the committee to be a member of the Council<sup>7</sup>;
- 524 (b) the majority of members of the committee to have such qualifications and experience in relation to the provision, funding or assessment of professional education and training as the Council considers will be of value to the committee in the performance of its functions<sup>8</sup>;
- 525 (c) the Council to have regard<sup>9</sup> when selecting non-Council members for the committee to the guidance issued by the Commissioner for Public Appointments<sup>10</sup>;
- 526 (d) the committee to comprise fewer members than the Council<sup>11</sup>;
- 527 (e) the members, who may but need not be members of the Council, to include at least:
  - 104 150. (i) one registrant<sup>12</sup> from each part of the register<sup>13</sup>;
  - 151. (ii) one person appointed from each country of the United Kingdom<sup>14</sup> who must live or work wholly or mainly in the country concerned<sup>15</sup>; and
  - 152. (iii) one lay person who appears to the Council to represent the interests of the patients or clients of registrants or their carers<sup>16</sup>;
- 105 528 (f) the number of registrant members from each part of the register to be equal<sup>17</sup>.

No person who is a member of the Council or the education and training committee by virtue of his membership of any profession may take part in any proceedings of the committee in any period during which he is the subject of any investigations, proceedings or determination against him concerning his fitness to practise his profession<sup>18</sup>.

The powers of the education and training committee may be exercised even though there is a vacancy among its members<sup>19</sup>. No proceedings of the education and training committee are invalidated by any defect in the appointment of a member<sup>20</sup>.

1 For the meaning of 'the Council' see PARA 308 note 1 ante.

2 Health Professions Order 2001, SI 2002/254, art 3(18), Sch 1 para 17(1)(a).

3 Ibid Sch 1 para 17(1)(b).

4 Ibid Sch 1 para 17(1)(c).

5 Ibid Sch 1 para 17(1)(d).

6 Ibid Sch 1 para 17(1)(e).

7 Ibid Sch 1 para 17(2)(a). As to the membership of the Council see PARA 308 ante.

- 8 Ibid Sch 1 para 17(2)(b).
- 9 le subject to other provisions in the Health Professions Order 2001, SI 2002/254 (as amended).
- 10 Ibid Sch 1 para 17(2)(c). As to the Commissioner for Public Appointments see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 953.
- 11 Ibid Sch 1 para 17(2)(d).
- 12 For the meaning of 'registrant' see PARA 318 note 4 post.
- 13 Health Professions Order 2001, SI 2002/254, Sch 1 para 17(2)(e)(i). As to the meaning of 'part of the register' see PARA 325 note 12 post. For the meaning of 'register' see PARA 325 note 2 post.
- 14 For the meaning of 'United Kingdom country' see PARA 308 note 15 ante.
- 15 Health Professions Order 2001, SI 2002/254, Sch 1 para 17(2)(e)(ii).
- 16 Ibid Sch 1 para 17(2)(e)(iii).
- 17 Ibid Sch 1 para 17(2)(f).
- 18 Ibid Sch 1 para 17(3).
- 19 Ibid Sch 1 para 17(4).
- 20 Ibid Sch 1 para 17(5).

## **UPDATE**

### **314 Education and training committee**

TEXT AND NOTES 1-17--SI 2002/254 Sch 1 para 17(1), (2) substituted; Sch 1 para 17(2A), (2B) added by SI 2009/1182 so as to require the Council to make provision by rules regarding the constitution of the education and training committee and give the committee express powers to regulate its own procedure, subject to the requirements of legislation.

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### **315. Practice committees.**

The Council<sup>1</sup> must in respect of each practice committee<sup>2</sup> provide by rules for<sup>3</sup>: (1) the quorum at meetings of the committee<sup>4</sup>; (2) regulating its procedure<sup>5</sup>; (3) establishing standards for the education and training, attendance and performance of its members<sup>6</sup>; (4) regulating its composition<sup>7</sup>; and (5) the performance of its functions<sup>8</sup>. The members of each practice committee must include registered professionals<sup>9</sup> and other members, of whom at least one must be a registered medical practitioner<sup>10</sup>. The chairman of the committee must be a Council member<sup>11</sup>.

The panel of a practice committee considering an allegation or taking any other action in relation to fitness to practise<sup>12</sup> must comprise at least three members selected with due regard to the former, current or proposed professional field of the person concerned, as the case may be, and to the nature of the matters in issue, provided that<sup>13</sup>:

- 529 (a) at least one member is registered in that part of the register<sup>14</sup> in which, as the case may be, the person under consideration is or was registered or in respect of which he has made an application to be registered<sup>15</sup>;
- 530 (b) there is at least one lay member<sup>16</sup>, who must not be a registered medical practitioner<sup>17</sup>;
- 531 (c) where the health of the person is relevant to the case, there is at least one registered medical practitioner<sup>18</sup>;
- 532 (d) the panel must comprise both registrant<sup>19</sup> and lay members, none of whom is a Council member, and the number of registrant members may exceed the number of lay members but may not exceed them by more than one<sup>20</sup>;
- 533 (e) no one who has been involved in the case in any other capacity may sit on the panel<sup>21</sup>; and
- 534 (f) the person presiding may but need not be a member of the Council<sup>22</sup>.

Decisions of a practice committee are made by a majority vote of the members present and voting<sup>23</sup>. In the event of a tie, the chairman has an additional casting vote<sup>24</sup>.

Except when it is performing functions relating to fitness to practise<sup>25</sup>, a practice committee may exercise its powers even though there is a vacancy among its members<sup>26</sup>. Apart from proceedings relating to fitness to practise, no proceedings of a practice committee are invalidated by any defect in the appointment of a member<sup>27</sup>.

1 For the meaning of 'the Council' see PARA 308 note 1 ante.

2 'Practice committee' means the investigating committee (see PARA 351 et seq post), the conduct and competence committee (see PARA 355 et seq post) and the health committee (see PARA 361 et seq post): Health Professions Order 2001, SI 2002/254, art 2, Sch 3 para 1.

3 Health Professions Order 2001, SI 2002/254, art 3(18), Sch 1 para 18. Schedule 1 para 18 is expressed to be subject to any provision made by or under the Health Professions Order 2001, SI 2002/254 (as amended): see Sch 1 para 18. The following rules have been made: the Health Professions Council (Practice Committees) (Constitution) Rules 2003, approved under the Health Professions Council (Practice Committees) (Constitution) Rules Order of Council 2003, SI 2003/1209 (see PARA 316 et seq post); the Health Professions Council (Investigating Committee) Procedure Rules 2003, approved under the Health Professions Council (Investigating Committee) Procedure Rules Order of Council 2003, SI 2003/1574 (see PARA 352 et seq post); and the Health

Professions Council (Health Committee) (Procedure) Rules 2003, approved under the Health Professions Council (Health Committee) (Procedure) Rules Order of Council 2003, SI 2003/1576 (see PARA 362 et seq post). As to the making of rules see PARA 320 post.

4 Health Professions Order 2001, SI 2002/254, Sch 1 para 18(a). This provision is expressed to be subject to Sch 1 para 19(6): see the text to notes 13-22 infra.

5 Ibid Sch 1 para 18(b).

6 Ibid Sch 1 para 18(c).

7 Ibid Sch 1 para 18(d).

8 Ibid Sch 1 para 18(e).

9 The number of registered professionals on a practice committee may, but need not, exceed the number of other members on the committee and must not in any case exceed that number by more than one: *ibid* Sch 1 para 19(2). 'Registered professional' means a member of one of the relevant professions who has been admitted to the register established and maintained under art 5 (see PARA 325 post): Sch 3 para 1. For the meaning of 'relevant professions' see PARA 318 note 2 post.

10 Ibid Sch 1 para 19(1). No one may be a member of more than one practice committee and must not be both a screener and a member of a practice committee: Sch 1 para 19(4). The Council must, subject to other provisions in the Health Professions Order 2001, SI 2002/254 (as amended), have regard when selecting non-Council members for a practice committee to the guidance issued by the Commissioner for Public Appointments: Sch 1 para 19(5). No person who is a member of the Council or a committee by virtue of his membership of any profession may take part in any proceedings of a practice committee in any period during which he is the subject of any investigations, proceedings or determination against him concerning his fitness to practise his profession: Sch 1 para 19(11). For the meaning of 'registered medical practitioner' see PARA 4 ante. For the meaning of 'screener' see PARA 346 note 3 post. As to the Commissioner for Public Appointments see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 953.

11 Ibid Sch 1 para 19(3). As to the membership of the Council see PARA 308 ante.

12 *Ie* action under *ibid* Pt V (arts 21-36): see PARA 343 et seq post.

13 Ibid Sch 1 para 19(6).

14 As to the meaning of 'part of the register' see PARA 325 note 12 post. For the meaning of 'register' see PARA 325 note 2 post.

15 Health Professions Order 2001, SI 2002/254, Sch 1 para 19(6)(a).

16 For the meaning of 'lay member' see PARA 308 ante.

17 Health Professions Order 2001, SI 2002/254, Sch 1 para 19(6)(b).

18 Ibid Sch 1 para 19(6)(c).

19 For the meaning of 'registrant member' see PARA 308 ante.

20 Health Professions Order 2001, SI 2002/254, Sch 1 para 19(6)(d). This provision is expressed to be subject to Sch 1 para 19(6)(f): see the text to note 22 infra.

21 Ibid Sch 1 para 19(6)(e).

22 Ibid Sch 1 para 19(6)(f).

23 Ibid Sch 1 para 19(7).

24 Ibid Sch 1 para 19(8). In respect of a decision relating to fitness to practise under Pt V, the chairman must exercise his casting vote in favour of the person concerned: Sch 1 para 19(8).

25 *Ie* under *ibid* Pt V.

26 Ibid Sch 1 para 19(9).

27 Ibid Sch 1 para 19(10).

**UPDATE****315-317 Practice committees ... Standards for members of practice committees**

The Health Professions Council (Practice Committees and Miscellaneous Amendments Rules) Order of Council 2009, SI 2009/1355, approves rules made by the Council making revised provision for the constitution of its investigating committee, conduct and competence committee, and health committee. The rules provide for the membership, quora and chairing of the committees (rr 3, 4); disqualification from appointment as a member of a committee (r 6); and the circumstances in which committee membership may be terminated or suspended (rr 7, 8). Where a suspended or removed member has been involved in part of a case, that member's participation in the proceedings does not invalidate them: r 5.

**315 Practice committees**

TEXT AND NOTES--SI 2002/254 Sch 1 para 18 substituted; Sch 1 para 19(1)-(4), (6), (9), (11) revoked by SI 2009/1182 so as to require the Council to make provision by rules regarding the constitution of each practice committee and give each committee express powers to regulate its own procedure, subject to the requirements of legislation. As to the constitution of the practice committees see PARA 315-317.

NOTE 3--SI 2003/1209 revoked: SI 2009/1182.

TEXT AND NOTE 24--Reference to 'chairman' replaced by reference to 'chair': SI 2002/254 Sch 1 para 19(8) (amended by SI 2009/1182).

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### **316. Membership and meetings of practice committees.**

A practice committee<sup>1</sup> must consist of not less than nine members who are to be appointed by the Council<sup>2</sup>. The Council must appoint from among its members<sup>3</sup> a chairman for each practice committee, and may appoint another member of the committee to be its deputy chairman to act as chairman in the chairman's absence<sup>4</sup>. A member appointed to a practice committee before the end of the second transitional period<sup>5</sup> serves until the end of that period<sup>6</sup>. A member of a practice committee may resign at any time by notice in writing addressed to the registrar<sup>7</sup>. The Council may remove a person from office as a member of a practice committee:

- 535 (1) for a serious and persistent deficiency in his attendance, conduct or performance at meetings of the committee<sup>8</sup>;
- 536 (2) if he is a member of the committee by virtue of his being a registered professional<sup>9</sup> and he:
  - 106 153. (a) ceases to be wholly or mainly engaged in the practice, teaching or management of the relevant profession or in research in those fields<sup>10</sup>; or
  - 154. (b) ceases to be registered in the part of the register relating to that profession<sup>11</sup>; or
- 107 537 (3) if he is a member of the committee by virtue of his being a registered medical practitioner<sup>12</sup> and he ceases to be so registered<sup>13</sup>.

Where a person ceases to be a member of a practice committee, the Council may fill the vacancy and the person appointed serves for the remainder of the term of the member he has replaced<sup>14</sup>.

A practice committee must meet at least four times each year at such places, times and dates as the chairman may determine<sup>15</sup>. The quorum for a meeting of a practice committee is five<sup>16</sup>. At least once in every year a practice committee must meet: (i) to review the allegations heard by the committee during the previous 12 months<sup>17</sup>; (ii) to review the education, training, attendance and performance of its members during that period<sup>18</sup>; (iii) to consider the education and training requirements for its members for the following 12 months and make recommendations to the Council<sup>19</sup>; and (iv) in the case of the conduct and competence committee<sup>20</sup>, to review the standards of conduct, performance and ethics established by the Council<sup>21</sup>. Subject as otherwise provided<sup>22</sup>, a practice committee may regulate its own procedure<sup>23</sup>.

1 For the meaning of 'practice committee' see PARA 315 note 2 ante.

2 He appointed in accordance with the Health Professions Order 2001, SI 2002/254, Sch 1 para 19 (see PARA 315 ante); Health Professions Council (Practice Committees) (Constitution) Rules Order of Council 2003, SI 2003/1209, r 3. For the meaning of 'the Council' see PARA 308 note 1 ante.

3 As to the membership of the Council see PARA 308 ante.

4 Health Professions Council (Practice Committees) (Constitution) Rules Order of Council 2003, SI 2003/1209, r 4.



- 5 For the meaning of 'second transitional period' see PARA 312 note 4 ante.
- 6 Health Professions Council (Practice Committees) (Constitution) Rules Order of Council 2003, SI 2003/1209, r 5(1).
- 7 Ibid r 5(2). As to the registrar see PARA 324 post. For the meaning of 'writing' see PARA 20 note 22 ante.
- 8 Ibid r 5(3)(a).
- 9 As to registered professionals see PARA 315 note 9 ante.
- 10 Health Professions Council (Practice Committees) (Constitution) Rules Order of Council 2003, SI 2003/1209, r 5(3)(b)(i).
- 11 Ibid r 5(3)(b)(ii). As to the register see PARA 325 post.
- 12 For the meaning of 'registered medical practitioner' see PARA 4 ante.
- 13 Health Professions Council (Practice Committees) (Constitution) Rules Order of Council 2003, SI 2003/1209, r 5(3)(c).
- 14 Ibid r 6.
- 15 Ibid r 8(1).
- 16 Ibid r 8(2).
- 17 Ibid r 8(3)(a).
- 18 Ibid r 8(3)(b). As to the standards required of members see PARA 317 post.
- 19 Ibid r 8(3)(c).
- 20 As to the conduct and competence committee see PARAS 313 ante, 355 et seq post.
- 21 I.e. the standards established under the Health Professions Order 2001, SI 2002/254, art 21(1)(a) (see PARA 343 post): Health Professions Council (Practice Committees) (Constitution) Rules Order of Council 2003, SI 2003/1209, r 8(3)(d).
- 22 I.e. as provided in the Health Professions Order 2001, SI 2002/254 (as amended); the Health Professions Council (Practice Committees) (Constitution) Rules Order of Council 2003, SI 2003/1209; and any other rules made under the Health Professions Order 2001, SI 2002/254 (as amended): Health Professions Council (Practice Committees) (Constitution) Rules Order of Council 2003, SI 2003/1209, r 8(4).
- 23 Ibid r 8(4).

## UPDATE

### **315-317 Practice committees ... Standards for members of practice committees**

The Health Professions Council (Practice Committees and Miscellaneous Amendments Rules) Order of Council 2009, SI 2009/1355, approves rules made by the Council making revised provision for the constitution of its investigating committee, conduct and competence committee, and health committee. The rules provide for the membership, quora and chairing of the committees (rr 3, 4); disqualification from appointment as a member of a committee (r 6); and the circumstances in which committee membership may be terminated or suspended (rr 7, 8). Where a suspended or removed member has been involved in part of a case, that member's participation in the proceedings does not invalidate them: r 5.

### **316 Membership and meetings of practice committees**

TEXT AND NOTES--SI 2003/1209 revoked by SI 2009/1182 so as to require the Council to make provision by rules regarding the constitution of each practice committee and give each committee express powers to regulate its own procedure, subject to the requirements of legislation. As to the constitution of the practice committees see PARA 315-317.

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### **317. Standards for members of practice committees.**

A member of a practice committee<sup>1</sup> must: (1) attend all meetings of the committee<sup>2</sup> unless there is good reason for him being unable to do so<sup>3</sup>; (2) prepare for any meeting of the committee by reading the agenda and any papers issued by the committee or the Council<sup>4</sup> which are relevant to any subject to be considered at that meeting<sup>5</sup>; and (3) if he will not be attending a meeting of the committee, take all reasonable steps to give advance warning of his absence to the chairman<sup>6</sup>. A member of a practice committee must undertake education and training provided or organised by the Council from time to time so that he is properly informed about his responsibilities and, in particular, must receive training in<sup>7</sup>: (a) the functions of the Council<sup>8</sup>, and the role of the committee and its place in the work of the Council<sup>9</sup>; (b) the effective conduct of proceedings by the committee<sup>10</sup>; and (c) the discharge by the committee of its functions relating to fitness to practise<sup>11</sup> including the principles of natural justice<sup>12</sup>, human rights<sup>13</sup> and Community law<sup>14</sup>.

1 For the meaning of 'practice committee' see PARA 315 note 2 ante.

2 As to meetings of practice committees see PARA 316 ante.

3 Health Professions Council (Practice Committees) (Constitution) Rules Order of Council 2003, SI 2003/1209, r 7(1)(a).

4 For the meaning of 'the Council' see PARA 308 note 1 ante.

5 Health Professions Council (Practice Committees) (Constitution) Rules Order of Council 2003, SI 2003/1209, r 7(1)(b).

6 Ibid r 7(1)(c). As to the appointment of the chairman of a practice committee see PARA 316 ante.

7 Ibid r 7(2).

8 As to the functions of the Council see PARA 318 post.

9 Health Professions Council (Practice Committees) (Constitution) Rules Order of Council 2003, SI 2003/1209, r 7(2)(a).

10 Ibid r 7(2)(b).

11 Ie under the Health Professions Order 2001, SI 2002/254, Pt V (arts 21-36): see PARA 343 et seq post.

12 As to the principles of natural justice see JUDICIAL REVIEW vol 61 (2010) PARA 629 et seq.

13 As to the principles of human rights see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2)( (Reissue) PARA 101 et seq.

14 Health Professions Council (Practice Committees) (Constitution) Rules Order of Council 2003, SI 2003/1209, r 7(2)(c).

## **UPDATE**

### **315-317 Practice committees ... Standards for members of practice committees**

The Health Professions Council (Practice Committees and Miscellaneous Amendments Rules) Order of Council 2009, SI 2009/1355, approves rules made by the Council making revised provision for the constitution of its investigating committee, conduct and competence committee, and health committee. The rules provide for the membership, quora and chairing of the committees (rr 3, 4); disqualification from appointment as a member of a committee (r 6); and the circumstances in which committee membership may be terminated or suspended (rr 7, 8). Where a suspended or removed member has been involved in part of a case, that member's participation in the proceedings does not invalidate them: r 5.

### **317 Standards for members of practice committees**

TEXT AND NOTES--SI 2003/1209 revoked by SI 2009/1182 so as to require the Council to make provision by rules regarding the constitution of each practice committee and give each committee express powers to regulate its own procedure, subject to the requirements of legislation. As to the constitution of the practice committees see PARA 315-317.

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### **C. FUNCTIONS**

#### **318. Principal functions of the council.**

The principal functions of the Council<sup>1</sup> are to establish from time to time standards of education, training, conduct and performance for members of the relevant professions<sup>2</sup> and to ensure the maintenance of those standards<sup>3</sup>. The main objective of the Council in exercising its functions is to safeguard the health and well-being of persons using or needing the services of registrants<sup>4</sup>. In exercising its functions, the Council must:

- 538 (1) have proper regard to the interests of all registrants, prospective registrants, and persons using or needing the services of registrants in each of the countries of the United Kingdom<sup>5</sup> and to any differing considerations applying to the relevant professions and to groups within them<sup>6</sup>; and
- 539 (2) co-operate wherever reasonably practicable with:
  - 108 155. (a) employers and prospective employers of registrants<sup>7</sup>;
  - 156. (b) persons who provide, assess or fund education or training for registrants or prospective registrants, or who propose to do so<sup>8</sup>;
  - 157. (c) persons who are responsible for regulating or co-ordinating the regulation of other health or social care professions, or of those who carry out activities in connection with the services provided by those professions or the relevant professions<sup>9</sup>;
  - 158. (d) persons responsible for regulating services in the provision of which registrants are engaged<sup>10</sup>.
- 109

The Council must consult the Privy Council, or such person as the Privy Council may designate, at least once in each calendar year on the way in which it proposes to exercise its functions in respect of such period as the Privy Council or the designated person, as the case may be, may specify<sup>11</sup>. Before establishing any standards or giving any guidance, the Council must consult representatives<sup>12</sup> of registrants or classes of registrant<sup>13</sup>, employers of registrants<sup>14</sup>, users of the services of registrants<sup>15</sup>, and persons providing, assessing or funding education or training for registrants or prospective registrants<sup>16</sup>. The Council must publish any standards it establishes and any guidance it gives<sup>17</sup>, and must inform and educate registrants, and inform the public, about its work<sup>18</sup>.

The Council may: (i) make recommendations to the Secretary of State<sup>19</sup> concerning any profession which in its opinion should be regulated<sup>20</sup>; and (ii) give such guidance as it sees fit, to such persons as seem to it to have an interest in such regulation, on the criteria to be taken into account in determining whether a profession should be so regulated<sup>21</sup>.

1 For the meaning of 'the Council' see PARA 308 note 1 ante.

2 'Relevant professions' means: arts therapists; biomedical scientists; chiropractors and podiatrists; clinical scientists; dietitians; occupational therapists; operating department practitioners; orthoptists; paramedics;

physiotherapists; prosthetists and orthotists; radiographers; and speech and language therapists: Health Professions Order 2001, SI 2002/254, Sch 3 para 1 (definition amended by SI 2004/2033).

3 Health Professions Order 2001, SI 2002/254, art 3(2). The Council has such other functions as are conferred on it by the Health Professions Order 2001, SI 2002/254 (as amended), or as may be provided by the Privy Council by order: art 3(3). Before making any order under art 3(3), the Privy Council must consult the Council: art 3(6). At the date at which this volume states the law no such order had been made. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

4 Ibid art 3(4). 'Registrant' means a member of one of the relevant professions who has been admitted to the register maintained under art 5 (see PARA 325 post): Sch 3 para 1.

5 For the meaning of 'United Kingdom country' see PARA 308 note 15 ante.

6 Ibid art 3(5)(a).

7 Ibid art 3(5)(b)(i).

8 Ibid art 3(5)(b)(ii).

9 Ibid art 3(5)(b)(iii).

10 Ibid art 3(5)(b)(iv).

11 Ibid art 3(7).

12 Ibid art 3(14). The provisions of arts 3(14), (15) do not apply to guidance given to an individual which is particular to him: art 3(16).

13 Ibid art 3(14)(a). See also note 12 supra.

14 Ibid art 3(14)(b). See also note 12 supra.

15 Ibid art 3(14)(c). See also note 12 supra.

16 Ibid art 3(14)(d). See also note 12 supra.

17 Ibid art 3(15). See also note 12 supra.

18 Ibid art 3(13). Nothing in the Health Professions Order 2001, SI 2002/254 (as amended) requires or permits any disclosure of information which is prohibited by or under any other enactment: art 3(19). As to the publication by the Council of an annual report see PARA 321 post.

19 As to the Secretary of State see PARA 5 ante.

20 Ie regulated pursuant to the Health Act 1999 s 60(1)(b) (see PARA 291 ante): Health Professions Order 2001, SI 2002/254, art 3(17)(a).

21 Ibid art 3(17)(b).

## **UPDATE**

### **318 Principal functions of the council**

NOTE 2--'Relevant professions' now also means practitioner psychologists: SI 2002/254 Sch 3 para 1 (definition further amended by SI 2009/1182).

TEXT AND NOTES 5-10--SI 2002/254 art 3(5) substituted; art 3(5A), (5B) added: SI 2009/1182.

TEXT AND NOTE 11--SI 2002/254 art 3(7) revoked: SI 2009/1182.

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### **319. Powers of the Council.**

The Council<sup>1</sup> may do anything which appears to it to be necessary or expedient for the purpose of, or in connection with, the performance of its functions<sup>2</sup>. The Council, in particular, has power:

- 540 (1) to borrow<sup>3</sup>;
- 541 (2) to appoint such staff as it may determine<sup>4</sup>;
- 542 (3) to pay its staff such salaries, allowances and expenses as it may determine<sup>5</sup>;
- 543 (4) to make such provision for the payment of such pensions, allowances or gratuities, or such contributions or payments towards provision for such pensions, allowances or gratuities, to or in respect of its staff as it may determine<sup>6</sup>;
- 544 (5) to make such provision in respect of its members and members of its committees and sub-committees as it may determine for the payment of fees and allowances, including the payment of allowances to employers of such members for the purposes of enabling the members to perform their functions<sup>7</sup>, and for the reimbursement of such expenses as the members may reasonably have incurred in the course of carrying out such functions<sup>8</sup>;
- 545 (6) to establish such sub-committees of any of its committees as it may determine<sup>9</sup>;
- 546 (7) to regulate the procedure of any of its committees or their sub-committees<sup>10</sup>;
- 547 (8) to abolish any of its committees, other than a statutory committee<sup>11</sup>, or any sub-committee of any of its committees<sup>12</sup>.

If it appears to the Council that any statutory committee is failing to perform its functions adequately, the Council may give a direction as to the proper performance of those functions<sup>13</sup>. Where the Council, having given such a direction, is satisfied that the committee has failed to comply with the direction, it may exercise any power of that committee or do any act or other thing authorised to be done by that committee<sup>14</sup>.

The powers of the Council may be exercised even though there is a vacancy among its members<sup>15</sup>.

1 For the meaning of 'the Council' see PARA 308 note 1 ante.

2 Health Professions Order 2001, SI 2002/254, art 3(8), Sch 1 para 16(1). This provision is expressed to be subject to any provision made by or under the Health Professions Order 2001, SI 2002/254 (as amended): Sch 1 para 16(1). As to the functions of the Council see PARA 318 ante.

3 Ibid Sch 1 para 16(2)(a).

4 Ibid Sch 1 para 16(2)(b). The Council may not employ any member of the Council or its committees or sub-committees: Sch 1 para 16(3). As to the membership of the Council see PARA 308 ante. As to committees see PARA 313 et seq ante.

5 Ibid Sch 1 para 16(2)(c).

6 Ibid Sch 1 para 16(2)(d).

7 I.e. their functions under the Health Professions Order 2001, SI 2002/254 (as amended): Sch 1 para 16(2)(e) (i).

8 Ibid Sch 1 para 16(2)(e)(i).

9 Ibid Sch 1 para 16(2)(f).

10 Ibid Sch 1 para 16(2)(g). This provision is expressed to be subject to any provision made by or under the Health Professions Order 2001, SI 2002/254 (as amended): Sch 1 para 16(2)(g).

11 For the meaning of 'statutory committees' see PARA 313 note 1 ante.

12 Health Professions Order 2001, SI 2002/254, Sch 1 para 16(2)(h).

13 Ibid Sch 1 para 16(4).

14 Ibid Sch 1 para 16(5).

15 Ibid Sch 1 para 16(6). As to the filling of vacancies in the membership of the Council see PARA 309 ante.

## **UPDATE**

### **319 Powers of the Council**

TEXT AND NOTES 10, 15--SI 2002/254 Sch 1 para 16(2)(g), (6) revoked: SI 2009/1182.



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### **320. Rules and orders.**

Before making any rules under the Health Professions Order 2001, the Council<sup>1</sup> must consult representatives of any group of persons who appear likely to be affected by the proposed rules, including such persons as appear to the Council to be representative<sup>2</sup> of registrants or classes of registrant<sup>3</sup>, employers of registrants<sup>4</sup>, users of the services of registrants<sup>5</sup>, or persons providing, assessing or funding education and training for registrants and prospective registrants<sup>6</sup>. No such rules may come into force until approved by order of the Privy Council<sup>7</sup>. Any rules made by the Council and any order of the Privy Council may make different provision with respect to different cases or classes of case<sup>8</sup>.

1 For the meaning of 'the Council' see PARA 308 note 1 ante.

2 Health Professions Order 2001, SI 2002/254, art 41(3).

3 Ibid art 41(3)(a). For the meaning of 'registrant' see PARA 318 note 4 ante.

4 Ibid art 41(3)(b).

5 Ibid art 41(3)(c).

6 Ibid art 41(3)(d). As to education and training see PARA 338 et seq post.

7 Ibid art 41(1). As to the exercise by the Privy Council of its powers under the Health Professions Order 2001, SI 2002/254 (as amended) see PARA 323 post. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

8 Ibid art 41(2).

### **UPDATE**

### **320 Rules and orders**

TEXT AND NOTES 2, 7--SI 2002/254 art 41(1), (3) amended: SI 2009/1182.

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### **321. Annual reports.**

The Council<sup>1</sup> must publish at least once in each calendar year a statistical report which indicates the efficiency and effectiveness of the arrangements it has put in place to protect the public from persons whose fitness to practise<sup>2</sup> is impaired, together with the Council's observations on the report<sup>3</sup>. The Council must within such time as directed by the Privy Council<sup>4</sup> submit a report to it on the Council's exercise of its functions<sup>5</sup> during the period specified by the Privy Council<sup>6</sup>, and thereafter submit such a report once in each calendar year in respect of the period since its last such report<sup>7</sup>. The Privy Council must lay before each House of Parliament<sup>8</sup> a copy of the report<sup>9</sup> submitted by the Council<sup>10</sup>.

1 For the meaning of 'the Council' see PARA 308 note 1 ante.

2 As to fitness to practise see PARA 343 et seq post.

3 Health Professions Order 2001, SI 2002/254, art 44(1).

4 As to the exercise of the powers of the Privy Council under the Health Professions Order 2001, SI 2002/254 (as amended) see PARA 323 post. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

5 As to the functions of the Council see PARA 318 ante.

6 Health Professions Order 2001, SI 2002/254, art 44(2)(a).

7 Ibid art 44(2)(b).

8 As to the laying of documents before Parliament see PARLIAMENT vol 34 (Reissue) PARA 941.

9 Ie the report submitted under the Health Professions Order 2001, SI 2002/254, art 44(2): see the text to notes 4-7 supra.

10 Ibid art 44(3).

### **UPDATE**

### **321 Annual reports**

TEXT AND NOTES--SI 2002/254 art 44 substituted: SI 2009/1182.

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### **322. Finances and accounts of the Council.**

The Council<sup>1</sup> may charge such fees in connection with the exercise of its functions<sup>2</sup> as it may, with the approval of the Privy Council<sup>3</sup>, determine<sup>4</sup>. The expenses of the Council are to be met<sup>5</sup> out of fees received by the Council and other sums paid to it in connection with the exercise of its functions<sup>6</sup>. The Secretary of State<sup>7</sup> or an appropriate authority<sup>8</sup> may make grants or loans to the Council towards expenses incurred, or to be incurred by it in connection with the process of the implementation of the Health Professions Order 2001<sup>9</sup>, or for such other purposes in connection with the professions regulated by that order<sup>10</sup> as may be approved by the Secretary of State or the appropriate authority and agreed with the Council<sup>11</sup>.

The Council must keep accounts in such form as the Privy Council may determine<sup>12</sup>, and prepare annual accounts in respect of each financial year<sup>13</sup> in such form as the Privy Council may determine<sup>14</sup>. The annual accounts must be audited by persons appointed by the Council<sup>15</sup>. As soon as is reasonably practicable after the end of the financial year to which the annual accounts relate, the Council must cause them to be published together with any report on them made by the auditors<sup>16</sup>, and send a copy of the annual accounts and of any such report to the Privy Council and to the Comptroller and Auditor General<sup>17</sup>. The Comptroller and Auditor General must examine, certify and report on the annual accounts<sup>18</sup>, and for the purposes of his examination he may inspect the accounts of the Council and any records relating to them<sup>19</sup>. The Privy Council must lay before each House of Parliament<sup>20</sup> a copy of the annual accounts certified by the Comptroller and Auditor General, any report of the auditors, and the report of the Comptroller and Auditor General<sup>21</sup>.

1 For the meaning of 'the Council' see PARA 308 note 1 ante.

2 As to the functions of the Council see PARA 318 ante.

3 As to the exercise by the Privy Council of its powers under the Health Professions Order 2001, SI 2002/254 (as amended) see PARA 323 post. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

4 Health Professions Order 2001, SI 2002/254, art 45(1).

5 Ie subject to ibid art 45: see the text to notes 6-11 infra.

6 Ibid art 45(2).

7 As to the Secretary of State see PARA 5 ante.

8 'Appropriate authority' means the National Assembly for Wales, the Scottish Ministers or the Department of Health, Social Services and Public Safety in Northern Ireland: Health Professions Order 2001, SI 2002/254, art 45(4). As to the National Assembly for Wales and the Scottish Ministers see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

9 Ie the Health Professions Order 2001, SI 2002/254 (as amended): art 45(3)(a).

10 As to the professions regulated by the Health Professions Order 2001, SI 2002/254 (as amended) see PARA 318 note 2 ante.

11 Ibid art 45(3)(b).

12 Ibid art 46(1)(a).

13 'Financial year' means: (1) the period beginning with the date on which the Council is established and ending with the next 31 March following that date (ibid art 46(8)(a)); and (2) each successive period of 12 months ending with 31 March (art 46(8)(b)). As to the establishment of the Council see PARA 312 ante.

14 Ibid art 46(1)(b).

15 Ibid art 46(2). No person may be appointed as an auditor unless he is eligible for appointment as a company auditor under the Companies Act 1989 s 25 (see COMPANIES vol 15 (2009) PARA 969); Health Professions Order 2001, SI 2002/254, art 46(3).

16 Ibid art 46(4)(a).

17 Ibid art 46(4)(b). As to the Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 724-726.

18 Ibid art 46(5).

19 Ibid art 46(6).

20 As to the laying of documents before Parliament see PARLIAMENT vol 34 (Reissue) PARA 941.

21 Ie the report prepared under the Health Professions Order 2001, SI 2002/254, art 46(5) (see the text to note 18 supra): art 46(7).

## **UPDATE**

### **322 Finances and accounts of the Council**

NOTE 15--SI 2002/254 art 46(3) substituted: SI 2009/1182.

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### **323. Powers of the Privy Council.**

For the purpose of exercising any powers conferred by the Health Professions Order 2001<sup>1</sup>, the quorum of the Privy Council is two<sup>2</sup>. Any act of the Privy Council is sufficiently signified by an instrument signed by the clerk of the Privy Council<sup>3</sup>. Where the approval of the Privy Council is required in respect of the making of any rules by the Council<sup>4</sup>, it must be given by an order made by the Privy Council<sup>5</sup>. Any power of the Privy Council to make such an order is exercisable by statutory instrument<sup>6</sup>.

If it appears to the Privy Council that the Council has failed to perform any functions<sup>7</sup> which, in the opinion of the Privy Council, should have been performed, the Privy Council may notify the Council of its opinion and require the Council to make representations to it<sup>8</sup>. The Privy Council may, having considered the representations of the Council, give such directions, if any, to the Council as it considers appropriate<sup>9</sup>. If the Council fails to comply with any such directions the Privy Council may give effect to the direction<sup>10</sup>. For the purpose of giving effect to such a direction, the Privy Council may exercise any power of the Council or do any act or other thing authorised to be done by the Council<sup>11</sup>, and do, of its own motion, any act or other thing which it is otherwise authorised to do at the instigation of the Council<sup>12</sup>.

The Privy Council may cause an inquiry to be held into any matter connected with the exercise by the Council of its functions<sup>13</sup>. For the purpose of any such inquiry, the person appointed to hold the inquiry: (1) may by summons require any person to attend, at a time and place stated in the summons, to give evidence or to produce any documents in his custody or under his control which relate to any matter in question at the inquiry<sup>14</sup>; and (2) may take evidence on oath, and for that purpose administer oaths, or may, instead of administering an oath, require the person examined to make a solemn affirmation<sup>15</sup>. Any person who refuses or deliberately fails to attend in obedience to such a summons, or to give evidence, or who deliberately alters, suppresses, conceals, destroys, or refuses to produce any book or other document which he is required or is liable to be required to produce, is liable on summary conviction to a fine<sup>16</sup>.

Where the Privy Council causes an inquiry to be held: (a) the costs or expenses incurred by it in relation to the inquiry, including such reasonable sum as it may determine for the services of any officer engaged in the inquiry, are to be paid by such party to the inquiry as it may direct<sup>17</sup>; and (b) it may cause the amount of the costs or expenses so incurred to be certified, and any amount so certified and directed to be paid by any person is recoverable from that person by the Privy Council summarily as a civil debt<sup>18</sup>. Where the Privy Council causes an inquiry to be held it may make orders as to the costs or expenses of the parties at the inquiry<sup>19</sup> and as to the parties by whom costs or expenses are to be paid<sup>20</sup>.

1    Ie the Health Professions Order 2001, SI 2002/254 (as amended).

2    Ibid art 42(4). As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

3    Ibid art 42(5). Any document purporting to be an instrument made by the Privy Council (art 42(6)(a)) and signed by the clerk of the Privy Council, is evidence of the fact that the instrument was so made and of its terms (art 42(6)(b)).

4    As to the making of rules by the Council see PARA 320 ante. For the meaning of 'the Council' see PARA 308 note 1 ante.

5    Health Professions Order 2001, SI 2002/254, art 42(1).

6 Ibid art 42(2). Any such order is subject to annulment in pursuance of a resolution of either House of Parliament but this does not apply to an order made under art 48(2) (see PARA 312 note 3 ante) or Sch 2 paras 19-21 (transitional provisions): art 42(3). As to the annulment of statutory instruments see STATUTES vol 44(1) (Reissue) PARA 1516.

7 As to the functions of the Council see PARA 318 ante.

8 Health Professions Order 2001, SI 2002/254, art 43(1). The powers under art 43(1), (2) may be exercised by a person authorised or designated by the Privy Council for that purpose: art 43(6).

9 Ibid art 43(2). See also note 8 supra.

10 Ibid art 43(3).

11 Ibid art 43(4)(a). The Privy Council may not exercise the power in art 43(3) to make, amend, remove or restore an entry in the register in respect of an individual, nor to refuse to do so: art 43(5). For the meaning of 'register' see PARA 325 note 2 post. As to the making, amendment, removal or restoration of entries in the register see PARA 324 et seq post.

12 Ibid art 43(4)(b). See also note 11 supra.

13 Ibid art 47(1). Before an inquiry is begun, the Privy Council may direct that it be held in public: art 47(2). Where no direction has been given, the person holding the inquiry may if he thinks fit hold it, or any part of it, in private: art 47(3).

14 Ibid art 47(4)(a). A person is not required, in obedience to such a summons, to attend to give evidence or to produce any documents unless the necessary expenses of his attendance are paid or tendered to him: see art 47(5).

15 Ibid art 47(4)(b). See also note 14 supra. As to oaths and affirmations see CIVIL PROCEDURE vol 11 (2009) PARA 1021 et seq.

16 Ibid art 47(6). The penalty is a fine not exceeding level 5 on the standard scale: see art 47(6). As to the standard scale see PARA 185 note 11 ante.

17 Ibid art 47(7)(a) (art 47(7)(a), (b), (8) amended, and art 47(9) substituted, by SI 2004/2033).

18 Health Professions Order 2001, SI 2002/254, art 47(7)(b) (as amended: see note 17 supra). As to the summary recovery of civil debts see MAGISTRATES vol 29(2) (Reissue) PARA 826.

19 Ibid art 47(8)(a) (as amended: see note 17 supra).

20 Ibid art 47(8)(b) (as amended: see note 17 supra). Every such order may be made a rule of the appropriate court on the application of any party named in the order: art 47(8). Orders as to costs may by leave of the High Court be enforced in the same manner as orders of the High Court to the same effect: art 47(9)(a) (as substituted: see note 17 supra). As to the enforcement of costs orders see CIVIL PROCEDURE vol 12 (2009) PARA 1123 et seq.

## UPDATE

### 323 Powers of the Privy Council

TEXT AND NOTE 6--SI 2002/254 art 42(3) substituted; art 42(2A), (3A) added: SI 2009/1182.

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## **(ii) Registration**

### **324. Registrar.**

The Council<sup>1</sup> must appoint a registrar who holds office for such period and on such terms as the Council may determine<sup>2</sup>. The registrar has such functions as the Council may direct<sup>3</sup>. The terms on which the registrar holds office may, in addition to providing for his remuneration, include provision for the payment of such pensions, allowances or gratuities to or in respect of him, or such contributions or payments towards provision for such pensions, allowances or gratuities, as may be determined by the Council<sup>4</sup>.

1 For the meaning of 'the Council' see PARA 308 note 1 ante.

2 Health Professions Order 2001, SI 2002/254, art 4(1). Provision was made for the first registrar to be appointed by the Secretary of State or the Council: see Sch 2 para 14. If the first registrar ceases to hold office before a registrar is appointed under art 4, the Secretary of State or the Council, as the case may be, may appoint a replacement: Sch 2 para 15. As to the Secretary of State see PARA 5 ante.

3 Ibid art 4(2). If the Council appoints a deputy or assistant registrar and that deputy or assistant registrar is authorised by the registrar to act for him in any matter, any reference in the Health Professions Order 2001, SI 2002/254 (as amended) to 'the registrar' includes a reference to that deputy or assistant registrar: art 4(5).

4 Ibid art 4(3). Where the terms on which the registrar holds office include provision for the payment to him of any allowances or expenses, the rate at which those allowances or expenses are paid are to be determined by the Council: art 4(4).

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### **325. The register.**

The Council<sup>1</sup> must establish and maintain a register<sup>2</sup> of members of the relevant professions<sup>3</sup>. The Council must from time to time establish the standards of proficiency<sup>4</sup> necessary to be admitted to the different parts of the register, being the standards it considers necessary for safe and effective practice under that part of the register<sup>5</sup>; and prescribe the requirements to be met as to the evidence of good health and good character in order to satisfy the education and training committee<sup>6</sup> that an applicant is capable of safe and effective practice under that part of the register<sup>7</sup>. The register must show, in relation to each registrant<sup>8</sup>, such address and other details as the Council may prescribe<sup>9</sup>.

The register must be divided into such parts as the Privy Council<sup>10</sup> may by order determine, on a proposal by the Council<sup>11</sup> or otherwise<sup>12</sup>. There must be one or more designated titles for each part of the register indicative of different qualifications and different kinds of education or training and a registrant is entitled to use whichever of those titles, corresponding to the part of the register in which he is registered<sup>13</sup>, as is appropriate in his case<sup>14</sup>. Subject as otherwise provided<sup>15</sup>, the Privy Council may by order<sup>16</sup>, on a proposal by the Council or otherwise, make such other provision in connection with the register as it considers appropriate and in particular may provide for<sup>17</sup>:

- 548 (1) the register to include entries indicating the possession of qualifications, whether or not they are approved qualifications, or competence in a particular field or at a particular level of practice, or for the use of a particular category of entry to be discontinued<sup>18</sup>;
- 549 (2) persons to be registered in one or more parts of the register by virtue of having been included in the register maintained under the Professions Supplementary to Medicine Act 1960<sup>19</sup>;
- 550 (3) the recording of additional entries by virtue of their having been in the register maintained under the Professions Supplementary to Medicine Act 1960<sup>20</sup>;
- 551 (4) a specified part of the register to be closed, as from a date specified in the order, so that on or after that date no further person may become registered in that part<sup>21</sup>;
- 552 (5) a specified part of the register to be sub-divided into two or more parts, or for two or more parts to be combined into one<sup>22</sup>;
- 553 (6) persons to be registered in one or more parts of the register by virtue of having been registered in a part or parts of the register which have been closed, sub-divided or combined<sup>23</sup>;
- 554 (7) the recording in Welsh of titles, qualifications and other entries in respect of those members of the regulated professions whose registered address is in Wales<sup>24</sup>.

Having consulted the education and training committee, the Council must make rules in connection with registration and the register, and as to the payment of fees<sup>25</sup>. The rules must, in particular, make provision as to the form and keeping of the register<sup>26</sup>; the procedure for the making, alteration and deletion of entries in the register<sup>27</sup>; the form and manner in which applications are to be made and the fee to be charged for registration, renewal of registration and readmission to the register<sup>28</sup>, for the making of any additional entry in the register<sup>29</sup>, and for registration to lapse<sup>30</sup>; and the documentary and other evidence which is to accompany applications<sup>31</sup>.



- 1 For the meaning of 'the Council' see PARA 308 note 1 ante.
- 2 'Register' means the register established and maintained under the Health Professions Order 2001, SI 2002/254, art 5: Sch 3 para 1. As to the parts of the register see PARA 326 post.
- 3 Ibid art 5(1). For the meaning of 'relevant professions' see PARA 318 note 2 ante. As to the arrangements for the transfer to the register of all the names in Part 1 of the register of operating department practitioners maintained by the Association of Operating Department Practitioners as at 18 October 2004 see art 48, Sch 2 paras 25-27 (added by SI 2004/2033); the Health Professions (Operating Department Practitioners and Miscellaneous Amendments) Order 2004, SI 2004/2033, art 2; and the Health Professions (Transitional Provisions) Order of Council 2004, SI 2004/2525, art 2.
- 4 'Standards of proficiency' means the standards established by the Council under the Health Professions Order 2001, SI 2002/254, art 5(2): Sch 3 para 1.
- 5 Ibid art 5(2)(a).
- 6 As to the education and training committee see PARA 314 ante.
- 7 Health Professions Order 2001, SI 2002/254, art 5(2)(b). The Council must, before prescribing the requirements mentioned in art 5(2)(b), consult the conduct and competence committee in addition to the persons referred to in art 3(14) (see PARA 318 ante): art 5(3)(a). The Council must publish the prescribed requirements: art 5(3)(b). As to the conduct and competence committee see PARAS 313 ante, 355 et seq post.
- 8 For the meaning of 'registrant' see PARA 318 note 4 ante.
- 9 Health Professions Order 2001, SI 2002/254, art 5(4).
- 10 As to the exercise of the powers of the Privy Council under the Health Professions Order 2001, SI 2002/254 (as amended) see PARA 323 ante. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.
- 11 Before making any proposal referred to in ibid art 6(1) or art 6(3) (see the text to note 17 infra), the Council must consult representatives of any group of persons who appear likely to be affected by the proposed order: art 6(5).
- 12 Ibid art 6(1). In the Health Professions Order 2001, SI 2002/254 (as amended), references to 'parts of the register' are references to the parts so determined: art 6(1). As to the order that has been made under art 6 see the Health Professions (Parts of and Entries in the Register) Order of Council 2003, SI 2003/1571; and PARA 326 post.
- 13 In any enactment or instrument (past or future and including the Health Professions Order 2001, SI 2002/254 (as amended)), except where the context otherwise provides, 'registered' in relation to any of the relevant professions means registered in the register maintained under art 5 by virtue of qualifications in that profession: art 5(5).
- 14 Ibid art 6(2).
- 15 Ie subject to ibid art 7: see the text to notes 25-31 infra.
- 16 The Privy Council, except where acting in accordance with a proposal made by the Council, must consult the Council before making, varying or revoking any order under ibid art 6: art 6(4).
- 17 Ibid art 6(3).
- 18 Ibid art 6(3)(a).
- 19 Ibid art 6(3)(b). The Professions Supplementary to Medicine Act 1960 has been repealed: see the Health Act 1999 s 60(3).
- 20 Health Professions Order 2001, SI 2002/254, art 6(3)(c).
- 21 Ibid art 6(3)(d).
- 22 Ibid art 6(3)(e).

23 Ibid art 6(3)(f).

24 Ibid art 6(3)(g).

25 Ibid art 7(1). As to the rules that have been made see the Health Professions Council (Registration and Fees) Rules, approved under the Health Professions Council (Registration and Fees) Rules Order of Council 2003, SI 2003/1572 (as amended); and PARA 336 post. As to the making of rules generally see PARA 320 ante.

26 Health Professions Order 2001, SI 2002/254, art 7(2)(a).

27 Ibid art 7(2)(b).

28 Ibid art 7(2)(c)(i). Before determining or varying any fees mentioned in art 7(2)(c), the Council must consult the education and training committee and such of those persons mentioned in art 3(14) (see PARA 318 ante) as it considers appropriate: art 7(3).

29 Ibid art 7(2)(c)(ii). See also note 28 supra.

30 Ibid art 7(2)(c)(iii). See also note 28 supra.

31 The applications of the kind mentioned in ibid art 7(2)(c) (see the text to notes 28-30 supra): art 7(2)(d).

## **UPDATE**

### **325 The register**

NOTE 7--The Council no longer has to consult the conduct and competence committee before prescribing the requirements mentioned in art 5(2)(b): SI 2002/254 art 5(3)(a) (amended by SI 2009/1182).

NOTES 15-31--SI 2002/254 art 6(3) amended, art 7(4) added: SI 2007/3101.

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### **326. Parts of the register.**

The register<sup>1</sup> is divided into specified parts<sup>2</sup>, and the designated titles in relation to each part of the register are also specified<sup>3</sup>. A title, qualification or other entry<sup>4</sup> which is recorded in the register<sup>5</sup> in respect of a registered professional<sup>6</sup> whose registered address is in Wales, may be recorded in the register in Welsh as well as in English<sup>7</sup>.

1 For the meaning of 'register' see PARA 325 note 2 ante.

2 The parts specified in the Health Professions (Parts of and Entries in the Register) Order of Council 2003, SI 2003/1571, Sch 1 (as amended) (see note 3 infra): art 2.

3 See *ibid* art 3. The parts of the register and the designated titles are set out in Sch 1 (amended by SI 2004/2033; SI 2004/2522), and are as follows:

- 111 Part 1 Arts Therapists: Music, Drama or Art (designated titles: Art Therapist, Art Psychotherapist, Dramatherapist, Music Therapist);
- 112 Part 2 Chiropodists and Podiatrists (designated titles: Chiropodist, Podiatrist);
- 113 Part 3 Clinical Scientists (designated title: Clinical Scientist);
- 114 Part 4 Dietitians (designated titles: Dietitian, Dietician);
- 115 Part 5 Biomedical Scientists (designated title: Biomedical Scientist);
- 116 Part 6 Occupational Therapists (designated title: Occupational Therapist);
- 117 Part 7 Orthoptists (designated title: Orthoptist);
- 118 Part 8 Paramedics (designated title: Paramedic);
- 119 Part 9 Physiotherapists (designated titles: Physiotherapist, Physical Therapist);
- 120 Part 10 Prosthetists and Orthotists (designated titles: Prosthetist and Orthotist, Prosthetist, Orthotist);
- 121 Part 11 Radiographers: Diagnostic or Therapeutic (designated titles: Radiographer, Diagnostic Radiographer, Therapeutic Radiographer);
- 122 Part 12 Speech and Language Therapists (designated titles: Speech and Language Therapist, Speech Therapist);
- 123 Part 13 Operating Department Practitioners (designated title: Operating Department Practitioner).

The entries in Part 3 and Part 5 of the register may include such entry indicating the possession by a registrant of qualifications or competence in life sciences or physiological sciences, as the Council considers appropriate: art 6(1). Where a chiropodist holds a certificate of competence: (1) issued by a Board under the Professions Supplementary to Medicine Act 1960 or by the Health Professions Council (Health Professions (Parts of and Entries in the Register) Order of Council 2003, SI 2003/1571, art 6(2)(a)); and (2) referred to in the Prescription Only Medicines (Human Use) Order 1997, SI 1997/1830, Sch 5 Pt I para 10 (exemption from restrictions on sale or supply; certificate of competence in the use of specified medicines) or Pt III para 1 (exemption from restriction on administration; certificate in the use of analgesics), the register may indicate that he holds such a certificate: Health Professions (Parts of and Entries in the Register) Order of Council 2003, SI 2003/1571, art 6(2)(b)(i), (ii).

Provision is made for the registration of persons formerly registered in accordance with the Professions Supplementary to Medicine Act 1960: see the Health Professions (Parts of and Entries in the Register) Order of Council 2003, SI 2003/1571, art 4, Sch 2.

4 le an entry referred to in the Health Professions Order 2001, SI 2002/254, art 6(3): see PARA 325 ante.

5 le in accordance with the Health Professions Council (Registration and Fees) Rules Order of Council 2003, SI 2003/1572, r 3: see PARA 327 post.

6 For the meaning of 'registered professional' see PARA 315 note 9 ante.

7 Health Professions (Parts of and Entries in the Register) Order of Council 2003, SI 2003/1571, art 5.

## **UPDATE**

### **326 Parts of the register**

NOTE 3--The entries in Parts 2, 9 and 11 of the register may include an entry indicating that a registrant is qualified to order drugs, medicines and appliances as a supplementary prescriber for the purposes of the Prescription Only Medicines (Human Use) Order 1997, SI 1997/1830: SI 2003/1571 art 6(3) (added by SI 2006/1996). The Council may also include such entry in the register as it considers appropriate to indicate that a registrant possesses any other qualification, whether or not it is an approved qualification, or competence in a particular field or at a particular level of practice: SI 2003/1571 art 6(4) (added by SI 2006/1996).

Also Part 14 Practitioner Psychologists (designated titles Clinical Psychologist, Counselling Psychologist, Educational Psychologist, Forensic Psychologist, Health Psychologist, Occupational Psychologist, Practitioner Psychologist, Registered Psychologist, Sport and Exercise Psychologist): SI 2003/1571 Sch 1 (amended by SI 2009/1182). Entries in Part 14 of the register must include such entries as the Health Professions Council considers appropriate to indicate whether the registrant's field of competence is as a clinical psychologist, a counselling psychologist, an educational psychologist, a forensic psychologist, a health psychologist, an occupational psychologist, a sport and exercise psychologist, or a combination of these: SI 2003/1571 art 6A (added by SI 2009/1182). For transitional provisions relating to the introduction of statutory registration of practitioner psychologists see Health Care and Associated Professions (Miscellaneous Amendments and Practitioner Psychologists) Order 2009, SI 2009/1182, art 5; Health Care and Associated Professions (Miscellaneous Amendments and Practitioner Psychologists) Order 2009 (Commencement No 1 and Transitional Provisions) Order of Council 2009, SI 2009/1357, art 3.

TEXT AND NOTES 4-7--The entries in the register are to include such annotation as the Council considers appropriate to denote that a registrant is a visiting health professional from another EEA state or Switzerland: SI 2003/1571 art 7 (added by SI 2007/3101).

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### **327. Entries in the register; certificates of registration.**

There must be entered in the register<sup>1</sup> against the full name of each registrant his registration number<sup>2</sup>, his last known home address<sup>3</sup>, and any qualification which has led to his registration<sup>4</sup>. The registrar<sup>5</sup> may enter on the register any other information which is material to a registrant's registration<sup>6</sup>. The registrar must keep the register in a form and manner which guards against falsification and take all reasonable steps to ensure that only he and such persons as have been authorised by him in writing for the purpose are able to amend the register or have access to the version of the register which contains entries which are not included in the published version of the register<sup>7</sup>.

A registrant must notify the registrar in writing within one month of any change in the registrant's name or home address as given in the register<sup>8</sup>. The registrar must amend the register, so far as may be necessary: (1) in consequence of any such notification<sup>9</sup>; (2) to give effect to any order<sup>10</sup> made by a practice committee<sup>11</sup>; (3) to give effect to any decision on appeal<sup>12</sup>; and (4) to reflect any other information which comes to the attention of the registrar and which in the registrar's opinion requires such an amendment to be made in order to maintain the register's accuracy<sup>13</sup>.

The registrar must, upon entering the name of a person in the register, issue to that registrant a certificate, in a form determined by the Council, which includes the part of the register in which he is registered, any designated title<sup>14</sup> he may use and the date of registration<sup>15</sup>. Any such certificate remains the property of the Council and must be surrendered to the registrar by the person<sup>16</sup> if: (a) a striking-off order is made against him<sup>17</sup>; (b) his name is removed from the register<sup>18</sup>; or (c) for any other reason, the certificate no longer accurately reflects his entry in the register<sup>19</sup>.

1 For the meaning of 'register' see PARA 325 note 2 ante.

2 Health Professions Council (Registration and Fees) Rules Order of Council 2003, SI 2003/1572, r 3(1)(a). The entries for registrants in each part of the register must appear in the alphabetical order of their surnames: r 3(3). As to the parts of the register see PARA 326 ante.

3 Ibid r 3(1)(b). The home address of a registrant must not be included in any published version of the register without his consent: r 3(2). As to publication of the register see PARA 337 post.

4 Ibid r 3(1)(c).

5 As to the registrar see PARA 324 ante.

6 Health Professions Council (Registration and Fees) Rules Order of Council 2003, SI 2003/1572, r 3(4).

7 Ibid r 3(5). For the meaning of 'writing' see PARA 20 note 22 ante. As to offences in respect of entries in the register see PARA 383 post.

8 Ibid r 9(1).

9 Ibid r 9(2)(a). Before making any amendment under r 9(2)(a) or r 9(2)(d) (see head (4) in the text), the registrar may make such further enquiries or require such further evidence from the registrant concerned as appears to the registrar to be appropriate: r 9(3).

10     le an order under the Health Professions Order 2001, SI 2002/254, Pt V (arts 21-36): see PARA 343 et seq post.

11     Health Professions Council (Registration and Fees) Rules Order of Council 2003, SI 2003/1572, r 9(2)(b). For the meaning of 'practice committee' see PARA 315 note 2 ante.

12     le under the Health Professions Order 2001, SI 2002/254, art 37 or art 38 (see PARAS 376-382 post): Health Professions Council (Registration and Fees) Rules Order of Council 2003, SI 2003/1572, r 9(2)(c).

13     Ibid r 9(2)(d). See also note 9 supra.

14     As to designated titles see PARA 326 ante.

15     Health Professions Council (Registration and Fees) Rules Order of Council 2003, SI 2003/1572, r 8(1).

16     Ibid r 8(2).

17     Ibid r 8(2)(a). As to striking-off orders see PARA 367 post.

18     Ibid r 8(2)(b). As to removal of names from the register see PARA 335 post.

19     Ibid r 8(2)(c). Where any certificate is surrendered by a registrant in accordance with r 8(2)(c), the registrar must issue a replacement certificate to that registrant which accurately reflects his entry in the register: r 8(3).

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### 328. Registration.

A person seeking admission to a part of the register<sup>1</sup> must apply to the Council<sup>2</sup> and, subject as otherwise provided<sup>3</sup>, if he satisfies the specified conditions<sup>4</sup> he is entitled to be registered<sup>5</sup> in that part<sup>6</sup>. The conditions are that the application is made in the prescribed<sup>7</sup> form and manner and that the applicant<sup>8</sup>:

- 555 (1) satisfies the education and training committee<sup>9</sup> that he holds an approved qualification<sup>10</sup> awarded:
- 110
- 159. (a) within such period, not exceeding five years ending with the date of the application, as may be prescribed<sup>11</sup>; or
- 160. (b) before the prescribed period<sup>12</sup>, and that he has met such requirements as to additional education, training and experience as the Council may specify<sup>13</sup> and which apply to him<sup>14</sup>;
- 111
- 556 (2) satisfies the education and training committee in accordance with the Council's requirements<sup>15</sup> that he is capable of safe and effective practice under the part of the register concerned<sup>16</sup>; and
- 557 (3) has paid the prescribed fee<sup>17</sup>.

Where a person who is not registered on the date of coming into force of an order<sup>18</sup> which relates to his profession<sup>19</sup>, but has been on a register under the Professions Supplementary to Medicine Act 1960 in the five years immediately preceding that date<sup>20</sup>, applies for admission to the register in the relevant period<sup>21</sup>, the education and training committee must, if it is satisfied as to his good character, grant the application<sup>22</sup>.

1 As to the meaning of 'part of the register' see PARA 325 note 12 ante. For the meaning of 'register' see PARA 325 note 2 ante.

2 For the meaning of 'the Council' see PARA 308 note 1 ante.

3 Ie subject to the provisions of the Health Professions Order 2001, SI 2002/254 (as amended), and in particular art 9(4) (see the text to notes 19-22 infra): art 9(1).

4 Ie the conditions mentioned in ibid art 9(2): see the text to notes 7-17 infra.

5 For the meaning of 'registered' see PARA 325 note 13 ante.

6 Health Professions Order 2001, SI 2002/254, art 9(1). The education and training committee (see note 9 infra) must give its decision on an application under art 9(1) as soon as reasonably practicable and in any event within the period specified in the European Communities (Recognition of Professional Qualifications) Regulations 1991, SI 1991/824 and the European Communities (Recognition of Professional Qualifications) (Second General System) Regulations 1996, SI 1996/2374 (repealed: see now the European Communities (Recognition of Professional Qualifications) (Second General System) Regulations 2002/2934): Health Professions Order 2001, SI 2002/254, art 9(5). The education and training committee must notify the applicant in writing of its decision, and, where that decision is unfavourable to the applicant, of its reasons for reaching that decision and of the applicant's right of appeal under art 37 (see PARA 376 post): art 9(6). Failure to notify the applicant of the committee's decision within the time specified in art 9(5) is treated as a decision from which the applicant may appeal under art 37: art 9(7). For the meaning of 'writing' see PARA 20 note 22 ante.

7 'Prescribed' means prescribed in rules made by the Council: *ibid* Sch 3 para 1. As to the making of rules see PARA 320 ante. As to the rules made see the Health Professions Council (Registration and Fees) Rules Order of Council 2003, SI 2003/1572 (as amended) (made partly under the Health Professions Order 2001, SI 2002/254, art 9). As to the form and manner of making applications see PARA 330 post.

8 Health Professions Order 2001, SI 2002/254, art 9(2).

9 As to the education and training committee see PARA 314 ante.

10 As to approved qualifications see PARA 329 post. The Council, being the designated authority for the health professions registered with it in the United Kingdom, may not, on grounds of inadequate qualifications, refuse to authorise a national of a European Union member state, Iceland, Norway, Liechtenstein or Switzerland to practise the profession on the same conditions as apply to a United Kingdom applicant, if that person holds the diploma required to practise in another such state or can satisfy certain other conditions as to experience and qualifications: see the European Communities (Recognition of Professional Qualifications) (First General System) Regulations 2005, SI 2005/18, regs 4(1), 5, Sch 1 Pt 1. As to proof of experience and qualifications see further regs 6-9. A national of a European Union member state, Iceland, Norway, Liechtenstein or Switzerland who has been granted authorisation to practise has the right to use the professional title and designatory letters applicable to the profession in the United Kingdom, and the lawful academic title, and where appropriate its abbreviation, acquired by him in the relevant state in which he formerly qualified and in the language of that state: reg 10(1)(a), (b). Where a person makes use of an academic title the Council may require that the title be followed by the name and location of the establishment or examining board which awarded it: reg 10(2).

11 Health Professions Order 2001, SI 2002/254, art 9(2)(a)(i). Where the applicant is already registered in the register and wishes to be registered in an additional part of the register or to have additional entries recorded, art 9(2)(a) applies only to the qualifications on which his application is based: art 9(3). The prescribed period for the purposes of art 9(2)(a)(i) is five years: Health Professions Council (Registration and Fees) Rules Order of Council 2003, SI 2003/1572, r 6(1).

12 *Ie* the period mentioned in the Health Professions Order 2001, SI 2002/254, art 9(2)(a)(i): see the text to note 11 *supra*.

13 *Ie* under *ibid* art 19(3): see PARA 342 post.

14 *Ibid* art 9(2)(a)(ii). See also note 11 *supra*.

15 *Ie* the requirements mentioned in *ibid* art 5(2): see PARA 325 ante.

16 *Ibid* art 9(2)(b).

17 *Ibid* art 9(2)(c). As to the prescribed fees see PARA 336 note 7 post.

18 *Ie* an order made under *ibid* art 6(1): see PARA 325 ante.

19 *Ibid* art 9(4)(a).

20 *Ibid* art 9(4)(b).

21 For the meaning of 'relevant period' see PARA 331 note 1 post.

22 Health Professions Order 2001, SI 2002/254, art 9(4).

## UPDATE

### 328 Registration

TEXT AND NOTES--SI 2002/254 art 9 amended: SI 2007/3101.

NOTE 6--SI 2002/2934 replaced: European Communities (Recognition of Professional Qualifications) Regulations 2007, SI 2007/2781 (amended by SI 2008/2683, SI 2009/1587, SI 2009/1885).

NOTE 10--SI 2005/18 reg 4 revoked, reg 5, Sch 1 Pt 1 replaced: European Communities (Recognition of Professional Qualifications) Regulations 2007, SI 2007/2781, reg 8, Sch 1 Pt 1.



NOTE 14--A person to whom SI 2002/254 art 9(2)(a)(ii) applies must not be admitted or readmitted to the register or have his registration renewed unless he has (1) undertaken such education or training; or (2) gained such experience, as the Council may specify in standards under art 19(4)(b) and which apply to him: SI 2003/1572 r 6(3) (added by SI 2005/1625).

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### 329. Approved qualifications.

A person is to be regarded as having an approved qualification if:

- 558 (1) he has a qualification awarded in the United Kingdom<sup>1</sup> which has been approved by the Council<sup>2</sup> as attesting to the standard of proficiency<sup>3</sup> it requires for admission to the part of the register<sup>4</sup> in respect of which he is applying<sup>5</sup>;
- 559 (2) he is an EEA national<sup>6</sup> and has a specified qualification<sup>7</sup>; or
- 560 (3) he has, elsewhere than in the United Kingdom, undergone training in one of the relevant professions<sup>8</sup> and either:
  - 112 161. (a) holds a qualification which the Council is satisfied attests to a standard of proficiency comparable to that attested to by a United Kingdom qualification<sup>9</sup>; or
  - 162. (b) the Council is not so satisfied, but the applicant has undergone in the United Kingdom or elsewhere such additional training or experience as satisfies the Council, following any test of competence as it may require him to take, that he has the requisite standard of proficiency for admission to the part of the register in respect of which he is applying<sup>10</sup>,
  - 113 561 and, in either case, he is not an EEA national or exempt person<sup>11</sup> and he satisfies prescribed<sup>12</sup> requirements as to knowledge of English<sup>13</sup>.

The education and training committee<sup>14</sup> must determine procedures to: (i) assess whether a qualification awarded outside the United Kingdom is of a comparable standard to a United Kingdom qualification<sup>15</sup> and must, where it sees fit, keep a list of qualifications which are of a comparable standard which it must publish and keep under review<sup>16</sup>; and (ii) assess other training or professional experience acquired outside the United Kingdom and to compare it, together with those qualifications<sup>17</sup> where appropriate, with the standard of proficiency required for admission to any part of the register<sup>18</sup>.

1 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

2 As to the approval of qualifications see PARA 338 post. For the meaning of 'the Council' see PARA 308 note 1 ante.

3 For the meaning of 'standard of proficiency' see PARA 325 note 4 ante.

4 As to the meaning of 'part of the register' see PARA 325 note 12 ante. As to the register see PARA 325 ante.

5 Health Professions Order 2001, SI 2002/254, art 12(1)(a).

6 'EEA national' means a national of an EEA state; 'national', in relation to an EEA state, has the same meaning as it does for the purposes of the Community Treaties but does not include a person who by virtue of the Treaty of Accession Protocol No 3 (Channel Islands and Isle of Man) art 2 is not to benefit from Community provisions relating to the free movement of persons and services; and 'EEA state' means a member state, Norway, Liechtenstein, Iceland or Switzerland: Health Professions Order 2001, SI 2002/254, art 2, Sch 3 para 1 (definition of 'national' amended by SI 2003/3148; definition of 'EEA state' amended by SI 2004/1947). For the meaning of 'the Community Treaties' see the European Communities Act 1972 s 1(2) (as applied by the Interpretation Act 1978 s 5, Sch 1).

7     Ie a qualification to which the European Communities (Recognition of Professional Qualifications) Regulations 1991, SI 1991/824, or, as the case may be, the European Communities (Recognition of Professional Qualifications) (Second General System) Regulations 1996, SI 1996/2374 (repealed: see now the European Communities (Recognition of Professional Qualifications) (Second General System) Regulations 2002/2934) apply: Health Professions Order 2001, SI 2002/254, art 12(1)(b).

8     For the meaning of 'relevant professions' see PARA 318 note 2 ante.

9     Ie a qualification referred to in the Health Professions Order 2001, SI 2002/254, art 12(1)(a) (see the text to note 5 supra): art 12(1)(c)(i).

10    Ibid art 12(1)(c)(ii).

11    'Exempt person' means any person who is not an EEA national but is, by virtue of a right conferred by EC Council Regulation 1612/68 (OJ L 257, 19.10.1968, p 2) art 11 or any other enforceable right, entitled to be treated for the purposes of access to one of the relevant professions no less favourably than a national of such a state: Health Professions Order 2001, SI 2002/254, Sch 3 para 1. As to the meaning of 'enforceable right' see the European Communities Act 1972 s 2(1); and the Interpretation Act 1978 s 5, Sch 1.

12    For the meaning of 'prescribed' see PARA 328 note 7 ante.

13    Health Professions Order 2001, SI 2002/254, art 12(1)(c)(iii). The education and training committee (see note 14 infra) may require an applicant who is not an EEA national exercising an enforceable Community right or an exempt person to produce evidence that he has sufficient knowledge of spoken and written English to enable him to practise as a registered professional in the United Kingdom safely and competently: Health Professions Council (Registration and Fees) Rules Order of Council 2003, SI 2003/1572, r 7.

14    As to the education and training committee see PARA 314 ante.

15    Ie a qualification mentioned in the Health Professions Order 2001, SI 2002/254, art 12(1)(a): see the text to notes 1-5 supra.

16    Ibid art 12(2)(a).

17    Ie the qualifications mentioned in ibid art 12(2)(a): see the text to notes 14-16 supra.

18    Ibid art 12(2)(b).

## UPDATE

### 329 Approved qualifications

TEXT AND NOTES 6-13--SI 2002/254 art 12, Sch 3 para 1, SI 2003/1572 r 7 amended, SI 2002/254 art 13A (visiting health professionals from other EEA states or Switzerland) added: SI 2007/3101.

NOTE 6--As to the meaning of 'the Community Treaties' see EUROPEAN COMMUNITIES vol 51 PARA 1•22.

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### **330. Applications for registration.**

An application for admission to a part of the register<sup>1</sup> must be: (1) made in writing on the specified form<sup>2</sup>; (2) signed by the applicant<sup>3</sup>; (3) accompanied by the registration fee<sup>4</sup>, and, if appropriate<sup>5</sup>, the scrutiny fee<sup>6</sup>; and (4) sent or given to the registrar<sup>7</sup>. The applicant must provide in connection with the application for registration:

- 562 (a) a reference as to the good character of the applicant given on the specified form<sup>8</sup> by a person who<sup>9</sup>:
  - 114 163. (i) is not a relative of the applicant<sup>10</sup>;
  - 164. (ii) is a person of standing in the community<sup>11</sup>; and
  - 165. (iii) has known the applicant for a period of at least three years<sup>12</sup>;
- 115 563 (b) a reference as to the physical and mental health of the applicant given on the specified form<sup>13</sup> by the applicant's doctor<sup>14</sup> provided that:
  - 116 166. (i) he is not a relative of the applicant<sup>15</sup>; and
  - 167. (ii) he has been the applicant's doctor, or in the case of a general practitioner is a partner in the practice of the doctor of whom the applicant has been a patient, for a period of at least three years ending on the date on which the reference is given<sup>16</sup>;
- 117 564 (c) one of the following:
  - 118 168. (i) the document which confers an approved qualification on the applicant or other evidence demonstrating that the applicant holds an approved qualification<sup>17</sup>;
  - 169. (ii) the certificate or other document issued by a competent authority of his home relevant state attesting to the applicant's qualifications and, where appropriate, experience in respect of the profession to which his application relates<sup>18</sup>; or
  - 170. (iii) where the application is made under the transitional arrangements relating to admission to the register<sup>19</sup>, such documents, information or evidence as the education and training committee may reasonably require<sup>20</sup>, including evidence that he holds the qualification on which he relies in making his application and information as to whether he has been a member of a professional body or has had professional indemnity insurance<sup>21</sup>; and
- 119 565 (d) such other documents, information or evidence as the committee may reasonably require for the purposes of verifying the information in and determining the application<sup>22</sup>.

For the purpose of satisfying itself as to the good character of the applicant, the committee must have regard to:

- 566 (A) the character reference provided<sup>23</sup>;

- 567 (b) any conviction or caution which the applicant has received in the United Kingdom<sup>24</sup> for a criminal offence or a conviction received elsewhere for an offence which, if committed in England and Wales, would constitute a criminal offence<sup>25</sup>;
- 568 (c) any determination by a body responsible for regulating or licensing a health or social care profession to the effect that the applicant's fitness to practise is impaired<sup>26</sup>; and
- 569 (d) any other matters which, in the opinion of the committee, appear to be relevant to the issue<sup>27</sup>,

and for this purpose the committee may seek information additional to that provided with the application for registration from any person or source as it considers appropriate<sup>28</sup>. For the purpose of being satisfied as to the physical and mental health of the applicant, the committee must have regard to the health reference or other evidence provided<sup>29</sup> and such other matters as appear to it to be relevant<sup>30</sup>; and for this purpose the committee may seek information additional to that provided with the application for registration from the applicant and from any other person or source as it considers appropriate and may require the applicant to be examined or further examined by a doctor nominated by the committee<sup>31</sup>.

1 Health Professions Council (Registration and Fees) Rules Order of Council 2003, SI 2003/1572, r 4(1) (amended by SI 2004/2524). As to the register and parts of the register see PARAS 325-326 ante.

2 Health Professions Council (Registration and Fees) Rules Order of Council 2003, SI 2003/1572, r 4(1)(a). As to the form specified see Sch 1 (substituted by SI 2004/2524). For the meaning of 'writing' see PARA 20 note 22 ante. The registrar may accept an application for registration which is not made in accordance with the Health Professions Council (Registration and Fees) Rules Order of Council 2003, SI 2003/1572, r 4(1)(a), (b) (see the text to note 3 infra) if the applicant has submitted by electronic means to the registrar the information which he would be required to provide if the application was submitted in writing on the form specified in Sch 1 (as substituted) and has included with that information an attestation as to its accuracy, and complied with all of the other requirements of r 4 which apply to him: r 4(1A) (added by SI 2004/2524).

3 Health Professions Council (Registration and Fees) Rules Order of Council 2003, SI 2003/1572, r 4(1)(b). See also note 2 supra.

4 Ie the fee prescribed in *ibid* r 14 (see PARA 336 note 7 post): r 4(1)(c)(i).

5 Ie if the applicant is relying on the Health Professions Order 2001, SI 2002/254, art 12(1)(b) or (c) (see PARA 329 ante) or seeking to be treated as satisfying the requirements of art 9(2)(a) by virtue of art 13 (see PARA 331 post).

6 Ie the scrutiny fee prescribed by the Health Professions Council (Registration and Fees) Rules Order of Council 2003, SI 2003/1572, r 17: r 4(1)(c)(ii) (amended by SI 2004/2524). The fee to be charged for scrutinising an application for registration where the applicant is relying on the Health Professions Order 2001, SI 2002/254, art 12(1)(b) or (c) (see PARA 329 ante), or is seeking to be treated as satisfying the requirements of art 9(2)(a) by virtue of art 13 (see PARA 331 post), is £200: Health Professions Council (Registration and Fees) Rules Order of Council 2003, SI 2003/1572, r 17(1) (amended by SI 2004/2524). The scrutiny fee must be paid at the time an application for registration to which it applies is made: Health Professions Council (Registration and Fees) Rules Order of Council 2003, SI 2003/1572, r 17(2).

7 *Ibid* r 4(1)(d). As to the registrar see PARA 324 ante.

8 Ie the form specified in *ibid* Sch 3.

9 *Ibid* r 4(2)(a). Where the applicant is relying on the Health Professions Order 2001, SI 2002/254, art 12(1)(b) (see PARA 329 ante), he may provide, in place of such a character reference: (1) a document issued by the competent authority of his home relevant state attesting to the applicant's good character and confirming that he has not been suspended or prohibited from practising the profession to which his application relates because of professional misconduct or the commission of a criminal offence (Health Professions Council (Registration and Fees) Rules Order of Council 2003, SI 2003/1572, r 4(3)(a)); or (2) where the competent authority does not issue such documents, a declaration on oath or solemn declaration attesting to and confirming the matters required by that competent authority to be attested to or confirmed under r 4(3)(a) made by the applicant before a competent judicial or administrative authority or (where appropriate) a notary or qualified professional body of his home relevant state, and authenticated by a certificate issued by the authority, notary or body (r

4(3)(b)). 'Competent authority' is to be construed in accordance with the European Communities (Recognition of Professional Qualifications) Regulations 1991, SI 1991/824, reg 2 or the European Communities (Recognition of Professional Qualifications) (Second General System) Regulations 2002, SI 2002/2934, reg 8 as appropriate: Health Professions Council (Registration and Fees) Rules Order of Council 2003, SI 2003/1572, r 2. 'Home relevant state' means the relevant state (within the meaning of the European Communities (Recognition of Professional Qualifications) Regulations 1991, SI 1991/824, or the European Communities (Recognition of Professional Qualifications) (Second General System) Regulations 2002, SI 2002/2934, as appropriate) from which, as the case requires, the applicant originates or comes or in which the applicant formerly qualified in, or practised, the profession to which his application relates: Health Professions Council (Registration and Fees) Rules Order of Council 2003, SI 2003/1572, r 2.

10 Ibid r 4(2)(a)(i). 'Relative', in relation to any person, means: (1) his spouse; (2) any lineal ancestor, lineal descendant, brother, sister, aunt, uncle, nephew, niece, or first cousin, of his or of his spouse; or (3) the spouse of any relative mentioned in head (2) supra, and for the purposes of deducing any such relationship 'spouse' includes a former spouse, a partner to whom the person is not married, and a partner of the same sex: r 2.

11 Ibid r 4(2)(a)(ii). A person of standing in the community includes a registered professional, doctor, solicitor, accountant, bank manager, justice of the peace, principal of the institution which granted the applicant an approved qualification or a person authorised to provide character references by the principal of that institution, minister of the Church, rabbi, imam or other religious official acceptable to the Council: r 4(2)(a)(ii). For these purposes, 'doctor' means a registered medical practitioner: r 2. For the meaning of 'registered medical practitioner' see PARA 4 ante. For the meaning of 'the Council' see PARA 308 note 1 ante.

12 Ibid r 4(2)(a)(iii).

13 Ie the form specified in ibid Sch 4.

14 Ibid r 4(2)(b). Where the applicant is relying on the Health Professions Order 2001, SI 2002/254, art 12(1)(b) (see PARA 329 ante), he must provide: (1) the document attesting to his physical or mental health required by the competent authority of his home relevant state which regulates the profession to which his application relates (Health Professions Council (Registration and Fees) Rules Order of Council 2003, SI 2003/1572, r 4(4)(a)); or (2) where such a document is not required, the reference referred to in r 4(2)(b) (r 4(4)(b)). Where the education and training committee is satisfied that the applicant cannot provide a health reference in the terms provided by r 4(2)(b) or (4), the committee may permit an applicant to provide evidence of his physical and mental health: (a) by a reference given by a doctor who, in giving the reference, relies on the medical records of the applicant made by another doctor of whom the applicant has been a patient and which relate to a period of at least three years ending on the date on which the reference is given (r 4(5)(a)); (b) by an examination by a doctor nominated by the committee (r 4(5)(b)); or (c) by such other manner as the committee considers appropriate in a particular case (r 4(5)(c)). As to the education and training committee see PARA 314 ante.

15 Ibid r 4(2)(b)(i).

16 Ibid r 4(2)(b)(ii).

17 Ibid r 4(2)(c)(i). As to approved qualifications see PARA 329 ante.

18 Ie where the applicant is relying on the Health Professions Order 2001, SI 2002/254, art 12(1)(b) (see PARA 329 ante): Health Professions Council (Registration and Fees) Rules Order of Council 2003, SI 2003/1572, r 4(2)(c)(ii).

19 Ie where the application is made under the Health Professions Order 2001, SI 2002/254, art 13: see PARA 331 post.

20 Ie for the purposes of determining whether by virtue of ibid art 13 (see PARA 331 post) the applicant is to be treated as satisfying the requirements of art 9(2)(a) (see PARA 328 ante).

21 Health Professions Council (Registration and Fees) Rules Order of Council 2003, SI 2003/1572, r 4(2)(c)(iii).

22 Ibid r 4(2)(d).

23 Ie under ibid r 4(2)(a) or (3) (see the text to note 9 supra): r 5(1)(a).

24 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

25 Health Professions Council (Registration and Fees) Rules Order of Council 2003, SI 2003/1572, r 5(1)(b).

26 Ibid r 5(1)(c).

- 27 Ibid r 5(1)(d).  
28 Ibid r 5(1).  
29 Ie under ibid r 4(2)(b), (4) or (5) (see the text to note 14 supra): r 5(2)(a).  
30 Ibid r 5(2)(b).  
31 Ibid r 5(2).

## **UPDATE**

### **330 Applications for registration**

NOTES--SI 2003/1572 rr 2, 4, 5 amended, r 2A added: SI 2007/3101.

NOTE 2--References in SI 2003/1572 r 4(1)(a), (1A)(a) (both as amended by SI 2005/1625) to the form specified in Sch 1 are now to the form provided by the Council and containing the declaration and information listed in Sch 1 (as further substituted by SI 2005/1625).

NOTE 4--SI 2003/1572 r 4(1)(c) substituted: SI 2007/1280.

NOTE 6--SI 2003/1572 r 17 substituted by SI 2007/1280 and amended by SI 2009/272.

NOTE 8--The reference in SI 2003/1572 r 4(2)(a) (as amended by SI 2005/1625) to the form specified in Sch 3 is now to the form provided by the Council containing the declaration and information listed in Sch 3 (as substituted by SI 2005/1625 and amended by SI 2005/2114).

NOTE 10--Definition of 'relative' in SI 2003/1572 r 2 amended: SI 2005/2114.

NOTE 13--The reference in SI 2003/1572 r 4(2)(b) (as amended by SI 2005/1625) to the form specified in Sch 4 is now to the form provided by the Council containing the declaration and information listed in Sch 4 (as substituted by SI 2005/1625 and amended by SI 2005/2114).

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### **331. Transitional provisions relating to admission to the register.**

A person to whom these provisions apply<sup>1</sup> must be treated as satisfying the requirements relating to the holding of an approved qualification<sup>2</sup> if he satisfies the education and training committee<sup>3</sup>, following any test of competence that it may require him to take<sup>4</sup>: (1) that for a period of at least three out of the five years immediately preceding the specified date<sup>5</sup>, or its equivalent on a part-time basis, he has been wholly or mainly engaged in the lawful, safe and effective practice of the profession in respect of which he wishes to be registered<sup>6</sup>; or (2) that he has not so practised but he has undergone in the United Kingdom<sup>7</sup> or elsewhere such additional training and experience as satisfies the Council<sup>8</sup> that he has the requisite standard of proficiency<sup>9</sup> for admission to the part of the register<sup>10</sup> in respect of which he is applying<sup>11</sup>.

1 The Health Professions Order 2001, SI 2002/254, art 13 applies to a person who: (1) applies for admission to the register under art 9(1) (see PARA 328 ante) (art 13(1)(a) (art 13(1) substituted by SI 2004/2033)); (2) is not registered on the date of coming into force of an order made under art 6(1) (see PARA 325 ante) which relates to the profession in respect of which he is applying to be registered (art 13(1)(b) (as so substituted)); (3) has never been registered in respect of that profession under the Professions Supplementary to Medicine Act 1960 or the Health Professions Order 2001, SI 2002/254 (as amended), or in the case of an operating department practitioner on the register of operating department practitioners (art 13(1)(c) (as so substituted)); but (4) applies for admission to the register in respect of that profession within the period of two years beginning with the date mentioned in head (2) supra ('the relevant period') (art 13(1)(d) (as so substituted)).

2 I.e. the requirements of *ibid* art 9(2)(a): see PARA 328 ante.

3 As to the education and training committee see PARA 314 ante.

4 Health Professions Order 2001, SI 2002/254, art 13(2). The Council must, having consulted such of those persons mentioned in art 3(14) (see PARA 318 ante) as it considers appropriate, establish from time to time the criteria to which the education and training committee is to have regard in reaching a decision under art 13(2); and it must publish those criteria: art 13(3).

5 I.e. the date mentioned in *ibid* art 13(1)(a) (as substituted): see note 1 supra.

6 *Ibid* art 13(2)(a). See also note 4 supra. For the meaning of 'registered' see PARA 325 note 13 ante.

7 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

8 For the meaning of 'the Council' see PARA 308 note 1 ante.

9 For the meaning of 'standard of proficiency' see PARA 325 note 4 ante.

10 As to the meaning of 'part of the register' see PARA 325 note 12 ante. As to the register see PARA 325 ante.

11 Health Professions Order 2001, SI 2002/254, art 13(2)(b). See also note 4 supra.

## **UPDATE**

### **331 Transitional provisions relating to admission to the register**

NOTE 1--SI 2002/254 art 13(1)(c) substituted; art 13(1)(d) amended: SI 2009/1182.



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### **332. Registration period.**

A person's registration period is to be determined in accordance with the following provisions<sup>1</sup>. A person's first registration period begins on the day on which he is first registered<sup>2</sup> in respect of the profession concerned and ends on the next occurrence of the specified date<sup>3</sup>. In respect of any registrant, a registration period subsequent to the first registration period begins on the day after the previous registration period ends and ends on the next occurrence of the specified date<sup>4</sup>. However, if a person's name is removed from the register<sup>5</sup> and he is thereafter readmitted or restored to the register<sup>6</sup>, his registration period begins on the day on which he is readmitted or restored and ends on the next occurrence of the specified date<sup>7</sup>.

1 Health Professions Council (Registration and Fees) Rules Order of Council 2003, SI 2003/1572, r 10(1).

2 For the meaning of 'registered' see PARA 325 note 13 ante.

3 Health Professions Council (Registration and Fees) Rules Order of Council 2003, SI 2003/1572, r 10(3) (r 10(3), (4), (5) amended, and Sch 5 substituted by SI 2004/2524). The specified date is that shown in the Health Professions Council (Registration and Fees) Rules Order of Council 2003, SI 2003/1572, Sch 5 column 2 (as so substituted) opposite the part of the register shown in Sch 5 column 1 (as so substituted) in which he is registered: r 10(3), (4), (5). However, the first registration period of a person who, on the date of the coming into force of the first order made by the Privy Council under art 6 (see PARA 312 note 4 ante), is transferred to the register from a register maintained under the Professions Supplementary to Medicine Act 1960 will end on the date that his last renewal of registration under that Act would have expired: Health Professions Council (Registration and Fees) Rules Order of Council 2003, SI 2003/1572, r 10(2). As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

4 Ibid r 10(4) (as amended: see note 3 supra). As to the specified date see note 3 supra.

5 As to the register see PARA 325 ante. As orders removing a person's name from the register see PARA 367 post. As to applications for removal from the register see PARA 335 post.

6 As to readmission to the register see PARA 333 post. As to restoration to the register see PARA 371 post.

7 Health Professions Council (Registration and Fees) Rules Order of Council 2003, SI 2003/1572, r 10(5) (as amended: see note 3 supra). As to the specified date see note 3 supra.

## **UPDATE**

### **332 Registration period**

NOTE 3--As to the ending of the first registration period of a practitioner psychologist who is transferred to the register by virtue of the Health Care and Associated Professions (Miscellaneous Amendments and Practitioner Psychologists) Order 2009, SI 2009/1182, art 5(3) see SI 2003/1572 r 10(2A), Sch 5 (r 10(2A) added; Sch 5 amended by SI 2009/1355).

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### **333. Renewal of registration and readmission.**

Where a person is registered<sup>1</sup> and wishes to renew his registration at the end of a prescribed period<sup>2</sup>, he must make an application<sup>3</sup> for renewal to the education and training committee<sup>4</sup> in accordance with rules made by the Council<sup>5</sup>. Not less than 42 days before his registration period ends, the committee must send to a registrant<sup>6</sup>: (1) an application for the renewal of his registration in the specified form<sup>7</sup>; (2) notice of the renewal fee<sup>8</sup>; and (3) a notice warning the registrant that unless a completed application form accompanied by the renewal fee is received by the committee on or before the date specified in the notice, the registrant is liable to be removed from the register<sup>9</sup>.

The education and training committee must grant the application for renewal if the applicant: (a) meets the specified conditions<sup>10</sup>; (b) satisfies the committee that he has met any prescribed requirements for continuing professional development within the prescribed time<sup>11</sup>; and (c) where he has not practised, or has practised for less than the prescribed period<sup>12</sup>, since his first registration or, as the case may be, his latest renewal, has met such requirements as to additional education, training or experience as the Council may specify<sup>13</sup> and which apply to him<sup>14</sup>.

Where a person's registration has lapsed<sup>15</sup>, he may apply to the education and training committee to be readmitted and the committee must grant the application<sup>16</sup> if the applicant meets the specified conditions<sup>17</sup>, and he satisfies the committee that he has met such requirements as to additional education, training or experience as the Council may specify<sup>18</sup> and which apply to him<sup>19</sup>.

1 For the meaning of 'registered' see PARA 325 note 13 ante.

2 As to the registration period see PARA 332 ante. For the meaning of 'prescribed' see PARA 328 note 7 ante.

3 The provisions of the Health Professions Order 2001, SI 2002/254, art 9(5)-(7) (see PARA 328 note 6 ante) apply to applications made under art 10: art 10(5) (amended by SI 2004/2033).

4 As to the education and training committee see PARA 314 ante.

5 Health Professions Order 2001, SI 2002/254, art 10(1). For the meaning of 'the Council' see PARA 308 note 1 ante. As to the rules made see the Health Professions Council (Registration and Fees) Rules Order of Council 2003, SI 2003/1572 (as amended); and the text to notes 6-9 infra. As to the making of rules generally see PARA 320 ante.

6 Health Professions Council (Registration and Fees) Rules Order of Council 2003, SI 2003/1572, r 11(1). Any form, warning or notice to be given by the committee to a registrant under r 11 may be sent by post to the home address of the registrant as it appears in the register and is treated as sent at the time of its posting: r 11(3).

7 I.e the form specified *ibid* Sch 2: r 11(1)(a).

8 I.e the renewal fee prescribed in *ibid* r 15 (see PARA 336 note 7 post): r 11(1)(b).

9 *Ibid* r 11(1)(c). If an application accompanied by the renewal fee is not received by the committee by the date specified in the notice, the committee must send a final notice to the registrant warning that unless his application and fee are received within 14 days (beginning with the day on which the committee sent the final notice) the registrant's name may be removed from the register; and if no such application and payment is made the committee may direct the registrar to remove the registrant from the register on the expiry of the 14

days or, if later, when the registrant's registration period has ended: r 11(2). As to the registrar see PARA 324 ante.

10 Ie the conditions set out in the Health Professions Order 2001, SI 2002/254, art 9(2)(b), (c) (see PARA 328 ante): art 10(2)(a).

11 Ibid art 10(2)(b). Where an applicant does not satisfy the committee that he has met the requirements mentioned in art 10(2)(b) or (c), the committee may renew the applicant's registration on condition that he satisfies those requirements within a specified time; and if the person fails to comply with the condition, subject to art 11(3) (see PARA 334 note 4 post) and art 37(3) (see PARA 376 note 12 post), his registration will lapse and, in accordance with prescribed procedure, his name will be removed from the register: art 10(3). As to continuing professional development see PARA 342 post.

12 The prescribed period for the purposes of ibid art 10(2)(c) is two years: Health Professions Council (Registration and Fees) Rules Order of Council 2003, SI 2003/1572, r 6(2).

13 Ie under the Health Professions Order 2001, SI 2002/254, art 19(3): see PARA 342 post.

14 Ibid art 10(2)(c). See also note 11 supra.

15 As to lapse of registration see PARA 334 post.

16 Health Professions Order 2001, SI 2002/254, art 10(4). See also note 3 supra.

17 Ie the conditions set out in ibid art 9(2)(b), (c): art 10(4)(a).

18 Ie under ibid art 19(3).

19 Ibid art 10(4)(b).

## **UPDATE**

### **333 Renewal of registration and readmission**

TEXT AND NOTES--SI 2002/254 art 10 amended: SI 2007/3101.

NOTE 7--Form for renewal must now include the declaration and information listed in SI 2003/1572 Sch 2 (substituted by SI 2005/1625): SI 2003/1572 r 11(1)(a) (amended by SI 2005/1625).

NOTE 12--A person to whom SI 2002/254 art 10(2)(c) applies must not be admitted or re-admitted to the register or have his registration renewed unless he has (1) undertaken such education or training; or (2) gained such experience, as the Council may specify in standards under art 19(4)(b) and which apply to him: SI 2003/1572 r 6(3) (added by SI 2005/1625).

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### **334. Lapse of registration.**

The Council<sup>1</sup> may make rules providing for the procedure by which and the circumstances in which a registrant's<sup>2</sup> name may be removed from the register<sup>3</sup> on his own application or after the expiry of a specified period<sup>4</sup>. Where a person's name is removed<sup>5</sup>, his registration is referred to as lapsed<sup>6</sup>.

Where the education and training committee renews a registrant's registration<sup>7</sup> subject to a condition that he satisfies a specified requirement<sup>8</sup> within a specified time, the committee must inform the registrant at the time it renews his registration that he must, before the expiry of the specified time, confirm in writing that he has complied with the condition and provide evidence which satisfies the committee that he has done so<sup>9</sup>. If, by the expiry of the specified time, the committee does not receive the written confirmation and evidence<sup>10</sup> or is not satisfied that the registrant has complied with the condition<sup>11</sup>, it must send a notice to the registrant stating that, unless before the end of the period of 14 days beginning with the day on which the committee sent the notice he provides the confirmation and evidence that he has complied with the condition, his name will be removed from the register<sup>12</sup>. If the written confirmation and evidence are not received or the committee is not satisfied that the registrant has complied with the specified condition within the specified time, the committee must instruct the registrar<sup>13</sup> to remove the registrant's name from the register<sup>14</sup>.

1 For the meaning of 'the Council' see PARA 308 note 1 ante.

2 For the meaning of 'registrant' see PARA 318 note 4 ante.

3 For the meaning of 'register' see PARA 325 note 2 ante.

4 Health Professions Order 2001, SI 2002/254, art 11(1). Any rules made under art 11(1) must provide that a person's registration does not lapse under art 11 or under art 10(3) (see PARA 333 note 11 ante): (1) where the person concerned is the subject of an allegation, or is treated under art 22(6) (see PARA 344 note 13 post) as if he were the subject of an allegation, or is the subject of any investigations or proceedings under Pt V (arts 21-36) (see PARA 343 et seq post) or Pt VI (arts 37, 38) (see PARAS 376, 382 post), on the grounds only that he has not paid the prescribed fee or has failed to apply for renewal in the prescribed form or within the prescribed time (art 11(3)(a)); or (2) if the person concerned is the subject of a suspension order, a conditions of practice order, an interim suspension order or an interim conditions of practice order (art 11(3)(b)). As to such orders see PARAS 367, 369 post. As to the rules that have been made see the Health Professions Council (Registration and Fees) Rules Order of Council 2003, SI 2003/1572 (as amended); and the text to notes 7-14 infra.

5 Ie in accordance with the Health Professions Order 2001, SI 2002/254, art 11 or art 10(3).

6 Ibid art 11(2).

7 Ie in accordance with ibid art 10(3). As to the education and training committee see PARA 314 ante.

8 Ie a requirement of art 10(2)(b) or (c): see PARA 333 ante.

9 Health Professions Council (Registration and Fees) Rules Order of Council 2003, SI 2003/1572, r 13(1). For the meaning of 'writing' see PARA 20 note 22 ante.

10 Ibid r 13(2)(a).

11 Ibid r 13(2)(b).

12 Ibid r 13(2).

13 As to the registrar see PARA 324 ante.

14 Health Professions Council (Registration and Fees) Rules Order of Council 2003, SI 2003/1572, r 13(3). Where the committee instructs the registrar to remove a registrant's name from the register in accordance with r 13(3), the committee must send him a notice informing him of that fact and advising him of his right of appeal under the Health Professions Order 2001, SI 2002/254, art 37 (see PARA 376 post): Health Professions Council (Registration and Fees) Rules Order of Council 2003, SI 2003/1572, r 13(4). A person's registration will not lapse and his name will not be removed from the register under the Health Professions Order 2001, SI 2002/254, art 10(3) or art 11 if that person: (1) is the subject of an allegation under the Health Professions Order 2001, SI 2002/254, art 22(1) (or is treated as if he were the subject of an allegation under art 22(6) (see PARA 344 note 13 post)) or is the subject of any investigation or proceedings under Pt V or Pt VI, on the grounds only that he has not paid the prescribed fee or has failed to apply for renewal in the prescribed form or within the prescribed time (Health Professions Council (Registration and Fees) Rules Order of Council 2003, SI 2003/1572, r 13(5)(a)); or (2) is the subject of a suspension order, conditions of practice order, interim suspension order or interim conditions of practice order (r 13(5)(b)).

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### **335. Application for removal from the register.**

Without prejudice to any other power of the registrar<sup>1</sup> to remove a registrant's name from the register<sup>2</sup>, the registrar may remove the name of a registrant from the register upon written application made by or on behalf of that registrant<sup>3</sup>. An application for the removal of a name from the register must be made in writing and accompanied by a declaration that the registrant concerned is not aware of any matter which could give rise to an allegation against him<sup>4</sup>. The registrar may not remove the name of a registrant from the register under these provisions if the registrant is subject to any allegation, investigation, proceedings or order of a specified kind<sup>5</sup>.

1 As to the registrar see PARA 324 ante.

2 As to the register see PARA 325 ante. As to the powers of the registrar to remove a registrant's name from the register see PARAS 333 note 9, 334 ante, 336 note 1, 367 post.

3 Health Professions Council (Registration and Fees) Rules Order of Council 2003, SI 2003/1572, r 12(1).

4 Ie under the Health Professions Order 2001, SI 2002/254, art 22 (see PARA 344 post): Health Professions Council (Registration and Fees) Rules Order of Council 2003, SI 2003/1572, r 12(2). For the meaning of 'writing' see PARA 20 note 22 ante.

5 Ie of a kind mentioned in *ibid* r 13(5) (see PARA 334 note 14 ante): r 12(3).

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### **336. Payment of fees.**

Subject to certain exceptions<sup>1</sup>, the registrar<sup>2</sup> must not include a person's name in the register<sup>3</sup> on an application for registration<sup>4</sup>, readmission or restoration or, except as otherwise provided<sup>5</sup>, renew an entry in the register<sup>6</sup> relating to any person, unless he has paid the prescribed registration fee, readmission fee, restoration fee or renewal fee<sup>7</sup>. A person who satisfies the Council<sup>8</sup> that he has retired from the practice of his profession, leaving unused his registration for a complete year of a registration period, is, on written application to the Council, to be given a refund of half the fee paid by him in respect of that registration period<sup>9</sup>.

A person whose registration period<sup>10</sup> is not more than one year is only liable to pay half the registration fee, readmission fee or restoration fee which he would otherwise be liable to pay in respect of that registration period<sup>11</sup>. The Council may waive payment of or reduce any fee or part of a fee otherwise payable<sup>12</sup> or refund the whole or part of any such fee<sup>13</sup>.

1 A person may, with the agreement of the registrar (see note 2 *infra*), elect to pay any registration fee, readmission fee, restoration fee or renewal fee in four six-monthly instalments by direct debit and in that event: (1) the registrar may make, renew or restore a register entry once the first instalment of that fee has been paid by direct debit; and (2) references to an application being accompanied by any such fee are to be construed as if they were references to the application being accompanied by a direct debit mandate in respect of those fees: Health Professions Council (Registration and Fees) Rules Order of Council 2003, SI 2003/1572, r 18(2). Where it has been agreed that any fee is to be paid in instalments by direct debit and, following the payment of the first instalment and the making, renewal or restoration of a register entry, a subsequent payment is not made by the date on which it is due, the registrar must send a notice to the registrant stating that, if payment is not received within 14 days (beginning with the day on which the registrar sent the notice), the registrant's name may be removed from the register; and if no such payment is made, the registrar may remove the registrant's name from the register: r 18(3).

2 As to the registrar see PARA 324 *ante*.

3 As to the register see PARA 325 *ante*.

4 As to applications for registration see PARA 330 *ante*.

5 *Ie* in the Health Professions Council (Registration and Fees) Rules Order of Council 2003, SI 2003/1572, r 11: see PARA 333 *ante*.

6 As to applications for readmission, restoration or renewal of registration see PARA 333 *ante*.

7 Health Professions Council (Registration and Fees) Rules Order of Council 2003, SI 2003/1572, r 18(1). The fee to be charged for registration following an application for registration is: (1) in respect of the first registration period (as determined in accordance with r 10(3): see PARA 332 *ante*), where the applicant applies less than one year after the date on which he was first awarded an approved qualification, £60; and (2) in all other cases, £120: r 14(1). However, a person who, on the date of the coming into force of the first order made by the Privy Council under the Health Professions Order 2001, SI 2002/254, art 6, is transferred to the register from a register maintained under the Professions Supplementary to Medicine Act 1960 and whose first registration period is determined in accordance with the Health Professions Council (Registration and Fees) Rules Order of Council 2003, SI 2003/1572, r 10(2) (see PARA 332 note 3 *ante*) is not liable to pay a registration fee in respect of that first registration period: r 14(2). The fee to be charged for renewal of registration or for readmission to the register is £120: r 15. The fee to be charged for restoring an entry in the register is £120: r 16.

8 For the meaning of 'the Council' see PARA 308 note 1 *ante*.

9 Health Professions Council (Registration and Fees) Rules Order of Council 2003, SI 2003/1572, r 18(4).

10 le as determined in accordance with *ibid* r 10(3) or (5): see PARA 332 ante.

11 *Ibid* r 16(A)(1) (r 16A added by SI 2004/2524).

12 le under the Health Professions Council (Registration and Fees) Rules Order of Council 2003, SI 2003/1572 (as amended): r 16A(2)(a) (as added: see note 11 *supra*).

13 *Ibid* r 16A(2)(b) (as added: see note 11 *supra*).

## **UPDATE**

### **336 Payment of fees**

NOTE 7--SI 2003/1572 r 14(1) amended: SI 2007/1280, SI 2009/272. As to the liability for registration fees of persons transferred to the register by virtue of the Health Care and Associated Professions (Miscellaneous Amendments and Practitioner Psychologists) Order 2009, SI 2009/1182, art 5(3) see SI 2003/1572 r 14(3) (added by SI 2009/1355).

The fee for renewal of registration is now (1) in the case of a practitioner psychologist for the registration period from 1 November 2009 to 31 May 2011, £120; and (2) in all other cases, £152: SI 2003/1572 r 15(a), (b) (substituted by SI 2009/1355). The fee for readmission to the register is now £267: SI 2003/1572 r 15A (added by SI 2007/1280 and amended by SI 2009/272). The fee for restoring an entry in the register is now £267: SI 2003/1572 r 16 (amended by SI 2009/272).

NOTE 11--SI 2003/1572 r 16A amended: SI 2007/1280.



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### **337. Access to the register.**

The Council<sup>1</sup> must make the register<sup>2</sup> available for inspection by members of the public at all reasonable times<sup>3</sup>. The Council must publish the register maintained by it in such manner, and at such times, as it considers appropriate<sup>4</sup>. Any copy of, or extract from, the published register is evidence of the matters mentioned in it<sup>5</sup>. A certificate purporting to be signed by the registrar<sup>6</sup>, certifying that a person: (1) is registered in a specified category<sup>7</sup>; (2) is not registered<sup>8</sup>; (3) was registered in a specified category at a specified date or during a specified period<sup>9</sup>; (4) was not registered in a specified category, or in any category, at a specified date or during a specified period<sup>10</sup>; or (5) has never been registered<sup>11</sup>, is evidence of the matters certified<sup>12</sup>. On application by a registrant<sup>13</sup> who wishes to practise in another EEA state<sup>14</sup>, the Council must provide him with such documentary evidence as is required by the relevant directive<sup>15</sup>.

1 For the meaning of 'the Council' see PARA 308 note 1 ante.

2 For the meaning of 'register' see PARA 325 note 2 ante.

3 Health Professions Order 2001, SI 2002/254, art 8(1).

4 Ibid art 8(2).

5 Ibid art 8(3).

6 As to the registrar see PARA 324 ante.

7 Health Professions Order 2001, SI 2002/254, art 8(4)(a).

8 Ibid art 8(4)(b).

9 Ibid art 8(4)(c).

10 Ibid art 8(4)(d).

11 Ibid art 8(4)(e).

12 Ibid art 8(4). As to the evidential effect of certificates admissible by statute see CIVIL PROCEDURE vol 11 (2009) PARA 897.

13 For the meaning of 'registrant' see PARA 318 note 4 ante.

14 For the meaning of 'EEA state' see PARA 329 note 6 ante.

15 Health Professions Order 2001, SI 2002/254, art 8(5).

### **UPDATE**

### **337 Access to the register**

NOTES 14, 15--SI 2002/254 art 8(5) amended: SI 2007/3101.

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### **(iii) Education and Training**

#### **338. Standards of education and training.**

The Council<sup>1</sup> must from time to time establish the standards of education and training<sup>2</sup> necessary to achieve the standards of proficiency<sup>3</sup> it has established<sup>4</sup>, and the requirements to be satisfied for admission to, and continued participation in, such education and training which may include requirements as to good health and good character<sup>5</sup>. Before establishing such standards or requirements, the Council must consult such of certain persons<sup>6</sup> as it considers appropriate and the education and training committee<sup>7</sup>.

The education and training committee must advise the Council, whether on the request of the Council or otherwise, on the performance of the Council's functions in relation to: (1) the establishing of standards of proficiency, and related functions<sup>8</sup>; (2) the establishing of standards and requirements in respect of education and training or continuing professional development, as the case may be<sup>9</sup>; and (3) the giving of guidance<sup>10</sup>.

The education and training committee must: (a) ensure that universities and other bodies in the United Kingdom<sup>11</sup> concerned with such education and training are notified of the standards and requirements established<sup>12</sup>; and (b) take appropriate steps to satisfy itself that those standards and requirements are met<sup>13</sup>. In performing the function mentioned in head (b) above, the committee may in particular, approve, or arrange with others to approve<sup>14</sup>: (i) a course of education or training which the committee is satisfied confers or would confer on persons completing it successfully the established standards of proficiency<sup>15</sup>; (ii) qualifications which are granted following success in an examination, or some other appropriate assessment, taken as part of an approved course of education or training<sup>16</sup>; (iii) institutions which the committee considers to be properly organised and equipped for conducting the whole or part of an approved course of education or training<sup>17</sup>; (iv) such tests of competence or knowledge of English as it may require<sup>18</sup>. The Council must from time to time publish a statement of the criteria which will be taken into account in deciding whether to give approval under heads (i) to (iv) above<sup>19</sup>. The Council must maintain and publish a list of the courses of education or training, qualifications and institutions which are for the time being approved<sup>20</sup>, or which have been approved but which are no longer so approved, together with a record of the periods in respect of which they were approved<sup>21</sup>.

1 For the meaning of 'the Council' see PARA 308 note 1 ante.

2 For the purposes of the Health Professions Order 2001, SI 2002/254, art 15, a reference to education or training includes any course of education or training or test referred to in art 15(5) (see the text to notes 14-18 infra): art 15(9).

3 For the meaning of 'standards of proficiency' see PARA 325 note 4 ante.

4 Health Professions Order 2001, SI 2002/254, art 15(1)(a). The standards mentioned in art 15(1)(a) must include such matters as the outcomes to be achieved by that education and training: art 15(2).

5 Ibid art 15(1)(b).

6 Ie those persons mentioned in ibid art 3(14): see PARA 318 ante.

7 Ibid art 15(3). As to the education and training committee see PARA 314 ante.

- 8 le the other functions of the Council under ibid art 5 (see PARA 325 ante): art 14(a).
- 9 le under ibid art 15(1) (see the text to notes 1-5 supra) and art 19(4), (6) (see PARA 342 post): art 14(b).
- 10 le under ibid art 21(2) (see PARA 343 post): art 14(c).
- 11 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.
- 12 le established under the Health Professions Order 2001, SI 2002/254, art 15(1) (see the text to notes 1-5 supra): art 15(4)(a).
- 13 Ibid art 15(4)(b).
- 14 Ibid art 15(5). The National Assembly for Wales may create or designate a body with which the Council may enter into any such arrangements as are referred to in art 15(5) in order to perform its function under art 15(4)(b) (see the text to note 13 supra) in respect of the standards established under art 15(1) (see the text to notes 1-5 supra) or art 19(4), (6) (see PARA 342 post): art 20. The National Assembly for Wales has established Health Professions Wales for these purposes: see the Health (Wales) Act 2003 s 4; and the Health Professions Wales (Establishment, Membership, Constitution and Functions) Order 2004, SI 2004/551. As to the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS.
- 15 Health Professions Order 2001, SI 2002/254, art 15(5)(a).
- 16 Ibid art 15(5)(b). 'Approved course of education or training' means a course approved under art 15(5)(a) (see the text to note 15 supra): art 2, Sch 3 para 1.
- 17 Ibid art 15(5)(c). In connection with art 15(5), the committee may approve or arrange with others to approve a course of education or training run outside the United Kingdom by an institution to which art 15(5)(c) applies: art 15(6).
- 18 Ibid art 15(5)(d). As to tests of competence or knowledge of English see PARA 329 ante.
- 19 Ibid art 15(7).
- 20 le approved under the Health Professions Order 2001, SI 2002/254 (as amended): art 15(8)(a).
- 21 Ibid art 15(8)(b).

## **UPDATE**

### **338 Standards of education and training**

NOTE 14--SI 2004/551 revoked; Health Professions Wales abolished and staff, property, records, rights and liabilities transferred to the National Assembly for Wales: see the Health Professions Wales Abolition Order 2006, SI 2006/978.

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### **339. Visitors.**

The Council<sup>1</sup> may, at the request of the education and training committee<sup>2</sup> or otherwise, appoint persons, known as 'visitors', to visit any place at which or institution by which or under whose direction<sup>3</sup>: (1) any relevant course of education or training<sup>4</sup> is, or is proposed to be, given<sup>5</sup>; (2) any examination or other assessment is, or is proposed to be, held in connection with any such course<sup>6</sup>; (3) any test of competence<sup>7</sup> is, or is proposed to be, conducted in connection with any such course or for any other purposes<sup>8</sup>. Visitors are to be selected with due regard to the profession with which the education and training they are to report on is concerned, and at least one of the visitors must be registered<sup>9</sup> in that part of the register<sup>10</sup> which relates to that profession<sup>11</sup>. No visitor may exercise his functions<sup>12</sup> in relation to any place at which he regularly gives instruction in any subject<sup>13</sup>, or any institution with which he has a significant connection<sup>14</sup>. A person is not prevented from being a visitor merely because he is a member of the Council or any of its committees<sup>15</sup> or a screener<sup>16</sup>, but no person may be a visitor if he is employed by the Council<sup>17</sup>.

Where a visitor visits any place or institution in the exercise of his functions, he must report to the committee on the nature and quality of the instruction given, or to be given, and the facilities provided or to be provided, at that place or by that institution<sup>18</sup>, and on such other matters, if any, as it requires<sup>19</sup>. Where a visitor makes such a report to the committee, the committee must on receipt of the report send a copy of it to the institution concerned<sup>20</sup>, and notify that institution of the period within which it may make observations on the report<sup>21</sup>. The committee may not take any steps in the light of any such report before the end of the specified period<sup>22</sup>. The Council must publish such reports together with, on the request of the institution concerned, the response of that institution to the report<sup>23</sup>.

The Council may make such provision in respect of visitors as it may determine: (a) for the payment of fees and allowances, including the payment of allowances to employers of visitors for the purposes of enabling visitors to perform their functions<sup>24</sup>; (b) for the reimbursement of such expenses as visitors may reasonably have incurred in the course of carrying out such functions<sup>25</sup>.

1 For the meaning of 'the Council' see PARA 308 note 1 ante.

2 As to the education and training committee see PARA 314 ante.

3 Health Professions Order 2001, SI 2002/254, art 16(1).

4 For the purposes of *ibid* art 16, 'relevant course of education or training' means any course of education or training which forms, or is intended to form, part of an approved course of education or training or any course which a registrant may be required to undergo after registration in accordance with rules made by the Council: art 16(3). For the meaning of 'approved course of education or training' see PARA 338 note 16 ante. For the meaning of 'registrant' see PARA 318 note 4 ante. As to the making of rules see PARA 320 ante.

5 *Ibid* art 16(1)(a).

6 *Ibid* art 16(1)(b).

7 For the purposes of *ibid* arts 16, 18, the words 'any test of competence' includes an assessment to establish the level of a person's knowledge of written or spoken English: art 16(2). As to tests of competence or knowledge of English see PARA 329 ante.

8     le purposes connected with the Health Professions Order 2001, SI 2002/254 (as amended): art 16(1)(c).

9     For the meaning of 'registered' see PARA 325 note 13 ante.

10    As to the meaning of 'part of the register' see PARA 325 note 12 ante. As to the register see PARA 325 ante.

11    Health Professions Order 2001, SI 2002/254, art 16(6). As to the professions regulated by the Health Professions Order 2001, SI 2002/254 (as amended) see PARA 318 note 2 ante.

12    le his functions under the Health Professions Order 2001, SI 2002/254 (as amended).

13    Ibid art 16(4)(a).

14    Ibid art 16(4)(b).

15    Ibid art 16(5)(a). As to the membership of the Council see PARA 308 ante. As to its committees see PARA 313 et seq ante.

16    Ibid art 16(5)(b). For the meaning of 'screener' see PARA 346 note 3 post.

17    Ibid art 16(5). As to the power of the Council to employ persons see PARA 319 ante.

18    Ibid art 16(7)(a).

19    Ibid art 16(7)(b). Requirements of the kind mentioned in art 16(7)(b) may be imposed by the committee: (1) generally in relation to all visits made to a specified kind of place or institution or in respect of a specified type of course (art 16(8)(a)); or (2) specifically in relation to a particular visit (art 16(8)(b)).

20    Ibid art 16(9)(a).

21    Ibid art 16(9)(b). The period specified by the committee in a notice given under art 16(9)(b) must be not less than one month beginning with the date on which a copy of the report is sent to the institution concerned under art 16(9)(a) (see the text to note 20 supra): art 16(10).

22    le the period mentioned in ibid art 16(10) (see note 21 supra): art 16(11).

23    Ibid art 16(12).

24    le their functions under ibid art 16: art 16(13)(a).

25    Ibid art 16(13)(b).

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### **340. Information to be given by institutions.**

The following provisions apply to any institution in the United Kingdom<sup>1</sup> by which, or under whose direction, whether inside or outside the United Kingdom: (1) any relevant course of education or training<sup>2</sup> is, or is proposed to be, given<sup>3</sup>; or (2) any test of competence is, or is proposed to be, conducted in connection with any such course or for any other specified purpose<sup>4</sup>.

Whenever required to do so by the education and training committee<sup>5</sup> or the Council<sup>6</sup>, any such institution must give to the committee such information and assistance as the committee may reasonably require in connection with the exercise of its functions<sup>7</sup>. Where an institution refuses any such reasonable request for information made by the committee or the Council, then the committee, with the approval of the Council, may refuse<sup>8</sup> to approve or withdraw approval from, as the case may be, any education, training, qualification or institution to which the information relates<sup>9</sup>.

1 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

2 For the meaning of 'relevant course of education or training' see PARA 339 note 4 ante: definition applied by the Health Professions Order 2001, SI 2002/254, art 17(2). For the purposes of art 17, a reference to education or training includes any course of education or training or test referred to in art 15(5) (see PARA 338 text to notes 14-18 ante): art 17(5).

3 Ibid art 17(1)(a).

4 Ie any other purpose connected with the Health Professions Order 2001, SI 2002/254 (as amended): art 17(1)(b).

5 As to the education and training committee see PARA 314 ante.

6 For the meaning of 'the Council' see PARA 308 note 1 ante.

7 Health Professions Order 2001, SI 2002/254, art 17(3).

8 Ie in accordance with ibid art 18: see PARA 341 post.

9 Ibid art 17(4). See also note 2 supra.

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### **341. Refusal or withdrawal of approval of courses, qualifications and institutions.**

Where, as a result of any visitor's<sup>1</sup> report or other information acquired by the education and training committee<sup>2</sup> or the Council<sup>3</sup> and taking account of the observations received from the institution<sup>4</sup>, the committee is of the opinion that the established standards<sup>5</sup> are not, or will not be, met by particular education or training or that an institution is not observing the specified requirements<sup>6</sup>, it may refuse to approve, or withdraw approval from, as the case may be, any education, training, qualification or institution to which that opinion relates<sup>7</sup>.

In making any such decision to refuse or to withdraw approval, the committee must act in accordance with the following provisions<sup>8</sup>. The committee must notify the institution concerned, setting out its reasons<sup>9</sup>, and inform the institution of the period within which it may make observations on the matters raised<sup>10</sup>. The committee must take no further steps before such period specified has expired<sup>11</sup>. If, taking account of the specified matters<sup>12</sup> and any observations submitted by the institution<sup>13</sup>, the committee decides that it is appropriate to refuse or withdraw approval, it must notify the institution accordingly<sup>14</sup>. Where approval is withdrawn, the committee must use its best endeavours to secure that any person who is undertaking the education or training concerned or who is studying for the qualification concerned or who is studying at the institution concerned at the time when recognition is withdrawn is given the opportunity to follow approved education or training or to study for an approved qualification or at an approved institution<sup>15</sup>.

The withdrawal under these provisions of approval from any education or training, qualification or institution does not affect the entitlement of any person to be registered<sup>16</sup> on the basis of an award to him, before the date on which the decision withdrawing approval had effect, of: (1) the qualification concerned<sup>17</sup>; or (2) any qualification awarded in connection with any education or training<sup>18</sup>, or by an institution<sup>19</sup>, from which approval has been withdrawn<sup>20</sup>.

1 As to visitors and their functions see PARA 339 ante.

2 As to the education and training committee see PARA 314 ante.

3 For the meaning of 'the Council' see PARA 308 note 1 ante.

4 Ie under the Health Professions Order 2001, SI 2002/254, art 16(9): see PARA 339 ante.

5 Ie the standards established under ibid art 15(1): see PARA 338 ante.

6 Ie the requirements referred to in ibid art 15(1).

7 Ibid art 18(1). For the purposes of art 18, a reference to education or training includes any course of education or training or test referred to in art 15(5) (see PARA 338 ante): art 18(2).

8 Ibid art 18(3).

9 Ibid art 18(4)(a).

10 Ibid art 18(4)(b). Such period must be not less than one month beginning with the date on which the reasons are sent to the institution under art 18(4)(a) (see the text to note 9 supra): art 18(4)(b).

11 Ibid art 18(5).

12     le those referred to in *ibid* art 18(1): see the text to notes 1-7 *supra*.

13     le under *ibid* art 18(4): see the text to notes 9, 10 *supra*.

14     *Ibid* art 18(6). A decision under art 18(6) has effect from the date of the decision or from such later date as may be specified in the decision: art 18(7).

15     *Ibid* art 18(8). See also note 7 *supra*.

16     For the meaning of 'registered' see *PARA* 325 note 13 *ante*.

17     Health Professions Order 2001, SI 2002/254, art 18(9)(a).

18     *Ibid* art 18(9)(b)(i). See also note 7 *supra*.

19     *Ibid* art 18(9)(b)(ii).

20     *Ibid* art 18(9)(b).



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### **342. Post-registration training.**

The Council<sup>1</sup> may make rules<sup>2</sup> requiring registrants<sup>3</sup> to undertake such continuing professional development as it may specify in standards<sup>4</sup>. The rules may, in particular, make provision with respect to registrants who fail to comply with any requirements of the rules, including making provision for their registration to cease to have effect<sup>5</sup>. The Council may by rules require persons who have not practised or who have not practised for or during a prescribed<sup>6</sup> period, to undertake such education or training or to gain such experience as it may specify in standards<sup>7</sup>. In respect of additional qualifications which may be recorded on the register<sup>8</sup>, the Council may establish standards of education and training<sup>9</sup>.

1 For the meaning of 'the Council' see PARA 308 note 1 ante.

2 As to the making of rules see PARA 320 ante.

3 For the meaning of 'registrants' see PARA 318 note 4 ante.

4 Health Professions Order 2001, SI 2002/254, art 19(1). If the Council makes rules under art 19(1) or art 19(3) (see the text and note 7 infra), it must establish the standards to be met in relation to:

124 (1) continuing professional development (art 19(4)(a)); or

125 (2) the education or training mentioned in art 19(3) (art 19(4)(b)),

and art 15(3)-(8) (see PARA 338 ante) and arts 16-18 (see PARAS 339-341 ante) apply in respect of those standards as if they were standards established under art 15(1)(a) (see PARA 338 ante): art 19(4). In the articles mentioned in art 19(4), references to 'education and training' are, for the purposes of that article, to be treated as being references to education, training or experience: art 19(5). At the date at which this volume states the law no such rules had been made.

5 Ibid art 19(2).

6 For the meaning of 'prescribed' see PARA 328 note 7 ante.

7 Health Professions Order 2001, SI 2002/254, art 19(3). See also note 4 supra. At the date at which this volume states the law no such rules had been made.

8 For the meaning of 'register' see PARA 325 note 2 ante.

9 Health Professions Order 2001, SI 2002/254, art 19(6). Article 15(3)-(8) (see PARA 338 ante) and arts 16-18 (see PARAS 339-341 ante) apply in respect of those standards as if they were standards established under art 15(1)(a) (see PARA 338 ante): art 19(6).

## **UPDATE**

### **342 Post-registration training**

TEXT AND NOTES--SI 2003/1572 r 11A added: SI 2005/1625. A registrant must (1) undertake continuing professional development in accordance with the standards specified by the Council which apply to him; and (2) maintain an up-to-date record, including any supporting documents or other evidence, of the continuing professional development he has undertaken: SI 2003/1572 r 11A(1) (r 11A as added). The committee may at any time send a notice to a registrant requiring him to (a) submit

his continuing professional development record for inspection; and (b) provide the committee with such other evidence as it may reasonably require, within such time period as the committee may specify in the notice, which must be at least 21 days beginning with the day on which the notice was sent, for the purpose of determining whether the health professional has met the requirements under heads (1), (2) above: r 11A(2) (r 11A as added). Where, from the information supplied by the registrant, the committee is not satisfied that he has complied with a requirement imposed by head (1) or (2) above, the committee must send the registrant a notice (i) providing a statement of the reasons why the committee is not satisfied that the registrant has complied with the requirement; and (ii) inviting the registrant to submit his observations on the matter by the date specified in the notice, which must be at least 14 days beginning with the date on which the notice was sent: r 11A(3) (r 11A as added). If, after considering any observations, the committee is of the view that the registrant has not complied with a requirement imposed by head (1) or (2) above, the committee may instruct the registrar to remove the name of the registrant from the register: r 11A(4) (r 11A as added). If a registrant fails to respond to a notice sent to him by the committee which contains the requirements set out in heads (a), (b) above within the period specified in the notice, the committee must send him a further notice warning that, if he does not respond to the original notice before the end of the period of 14 days beginning with the day on which the further notice was sent, his name may be removed from the register: r 11A(5) (r 11A as added). If a registrant does not respond by the date specified in the notice which contains the requirements set out in heads (a), (b) above or the further notice warning that his name may be removed from the register, then the committee may instruct the registrar to remove the name of the registrant from the register: r 11A(6) (r 11A as added). For these purposes, 'committee' means the education and training committee of the Council: Health Professions Council (Registration Appeals) Rules Order of Council 2003, SI 2003/1579, r 2.

See also SI 2002/254 art 19(2A)-(2D) (application of art 19(1), (2) to visiting health professionals from other EEA states or Switzerland) (added by SI 2007/3101).

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## **(iv) Fitness to Practise**

### **A. IN GENERAL**

#### **343. Council's functions in respect of fitness to practise.**

The Council<sup>1</sup> must: (1) establish and keep under review the standards of conduct, performance and ethics expected of registrants<sup>2</sup> and prospective registrants and give them such guidance on these matters as it sees fit<sup>3</sup>; and (2) establish and keep under review effective arrangements to protect the public from persons whose fitness to practise is impaired<sup>4</sup>. The Council may also from time to time give guidance to registrants, employers and such other persons as it thinks appropriate in respect of standards for the education and training, supervision and performance of persons who provide services in connection with those provided by registrants<sup>5</sup>. The Council must, before establishing any standards or arrangements<sup>6</sup>, consult the conduct and competence committee<sup>7</sup> in addition to the specified persons<sup>8</sup>; and, before giving guidance<sup>9</sup>, it must consult the education and training committee<sup>10</sup> in addition to such persons<sup>11</sup>.

1 For the meaning of 'the Council' see PARA 308 note 1 ante.

2 For the meaning of 'registrant' see PARA 318 note 4 ante.

3 Health Professions Order 2001, SI 2002/254, art 21(1)(a).

4 Ibid art 21(1)(b).

5 Ibid art 21(2).

6 Ie as mentioned in ibid art 21(1).

7 As to the conduct and competence committee see PARAS 313 ante, 355 et seq post.

8 Ie the persons mentioned in the Health Professions Order 2001, SI 2002/254, art 3(14) (see PARA 318 ante): art 21(3)(a).

9 Ie under ibid art 21(1), (2).

10 As to the education and training committee see PARA 314 ante.

11 Health Professions Order 2001, SI 2002/254, art 21(3)(b).

### **UPDATE**

#### **343 Council's functions in respect of fitness to practise**

TEXT AND NOTE 8--The reference to standards is omitted and the Council no longer has to consult the conduct and competence committee before establishing any arrangements: SI 2002/254 art 21(3)(a) (amended by SI 2009/1182).

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### **344. Allegations.**

The following provisions apply where any allegation<sup>1</sup> is made against a registrant<sup>2</sup> to the effect that:

- 570 (1) his fitness to practise is impaired by reason of:
- 120
- 171. (a) misconduct<sup>3</sup>;
  - 172. (b) lack of competence<sup>4</sup>;
  - 173. (c) a conviction<sup>5</sup> or caution in the United Kingdom<sup>6</sup> for a criminal offence, or a conviction elsewhere for an offence which, if committed in England and Wales, would constitute a criminal offence<sup>7</sup>;
  - 174. (d) his physical or mental health<sup>8</sup>; or
  - 175. (e) a determination by a body in the United Kingdom responsible under any enactment for the regulation of a health or social care profession to the effect that his fitness to practise is impaired, or a determination by a licensing body<sup>9</sup> elsewhere to the same effect<sup>10</sup>;
- 121
- 571 (2) an entry in the register<sup>11</sup> relating to him has been fraudulently procured or incorrectly made<sup>12</sup>.

When an allegation is made to the Council or any of its committees, as soon as reasonably practicable after receipt of the allegation in the form required by the Council, the Council must refer it: (i) where it is an allegation that an entry in the register has been fraudulently procured or incorrectly made, to the investigating committee<sup>13</sup>; and (ii) in any other case to persons appointed by the Council<sup>14</sup>, or to a practice committee<sup>15</sup>. Hearings and preliminary meetings of practice committees at which the person concerned<sup>16</sup> is entitled to be present or to be represented are to be held in the United Kingdom country<sup>17</sup> in which the registered address of the person concerned is situated<sup>18</sup>; or if he is not registered and resides in the United Kingdom, in the country in which he resides<sup>19</sup>; and in any other case, in England<sup>20</sup>. The Council must publish, as soon as reasonably practicable, particulars of any orders and decisions made by a practice committee<sup>21</sup> and of its reasons for them and of any decision given on appeal<sup>22</sup>. The Council may disclose to any person any information relating to a person's fitness to practise which it considers it to be in the public interest to disclose<sup>23</sup>.

While the registration of a registrant is suspended by virtue of a suspension order or an interim suspension order<sup>24</sup>, he must be treated as not being registered notwithstanding that his name still appears in the register<sup>25</sup>.

1 The Health Professions Order 2001, SI 2002/254, art 22 applies even if the allegation is based on a matter alleged to have occurred outside the United Kingdom or at a time when the person against whom the allegation is made was not registered: art 22(3). For the meaning of 'registered' see PARA 325 note 13 ante. Rules may provide that where a practice committee finds that a person has failed to comply with the standards mentioned in art 21(1) (see PARA 343 ante), such failure is not to be taken of itself to establish that his fitness to practise is impaired, but may be taken into account in any proceedings under the Health Professions Order 2001, SI 2002/254 (as amended): art 22(4). As to the rules that have been made see the Health Professions Council (Investigating Committee) Procedure Rules Order of Council 2003, SI 2003/1574 (see PARA 351 et seq post); the Health Professions Council (Conduct and Competence Committee) (Procedure) Rules Order of Council 2003, SI 2003/1575 (see PARA 356 et seq post); and the Health Professions Council (Health Committee) (Procedure) Rules

Order of Council 2003, SI 2003/1576 (see PARA 362 et seq post). As to transitional provisions relating to any allegation which is received by the Council on or after 1 April 2002 but before 9 July 2003 see the Health Professions Order 2001 (Transitional Provisions) Order of Council 2003, SI 2003/1700.

2 For the meaning of 'registrant' see PARA 318 note 4 ante.

3 Health Professions Order 2001, SI 2002/254, art 22(1)(a)(i). As to what constitutes misconduct see PARAS 143 ante, 456 note 6 post.

4 Ibid art 22(1)(a)(ii).

5 For the purposes of ibid art 22, references to a conviction include a conviction by a court-martial: art 22(2). As to courts-martial see ARMED FORCES.

6 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

7 Health Professions Order 2001, SI 2002/254, art 22(1)(a)(iii). The purpose of giving a disciplinary committee powers over a professional man who has been convicted of crime is not to punish him for a second time for the same offence but to protect the public who may come to him as patients and to maintain the high standards and good reputation of an honourable profession: *Zideman v General Dental Council* [1976] 2 All ER 334, [1976] 1 WLR 330, PC. Where a professional man has been convicted and punished for a criminal offence which also constitutes professional misconduct and the appropriate disciplinary body imposes what it decides is a proper disciplinary penalty, the court will not interfere on an appeal: *Laud v General Medical Council* (1980) Times, 8 March, PC. The maxim that a person ought not to be punished twice for the same offence does not apply to proceedings before a disciplinary committee: *R v Statutory Committee of the Pharmaceutical Society of Great Britain, ex p Pharmaceutical Society of Great Britain* [1981] 2 All ER 805, [1981] 1 WLR 886, DC. If the disciplinary committee is considering erasure, it must satisfy itself that the criminal offence is of so grave a character as to show that the professional man is unfit to continue to practise: *Zideman v General Dental Council* supra.

8 Health Professions Order 2001, SI 2002/254, art 22(1)(a)(iv).

9 'Licensing body' means a regulatory body which has the function of authorising persons to practise a health or social care profession: ibid art 2, Sch 3 para 1.

10 Ibid art 22(1)(a)(v).

11 For the meaning of 'register' see PARA 325 note 2 ante.

12 Health Professions Order 2001, SI 2002/254, art 22(1)(b).

13 Ibid art 22(5)(a). If an allegation is not made under art 22(1) (see the text to notes 1-12 supra) but it appears to the Council that there should be an investigation into the fitness to practise of a registrant or into his entry in the register, it may refer the matter in accordance with art 22(5), and the Health Professions Order 2001, SI 2002/254 (as amended) applies as if it were an allegation made under art 22(1): art 22(6). As to the investigating committee see PARA 351 et seq post.

14 In accordance with any rules made under ibid art 23 (see PARA 346 post): art 22(5)(b)(i). See also note 13 supra.

15 Ibid art 22(5)(b)(ii). See also note 13 supra. For the meaning of 'practice committee' see PARA 315 note 2 ante.

16 For the purposes of ibid Pt V (arts 21-36), 'the person concerned' means the person against whom an allegation has been made: art 22(11).

17 For the meaning of 'United Kingdom country' see PARA 308 note 15 ante.

18 Health Professions Order 2001, SI 2002/254, art 22(7)(a).

19 Ibid art 22(7)(b).

20 Ibid art 22(7)(c).

21 In made under ibid art 26(7), (12) (see PARA 351 post), art 29(5) (see PARA 367 post), art 30(1), (2), (4), (6)-(8) (see PARA 368 post) or art 33 (see PARA 371 post).

22 Ibid art 22(9). As to appeals see PARA 376 et seq post.

23 Ibid art 22(10).

24 As to suspension orders and interim suspension orders see PARAS 367, 369 post.

25 Health Professions Order 2001, SI 2002/254, art 22(8). However, this does not prevent action being taken in respect of such a person as appropriate under arts 22-32: art 22(8).

## **UPDATE**

### **344 Allegations**

TEXT AND NOTES 1-10--Also head (f) the Independent Barring Board including him in a barred list (within the meaning of Safeguarding Vulnerable Groups Act 2006) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 681): SI 2002/254 art 22(1)(a) (vi) (added by SI 2009/1182) (in force on the coming into force of the Safeguarding Vulnerable Groups Act 2006 s 44(1) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 704)).

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### **345. Investigation of allegations: procedural rules.**

The Council<sup>1</sup> must make rules<sup>2</sup> as to the procedure to be followed by the health committee<sup>3</sup> and the conduct and competence committee<sup>4</sup> in considering any allegation and before making an order<sup>5</sup>. The rules must, in particular, make provision:

- 572 (1) empowering each committee to refer to the other any allegation which it considers would be better dealt with by that other committee<sup>6</sup>;
- 573 (2) empowering each committee, before it holds any hearing to which head (6) below applies, and where it considers that it would assist it in performing its functions, to hold a preliminary meeting in private attended by the parties<sup>7</sup> and their representatives and any other person it thinks appropriate<sup>8</sup>;
- 574 (3) requiring the person concerned to be given notice of the allegation without delay<sup>9</sup>;
- 575 (4) giving the person concerned an opportunity to submit written representations within a prescribed period<sup>10</sup>;
- 576 (5) for the committee, where it sees fit, to notify the person making the allegation of the representations provided under head (4) above and to invite him to deal within a prescribed period with any points raised by the committee in respect of those representations<sup>11</sup>;
- 577 (6) giving the person concerned an opportunity to put his case at a hearing if, before the end of the prescribed period, he asks for a hearing<sup>12</sup>, or the committee considers that a hearing is desirable<sup>13</sup>;
- 578 (7) entitling the person concerned to be represented whether by a legally qualified person or otherwise at any such hearing<sup>14</sup>;
- 579 (8) where an allegation is referred by the Council, screeners<sup>15</sup> or the investigating committee<sup>16</sup> to the health committee or the conduct and competence committee, for the Council to give notice of that referral to specified persons who must include the Secretary of State<sup>17</sup> and the National Assembly for Wales<sup>18</sup> and, where they are known, to certain other persons<sup>19</sup>;
- 580 (9) giving any person, other than the person concerned, who, in the opinion of the relevant committee, taking account of any criteria included in the rules, has an interest in proceedings before it, the opportunity to submit written representations<sup>20</sup>;
- 581 (10) requiring a hearing before a committee to be held in public except in so far as may be provided by the rules<sup>21</sup>;
- 582 (11) requiring the committee to notify the person concerned of its decision, its reasons for reaching that decision and of his right of appeal<sup>22</sup>;
- 583 (12) requiring the person by whom the allegation was made to be notified by the committee of its decision and of its reasons for reaching that decision<sup>23</sup>;
- 584 (13) empowering the committee to require persons other than the person concerned to attend and give evidence or to produce documents<sup>24</sup>;
- 585 (14) about the admissibility of evidence<sup>25</sup>;
- 586 (15) enabling the committee to administer oaths<sup>26</sup>;
- 587 (16) where the person concerned has been convicted of a criminal offence, for the conviction to be proved by the production of a certified copy of the certificate

of conviction relating to the offence and for the findings of fact upon which the conviction is based to be admissible as proof of those facts<sup>27</sup>.

Each stage in proceedings relating to fitness to practise<sup>28</sup> and appeals<sup>29</sup> must be dealt with expeditiously and the committee concerned may give directions as to the conduct of the case and for the consequences of failure to comply with such directions, which may include the making of an order or refusal of an application if the failure to comply was without reasonable excuse<sup>30</sup>. The Council may provide in the rules for the chairman of the committee to hold the preliminary meeting referred to in head (2) above or to give directions<sup>31</sup> and, subject to the agreement of the parties to his acting on behalf of the committee, to take such action as the committee would be competent to take at such a meeting<sup>32</sup>.

1 For the meaning of 'the Council' see PARA 308 note 1 ante.

2 As to the making of rules see PARA 320 ante.

3 As to the consideration of allegations by the health committee see PARA 361 et seq post. As to the establishment of the health committee see PARA 313 et seq ante.

4 As to the consideration of allegations by the conduct and competence committee see PARA 355 et seq post. As to the establishment of the conduct and competence committee see PARA 313 et seq ante.

5 I.e. an order under the Health Professions Order 2001, SI 2002/254, art 29(5) (see PARA 367 post): art 32(1). As to the rules that have been made see the Health Professions Council (Screeners) Rules 2003, approved by the Health Professions Council (Screeners) Rules Order of Council 2003, SI 2003/1573 (see PARAS 347-349 post); the Health Professions Council (Conduct and Competence Committee) (Procedure) Rules 2003, approved by the Health Professions Council (Conduct and Competence Committee) (Procedure) Rules Order of Council 2003, SI 2003/1575 (see PARA 356 et seq post); and the Health Professions Council (Health Committee) (Procedure) Rules 2003, approved by the Health Professions Council (Health Committee) (Procedure) Rules Order of Council 2003, SI 2003/1576 (see PARA 362 et seq post).

6 Health Professions Order 2001, SI 2002/254, art 32(2)(a).

7 For the purposes of ibid art 32, 'parties' means the Council and the person concerned: art 32(5). For the meaning of 'the person concerned' see PARA 344 note 16 ante.

8 Ibid art 32(2)(b). See also the text to notes 31, 32 infra.

9 Ibid art 32(2)(c).

10 Ibid art 32(2)(d). For the meaning of 'prescribed' see PARA 328 note 7 ante.

11 Ibid art 32(2)(e).

12 Ibid art 32(2)(f)(i).

13 Ibid art 32(2)(f)(ii).

14 Ibid art 32(2)(g).

15 For the meaning of 'screeners' see PARA 346 note 3 post.

16 As to the consideration of allegations by the investigating committee see PARAS 351-352 post.

17 As to the Secretary of State see PARA 5 ante.

18 As to the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

19 I.e. any person referred to in the Health Professions Order 2001, SI 2002/254, art 25(2)(a), (b) (see PARA 350 post): art 32(2)(h).

20 Ibid art 32(2)(i).

21 Ibid art 32(2)(j).



- 22 Ibid art 32(2)(k).
- 23 Ibid art 32(2)(l).
- 24 Ibid art 32(2)(m).
- 25 Ibid art 32(2)(n).
- 26 Ibid art 32(2)(o). For the meaning of 'oath' see PARA 153 note 4 ante.
- 27 Ibid art 32(2)(p). As to certificates of conviction see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1500.
- 28 Ie proceedings under ibid Pt V (arts 21-36): see PARA 343 et seq ante.
- 29 Ie proceedings under ibid art 37: see PARA 376 post.
- 30 Ibid art 32(3).
- 31 Ie the directions mentioned in ibid art 32(3) (see the text to note 30 supra).
- 32 Ibid art 32(4).

## **UPDATE**

### **345 Investigation of allegations: procedural rules**

TEXT AND NOTE 32--Reference to the 'chairman' now to the 'chair': SI 2002/254 art 32(4) (amended by SI 2009/1182).

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### 346. Screeners.

The Council<sup>1</sup> may by rules<sup>2</sup> provide for the appointment of persons, to be known as screeners<sup>3</sup>, to whom allegations may be referred<sup>4</sup>. A person is not prevented from being a screener merely because he is a member of the Council<sup>5</sup> or any of its committees<sup>6</sup> (other than a practice committee)<sup>7</sup>, or a visitor<sup>8</sup>. No person may be a screener if he is a member of a practice committee<sup>9</sup>, a legal, medical or registrant assessor<sup>10</sup>, or employed by the Council<sup>11</sup>. No person may act as a screener in respect of a particular case if he has been involved in that case in any other capacity<sup>12</sup>.

Any such rules must provide that<sup>13</sup>: (1) any matter referred to the screeners be considered by a panel of at least two screeners<sup>14</sup>; (2) the panel include at least one lay person<sup>15</sup> and one registrant<sup>16</sup> selected with due regard to the professional field of the person concerned and to the matter under consideration<sup>17</sup>; (3) the number of registrants on any panel may not exceed the number of lay persons<sup>18</sup>. Any such rules must also give screeners the functions<sup>19</sup>:

- 588 (a) of considering the allegation and establishing whether, in their opinion, power is given<sup>20</sup> to deal with it if it proves to be well founded<sup>21</sup>;
- 589 (b) if in their opinion such power is given, of referring the matter together with a report of the result of their consideration to such practice committee as they see fit<sup>22</sup>;
- 590 (c) if in their opinion such power is not given, of closing the case<sup>23</sup>, provided that:  
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- 176. (i) if there are two screeners, the lay person agrees<sup>23</sup>; or
- 177. (ii) if there are more than two screeners, it is the decision of the majority<sup>24</sup>,  
123
- 591 and if head (i) or (ii) above, as the case may be, is not satisfied, of referring the matter to a practice committee<sup>25</sup>;
- 592 (d) where requested to do so by any practice committee, of mediating in any case with the aim of dealing with the allegation without it being necessary for the case to reach the stage at which the health committee<sup>26</sup> or conduct and competence committee<sup>27</sup>, as the case may be, would arrange a hearing<sup>28</sup>;
- 593 (e) in the event that mediation fails, of referring the matter back to the practice committee which referred it to the screeners<sup>29</sup>.

The Council may make such provision in respect of screeners as it may determine: (A) for the payment of fees and allowances, including the payment of allowances to employers of screeners for the purpose of enabling screeners to perform their functions<sup>30</sup>; and (B) for the reimbursement of such expenses as the screeners may reasonably have incurred in the course of carrying out such functions<sup>31</sup>.

1 For the meaning of 'the Council' see PARA 308 note 1 ante.

2 As to the making of rules see PARA 320 ante.

3 'Screeners' means persons appointed under the Health Professions Order 2001, SI 2002/254, art 23: art 2, Sch 3 para 1.

4 le referred in accordance with the Health Professions Order 2001, SI 2002/254 (as amended) (see PARA 345 ante) or rules made under it: art 23(1). As to the rules that have been made see the Health Professions Council (Screeners) Rules Order of Council 2003, SI 2003/1573; and PARAS 347-349 post.

5 As to membership of the Council see PARA 308 ante.

6 As to the committees see PARA 313 et seq ante.

7 Health Professions Order 2001, SI 2002/254, art 23(2)(a). For the meaning of 'practice committee' see PARA 315 note 2 ante. As to membership of practice committees see PARA 316 ante.

8 Ibid art 23(2)(b). As to visitors see PARA 339 ante.

9 Ibid art 23(3)(a).

10 Ibid art 23(3)(b). As to assessors see PARA 372 et seq post.

11 Ibid art 23(3)(c). As to the power of the Council to employ persons see PARA 319 ante.

12 Ibid art 23(4).

13 See ibid art 24(1), (2).

14 Ibid art 24(2)(a).

15 'Lay person' means, in relation to screeners, a person who is not and never has been a member of a health or social care profession which is regulated under any enactment: ibid Sch 3 para 1.

16 For the meaning of 'registrant' see PARA 318 note 4 ante.

17 Health Professions Order 2001, SI 2002/254, art 24(2)(b).

18 Ibid art 24(2)(c).

19 See ibid art 24(1), (3).

20 le by the Health Professions Order 2001, SI 2002/254 (as amended).

21 Ibid art 24(3)(a).

22 Ibid art 24(3)(b).

23 If the screeners decide that power is not given by the Health Professions Order 2001, SI 2002/254 (as amended) to deal with the allegation, the registrar must inform the person making the allegation giving reasons: art 24(5).

23 Ibid art 24(3)(c)(i).

24 Ibid art 24(3)(c)(ii).

25 le in accordance with ibid art 24(3): art 24(3)(c).

26 As to the health committee see PARAS 313 ante, 361 et seq post.

27 As to the conduct and competence committee see PARAS 313 ante, 355 et seq post.

28 le a hearing in accordance with the Health Professions Order 2001, SI 2002/254, art 32(2)(f) (see PARA 345 ante): art 24(3)(d).

29 Ibid art 24(3)(e).

30 le their functions under the Health Professions Order 2001, SI 2002/254 (as amended): art 24(4)(a).

31 Ibid art 24(4)(b).

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### **347. Appointment of screeners.**

The Council<sup>1</sup> may appoint persons to be screeners<sup>2</sup>. Screeners must be appointed from among persons who are not and never have been members of a health or social care profession which is regulated under any enactment (known as 'lay screeners')<sup>3</sup>, and from among registrants (known as 'registrant screeners')<sup>4</sup>. Such persons must have such qualifications, interests and experience as, in the opinion of the Council, will enable them to perform the functions of screeners<sup>5</sup>. There must be at least one registrant screener appointed from each part of the register<sup>6</sup>. A person may not be appointed as a registrant screener nor act as such if he is subject to any investigations, proceedings or determination against him concerning his fitness to practise his profession<sup>7</sup>.

1 As to the Council see PARA 308 ante.

2 In accordance with the Health Professions Order 2001, SI 2002/254, art 23 (see PARA 346 ante): Health Professions Council (Screeners) Rules Order of Council 2003, SI 2003/1573, r 3(1).

3 Ibid r 3(2)(a). 'Lay screener' is to be construed in accordance with r 3(2)(a): r 2.

4 Ibid r 3(2)(b). 'Registrant screener' is to be construed in accordance with r 3(2)(b): r 2.

5 See ibid r 3(2).

6 Ibid r 3(3). As to the register see PARA 325 ante; and as to the parts of the register see PARA 326 ante.

7 Ibid r 3(4).

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### **348. Consideration of allegations referred to screeners.**

Any allegation<sup>1</sup> which is referred to the screeners<sup>2</sup> must be considered by a panel<sup>3</sup> of at least two screeners<sup>4</sup>. If a panel comprises two screeners, it must consist of one lay screener<sup>5</sup> and one registrant screener<sup>6</sup>, and if it comprises more than two screeners it must consist of at least one lay screener and one registrant screener and the number of registrant screeners must not exceed the number of lay screeners<sup>7</sup>. In appointing a registrant screener to a panel, the Council<sup>8</sup> must have due regard to the professional field of the health professional<sup>9</sup> and to the allegation under consideration<sup>10</sup>.

A panel must consider any allegation which is referred to it and establish whether power is given<sup>11</sup> to deal with the allegation if it proves to be well founded<sup>12</sup>. Where a panel decides that power is not given to deal with an allegation, it must close the case and inform the registrar of its decision<sup>13</sup>. Where a panel comprises two screeners, a decision to close a case may only be made by a unanimous decision, but where a panel comprises more than two screeners it may be made by a majority decision<sup>14</sup>. Where a decision to close a case cannot be reached in accordance with these requirements<sup>15</sup> or a panel determines that power is given to deal with an allegation<sup>16</sup>, the panel must refer the allegation to such practice committee<sup>17</sup> as it sees fit and submit the report of the result of its consideration of the allegation to that committee<sup>18</sup>.

Where a panel refers any allegation to the health committee<sup>19</sup> or conduct and competence committee<sup>20</sup>, the Council must give notice of the referral to: (1) where known, the employer of the health professional or any other person with whom he has an arrangement to provide professional services<sup>21</sup>; (2) where known, any other body by which the health professional is authorised to practise a health or social care profession<sup>22</sup>; and (3) the Secretary of State<sup>23</sup> and the National Assembly for Wales<sup>24</sup>.

1 'Allegation' means any allegation of a kind mentioned in the Health Professions Order 2001, SI 2002/254, art 22(1)(a) (see PARA 344 ante) or any matter which is treated as an allegation in respect of fitness to practise by virtue of action taken under art 22(6) (see PARA 344 note 13 ante): Health Professions Council (Screeners) Rules Order of Council 2003, SI 2003/1573, r 2.

2 As to screeners see PARAS 346-347 ante.

3 'Panel' is to be construed in accordance with the Health Professions Council (Screeners) Rules Order of Council 2003, SI 2003/1573, r 4: r 2.

4 Ibid r 4(1).

5 For the meaning of 'lay screener' see PARA 347 note 3 ante.

6 Health Professions Council (Screeners) Rules Order of Council 2003, SI 2003/1573, r 4(2)(a). For the meaning of 'registrant screener' see PARA 347 note 4 ante.

7 Ibid r 4(2)(b).

8 As to the Council see PARA 308 ante.

9 'Health professional' means a person whose name appears in the register against whom an allegation has been made and includes a person whose registration is currently suspended: Health Professions Council (Screeners) Rules Order of Council 2003, SI 2003/1573, r 2. As to the register see PARA 325 ante. As to suspension orders and interim suspension orders see PARAS 367, 369 post.

- 10 Ibid r 4(3).
- 11 le by the Health Professions Order 2001, SI 2002/254 (as amended).
- 12 Health Professions Council (Screeners) Rules Order of Council 2003, SI 2003/1573, r 5(1).
- 13 Ibid r 5(2). As to the registrar see PARA 324 ante.
- 14 Ibid r 5(3).
- 15 le in accordance with ibid r 5(3): r 5(4)(a).
- 16 Ibid r 5(4)(b).
- 17 As to the practice committees see PARA 315 ante.
- 18 Health Professions Council (Screeners) Rules Order of Council 2003, SI 2003/1573, r 5(4).
- 19 'Health committee' is to be construed in accordance with the Health Professions Order 2001, SI 2002/254, art 3(9) (see PARA 313 ante): Health Professions Council (Screeners) Rules Order of Council 2003, SI 2003/1573, r 2.
- 20 'Conduct and competence committee' is to be construed in accordance with the Health Professions Order 2001, SI 2002/254, art 3(9) (see PARA 313 ante): Health Professions Council (Screeners) Rules Order of Council 2003, SI 2003/1573, r 2.
- 21 Ibid r 5(5)(a).
- 22 Ibid r 5(5)(b).
- 23 As to the Secretary of State see PARA 5 ante.
- 24 Health Professions Council (Screeners) Rules Order of Council 2003, SI 2003/1573, Sch 5(5)(c). As to the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

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### 349. Mediation.

Where the screeners<sup>1</sup> are requested by a practice committee<sup>2</sup> to mediate in a case, a panel<sup>3</sup> must undertake mediation with the aim of dealing with an allegation<sup>4</sup> without it being necessary for the case to reach the stage at which the health committee<sup>5</sup> or conduct and competence committee<sup>6</sup> would arrange a hearing<sup>7</sup>. In undertaking any mediation, a panel may adopt such procedure as it sees fit<sup>8</sup>. The Council<sup>9</sup> must not appoint a screener to be a member of a panel undertaking mediation unless he holds such qualification or has undergone such training as the Council may determine<sup>10</sup>. A panel must report the outcome of any successful mediation to the practice committee which referred the case to the screeners and its report must include the terms on which the case was resolved<sup>11</sup>. A panel must refer any case in which mediation fails back to the practice committee which referred the case to the screeners<sup>12</sup>.

1 As to screeners see PARAS 346-347 ante.

2 As to the practice committees see PARA 315 ante.

3 For the meaning of 'panel' see PARA 348 note 3 ante.

4 For the meaning of 'allegation' see PARA 348 note 1 ante.

5 For the meaning of 'health committee' see PARA 348 note 19 ante.

6 For the meaning of 'conduct and competence committee' see PARA 348 note 20 ante.

7 In accordance with the Health Professions Order 2001, SI 2002/254, art 32(2)(f) (see PARA 345 ante): Health Professions Council (Screeners) Rules Order of Council 2003, SI 2003/1573, r 6(1).

8 Ibid r 6(2).

9 As to the Council see PARA 308 ante.

10 Health Professions Council (Screeners) Rules Order of Council 2003, SI 2003/1573, r 6(3).

11 Ibid r 6(4).

12 Ibid r 6(5).

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### **350. Powers to require disclosure of information.**

For the purpose of assisting him in carrying out functions in respect of fitness to practise, a person authorised by a practice committee<sup>1</sup> may require any person, other than the person concerned<sup>2</sup>, who in his opinion is able to supply information or produce any document which appears relevant to the discharge of any such function, to supply such information or produce such a document<sup>3</sup>. As soon as is reasonably practicable after a decision has been made to refer an allegation or other matter to a practice committee<sup>4</sup>, the Council<sup>5</sup> must require, from the person concerned, details of: (1) any person by whom he is employed to provide services in, or in relation to, the profession in respect of which he is registered<sup>6</sup>, or with whom he has an arrangement to provide such services<sup>7</sup>; and (2) any body by which he is authorised to practise, in the United Kingdom<sup>8</sup> or elsewhere, a health or social care profession which is regulated under any enactment<sup>9</sup>.

Nothing in these provisions requires or permits any disclosure of information which is prohibited by or under any other enactment<sup>10</sup>. However, where information is held in a form in which the prohibition operates because the information is capable of identifying an individual, the authorised person<sup>11</sup> may require that the information be put into a form which is not capable of identifying that individual<sup>12</sup>.

1 For the meaning of 'practice committee' see PARA 315 note 2 ante.

2 For the meaning of 'the person concerned' see PARA 344 note 16 ante.

3 Health Professions Order 2001, SI 2002/254, art 25(1). Article 25(1) does not apply in relation to the supplying of information or the production of any document which a person could not be compelled to supply or produce in civil proceedings in any court to which an appeal would lie from a decision of the practice committee in respect of the allegation with which it is dealing: art 25(5). For these purposes, 'enactment' includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament: art 25(6). As to evidence in civil proceedings see CIVIL PROCEDURE vol 11 (2009) PARA 749 et seq. As to the production of documents in civil proceedings see CIVIL PROCEDURE vol 11 (2009) PARAS 538-583. As to the Scottish Parliament see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

4 Ie under ibid art 22(5) or (6): see PARA 344 ante.

5 For the meaning of 'the Council' see PARA 308 note 1 ante.

6 Health Professions Order 2001, SI 2002/254, art 25(2)(a)(i). For the meaning of 'registered' see PARA 325 note 13 ante.

7 Ibid art 25(2)(a)(ii).

8 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

9 Health Professions Order 2001, SI 2002/254, art 25(2)(b).

10 Ibid art 25(3).

11 Ie the person referred to in ibid art 25(1) exercising his functions under that article: see the text to notes 1-3 supra.

12 Ibid art 25(4).



**UPDATE**

**350 Powers to require disclosure of information**

TEXT AND NOTES 1-3--SI 2002/254 art 25(1), (5) amended; art 25(6) revoked: SI 2009/1182.

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## ***B. THE INVESTIGATING COMMITTEE***

### **351. Investigation of allegations.**

The investigating committee<sup>1</sup> must investigate any allegation which is referred to it<sup>2</sup>. Where an allegation is referred to the committee, it must:

- 594 (1) notify without delay the person concerned<sup>3</sup> of the allegation and invite him to submit written representations within a prescribed period<sup>4</sup>;
  - 595 (2) where it sees fit, notify the person making the allegation of such written representations and invite him to deal within a specified period with any points raised by the committee in respect of those representations<sup>5</sup>;
  - 596 (3) take such other steps as are reasonably practicable to obtain as much information as possible about the case<sup>6</sup>;
  - 597 (4) consider, in the light of the information which it has been able to obtain and any representations or other observations made to it<sup>7</sup>, whether in its opinion:
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- 178. (a) in respect of an allegation relating to fitness to practise<sup>8</sup> there is a case to answer<sup>9</sup>; and
  - 179. (b) in respect of an allegation relating to an entry in the register<sup>10</sup> whether the entry concerned has been fraudulently procured or incorrectly made<sup>11</sup>.
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When the committee reaches a decision that there is a case to answer<sup>12</sup> or an entry in the register has been fraudulently procured or incorrectly made<sup>13</sup>, it must notify in writing both the person concerned and the person making the allegation, if any, of its decision, giving its reasons<sup>14</sup>. Where the committee concludes that there is a case to answer in respect of an allegation relating to fitness to practise it must: (i) undertake mediation<sup>15</sup>; or (ii) refer the case to screeners<sup>16</sup> for them to undertake mediation<sup>17</sup>, to the health committee in the case of an allegation concerning a person's physical or mental health<sup>18</sup>, or to the conduct and competence committee in the case of any other allegation<sup>19</sup>. If, in the case of an allegation relating to an entry in the register, the investigating committee is satisfied that an entry has been fraudulently procured or incorrectly made, it may make an order that the registrar<sup>20</sup> remove or amend the entry and must notify the person concerned of his right of appeal<sup>21</sup>. The committee may review such an order if new evidence relevant to the order becomes available after the order has been made, and may revoke that order if it considers that it should not have been made<sup>22</sup>. Where the committee makes such an order or decides not to review such an order, the person concerned may appeal to the appropriate court<sup>23</sup>.

If the investigating committee concludes that there is no case to answer or that the relevant entry was not fraudulently procured or incorrectly made, it must, where requested to do so by the person concerned, make a declaration to that effect giving its reasons<sup>24</sup>; and in any other case, and with the consent of the person concerned, may make such a declaration<sup>25</sup>.

The Council<sup>26</sup> must by rules<sup>27</sup> make provision as to the procedure to be followed by the investigating committee in any investigation under these provisions carried out by it<sup>28</sup>.

- 1 As to the establishment of the investigating committee see PARA 313 et seq ante.
- 2 Ie which is referred to it in accordance with the Health Professions Order 2001, SI 2002/254, arts 22, 24 (see PARAS 344, 346 ante): art 26(1).
- 3 For the meaning of 'the person concerned' see PARA 344 note 16 ante.
- 4 Health Professions Order 2001, SI 2002/254, art 26(2)(a). For the meaning of 'prescribed' see PARA 328 note 7 ante. Any written representations to be submitted to the committee under art 26(2)(a) must be sent before the end of the period of 28 days beginning with the date on which the notice is sent: Health Professions Council (Investigating Committee) Procedure Rules Order of Council 2003, SI 2003/1574, r 4(2). The time for sending written representations specified in r 4(2) may be extended by the chairman where he is satisfied that in all the circumstances it is reasonable to do so: r 10. For the meaning of 'chairman' see PARA 354 note 2 post.
- 5 Health Professions Order 2001, SI 2002/254, art 26(2)(b).
- 6 Ibid art 26(2)(c). As to powers to require the disclosure of information see PARA 350 ante.
- 7 Ie under ibid art 26(2)(a),(b): see the text to notes 3-5 supra.
- 8 Ie an allegation of the kind mentioned in ibid art 22(1)(a): see PARA 344 ante.
- 9 Ibid art 26(2)(d)(i).
- 10 Ie an allegation of the kind mentioned in ibid art 22(1)(b): see PARA 344 ante. For the meaning of 'register' see PARA 325 note 2 ante.
- 11 Ibid art 26(2)(d)(ii). An entry which has been restored to the register on an application for readmission or restoration being granted may be treated for the purposes of art 26 as having been fraudulently procured or incorrectly made if any previous entry from which the restored entry is derived was fraudulently procured or incorrectly made: art 26(16). As to applications for readmission to the register see PARA 333 ante. As to applications for restoration to the register see PARA 360 post.
- 12 Ibid art 26(5)(a).
- 13 Ibid art 26(5)(b).
- 14 Ibid art 26(5). For the meaning of 'writing' see PARA 20 note 22 ante.
- 15 Ibid art 26(6)(a).
- 16 For the meaning of 'screeners' see PARA 346 note 3 ante.
- 17 Health Professions Order 2001, SI 2002/254, art 26(6)(b)(i). As to such mediation see PARA 349 ante.
- 18 Ibid art 26(6)(b)(ii). As to the consideration of allegations by the health committee see PARA 361 et seq post. The investigating committee may make an interim order in accordance with art 31 (see PARA 369 post) at any time before referring a case to the health committee or the conduct and competence committee under art 26(6): see art 26(11).
- 19 Ibid art 26(6)(b)(iii). See also note 18 supra. As to the consideration of allegations by the conduct and competence committee see PARA 355 et seq post.
- 20 As to the registrar see PARA 324 ante.
- 21 Ie his right of appeal under the Health Professions Order 2001, SI 2002/254, art 38 (see PARA 382 post): art 26(7). No order made under art 26(7) has effect: (1) before the expiry of the period within which an appeal against the order may be made (art 26(10)(a)); or (2) where an appeal against the order has been made, before the appeal is withdrawn or otherwise finally disposed of (art 26(10)(b)). On an appeal under art 26, the Council is the respondent: art 26(15). The investigating committee may make an interim order in accordance with art 31 (see PARA 369 post) at the same time as making an order under art 26(7): see art 26(11).
- 22 Ibid art 26(12).
- 23 Ibid art 26(13). The provisions of art 38 (see PARA 382 post) apply to the appeal: art 26(13). Any such appeal must be brought before the end of the period of 28 days beginning with the date on which notice of the

order or decision appealed against is served on the person concerned: art 26(14). On such an appeal, the Council is the respondent: see art 26(15). For the meaning of 'appropriate court' see PARA 382 note 4 post.

24 Ibid art 26(8)(a). For the purposes of art 26(8), the publication of the decision mentioned in art 26(5) (see the text to notes 12-14 supra) together with the reasons for it may constitute such a declaration: art 26(9).

25 Ibid art 26(8)(b). See also note 24 supra.

26 For the meaning of 'the Council' see PARA 308 note 1 ante.

27 As to the making of rules see PARA 320 ante.

28 Health Professions Order 2001, SI 2002/254, art 26(3). In the case of an allegation of the kind mentioned in art 22(1)(b), the rules must, in particular, make similar provision to that made by virtue of art 32(2)(b), (f)-(j), (m)-(p) (see PARA 345 ante); and they may provide for the registrar to be made a party to the proceedings: art 26(4). As to the rules that have been made see the Health Professions Council (Investigating Committee) Procedure Rules, approved by the Health Professions Council (Investigating Committee) Procedure Rules Order of Council 2003, SI 2003/1574; and PARAS 352-354 post.

## **UPDATE**

### **351 Investigation of allegations**

NOTE 4--Reference to the 'chairman' now to the 'chair': SI 2003/1574 r 10 (amended by SI 2009/1355). For the meaning of 'chair' see PARA 354.

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### 352. Investigation of allegations: further provisions.

Where an allegation<sup>1</sup> is referred to the investigating committee<sup>2</sup>, it must, at the same time that it sends the notice<sup>3</sup> to the health professional<sup>4</sup>, provide him with a copy of the standards of conduct, performance and ethics<sup>5</sup>. In considering an allegation the committee may seek such advice or assistance as it sees fit but<sup>6</sup> may not interview the health professional unless he consents<sup>7</sup>, or take account of any document or other material which the health professional has not had the opportunity to comment upon<sup>8</sup>. Where the committee has found that the health professional has failed to comply with the standards of conduct, performance and ethics, it may take that failure into account in its consideration of an allegation but such failure is not to be taken of itself to establish that the fitness to practise of the health professional is impaired<sup>9</sup>. In determining whether there is a case to answer, the committee may take account of any other allegation made against the health professional within a period of three years ending on the date upon which the present allegation was received by the Council<sup>10</sup>. However, an earlier allegation in respect of which a practice committee<sup>11</sup> previously determined that there was no case to answer may only be taken into account if, when the health professional is notified that no further action is to be taken in connection with the earlier allegation, the notification contains a statement that the case may be taken into account in the consideration of any subsequent allegation<sup>12</sup>.

Subject as otherwise provided<sup>13</sup>, the committee meets in private to consider an allegation other than a register entry allegation<sup>14</sup>.

1 'Allegation' means any allegation of a kind mentioned in the Health Professions Order 2001, SI 2002/254, art 22(1) (see PARA 344 ante) or any matter which is treated as an allegation by virtue of action taken under art 22(6) (see PARA 344 note 13 ante): Health Professions Council (Investigating Committee) Procedure Rules Order of Council 2003, SI 2003/1574, r 2.

2 As to the establishment of the investigating committee see PARA 313 et seq ante.

3 I.e. the notice referred to in the Health Professions Order 2001, SI 2002/254, art 26(2)(a): see PARA 351 ante. For the purposes of the Health Professions Council (Investigating Committee) Procedure Rules Order of Council 2003, SI 2003/1574, a reference to the sending of a notice or other document to any person is a reference to it being sent: (1) in the case of the Council, its committees or the registrar, to the offices of the Council (r 3(1)(a)); (2) in the case of a health professional, to his address as it appears in the register (r 3(1)(b)); and (3) in all other cases, to the last known address of that person (r 3(1)(c)). All communications to be sent for the purposes of the rules may be sent by post and any such communication is treated as having been sent on the day that it was posted: r 3(2). As to the Council see PARA 308 ante. As to the registrar see PARA 324 ante.

4 'Health professional' means a person whose name appears in the register against whom an allegation has been made and includes a person whose registration is currently suspended: *ibid* r 2. As to the register see PARA 325 ante. As to suspension orders and interim suspension orders see PARAS 367, 369 post.

5 *Ibid* r 4(1). 'Standards of conduct, performance and ethics' means the standards of conduct, performance and ethics established by the Council under the Health Professions Order 2001, SI 2002/254, art 21(1)(a) (see PARA 343 ante): Health Professions Council (Investigating Committee) Procedure Rules Order of Council 2003, SI 2003/1574, r 2.

6 *Ibid* r 4(3).

7 *Ibid* r 4(3)(a).

8 *Ibid* r 4(3)(b).

9 Ibid r 4(4).

10 Ibid r 4(6).

11 As to the practice committees see PARA 315 ante.

12 Health Professions Council (Investigating Committee) Procedure Rules Order of Council 2003, SI 2003/1574, r 4(7).

13 le by ibid r 8: see PARA 354 post.

14 Ibid r 4(5). 'Register entry allegation' means an allegation of the kind mentioned in the Health Professions Order 2001, SI 2002/254, art 22(1)(b) (see PARA 344 ante) or any matter which is treated as such an allegation by virtue of action taken under art 22(6) (see PARA 344 note 13 ante): Health Professions Council (Investigating Committee) Procedure Rules Order of Council 2003, SI 2003/1574, r 2.

## **UPDATE**

### **352 Investigation of allegations: further provisions**

TEXT AND NOTES--The investigating committee may consider and determine together two or more allegations against the same health professional, or allegations against two or more health professionals, where it would be just to do so: SI 2003/1574 r 4(8) (added by 2005/1625).

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### **353. Register entry allegations.**

Where the Council<sup>1</sup> refers a register entry allegation<sup>2</sup> to the investigating committee<sup>3</sup>, the Council must send notice of the allegation to: (1) where known, the employer of the health professional<sup>4</sup> or any other person with whom he has an arrangement to provide professional services<sup>5</sup>; (2) where known, any other body by which the health professional is authorised to practise a health or social care profession<sup>6</sup>; and (3) the Secretary of State<sup>7</sup> and the National Assembly for Wales<sup>8</sup>.

Where a register entry allegation is referred to the investigating committee it must, in addition to the notice of the allegation<sup>9</sup>, send a notice<sup>10</sup> to the health professional: (a) informing him that he may, before the end of the period of 28 days beginning with the date on which the notice is sent, request that a hearing be held<sup>11</sup>, and that, even if he does not request a hearing, the committee may hold a hearing if it considers it to be desirable<sup>12</sup>; and (b) informing him of his right to be heard, and to be represented, at such a hearing<sup>13</sup>. The registrar<sup>14</sup> may, and at the direction of the committee must, be a party to any proceedings<sup>15</sup>. The committee may invite any person who, in its opinion, has an interest in the proceedings to submit written representations, and any such representations must be sent to the committee before the end of the period of 14 days beginning with the date on which the invitation is sent to that person<sup>16</sup>.

If the health professional has requested that a hearing be held or the committee determines that it would be desirable to hold a hearing, the committee must fix a day on which it is to hear the case and send the parties notice of the day, time and venue for the hearing<sup>17</sup>.

1 As to the Council see PARA 308 ante.

2 For the meaning of 'register entry allegation' see PARA 352 note 14 ante.

3 As to the establishment of the investigating committee see PARA 313 et seq ante.

4 For the meaning of 'health professional' see PARA 352 note 4 ante.

5 Health Professions Council (Investigating Committee) Procedure Rules Order of Council 2003, SI 2003/1574, r 5(a).

6 Ibid r 5(b).

7 As to the Secretary of State see PARA 5 ante.

8 Health Professions Council (Investigating Committee) Procedure Rules Order of Council 2003, SI 2003/1574, r 5(c). As to the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

9 I.e. the notice referred to in ibid r 4(1): see PARA 352 note 3 ante.

10 As to the service of notices and other documents see PARA 352 note 3 ante.

11 Health Professions Council (Investigating Committee) Procedure Rules Order of Council 2003, SI 2003/1574, r 6(1)(a)(i). The time for requesting that a hearing be held specified in r 6(1)(a), or for sending written representations specified in r 6(6) (see the text to note 16 infra), may be extended by the chairman where he is satisfied that in all the circumstances it is reasonable to do so: r 10. For the meaning of 'chairman' see PARA 354 note 2 post.

12 Ibid r 6(1)(a)(ii).

13 Ibid r 6(1)(b). A health professional may be represented in any proceedings by any person, whether or not legally qualified, except a member of the Council or any of its committees or a person employed by the Council: r 6(5). As to the committees of the Council see PARA 313 et seq ante. As to the power of the Council to employ persons see PARA 319 ante.

14 As to the registrar see PARA 324 ante.

15 Health Professions Council (Investigating Committee) Procedure Rules Order of Council 2003, SI 2003/1574, r 6(2).

16 Ibid r 6(6). See also note 11 supra.

17 Ibid r 6(3). The committee must not fix a date for the hearing which is before the end of the period of 28 days beginning with the day on which the committee sent the notice referred to in r 6(3) to the health professional: r 6(4).

## **UPDATE**

### **353 Register entry allegations**

TEXT AND NOTES--The investigating committee may consider and determine together two or more register entry allegations against the same health professional, or register entry allegations against two or more health professionals, where it would be just to do so: SI 2003/1574 r 6(7) (added by SI 2005/1625).

NOTE 11--Reference to the 'chairman' now to the 'chair': SI 2003/1574 r 10 (amended by SI 2009/1355). For the meaning of 'chair' see PARA 354.



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### **354. Preliminary meetings; hearings.**

The investigating committee<sup>1</sup> or the chairman<sup>2</sup> may hold a preliminary meeting in private with the parties, their representatives<sup>3</sup> and any other person it or he considers appropriate if such a meeting would, in its or his opinion, assist the committee to perform its functions<sup>4</sup>. At any such meeting which he conducts, the chairman may give directions<sup>5</sup> and, with the agreement of the parties, take any action which the investigating committee would be competent to take at such a meeting<sup>6</sup>.

At any hearing in respect of a register entry allegation<sup>7</sup>: (1) the proceedings must be held in public unless the investigating committee is satisfied that, in the interests of justice or for the protection of the private life of the health professional<sup>8</sup>, the complainant<sup>9</sup>, any person giving evidence, or any patient or client, the public should be excluded from all or part of the hearing<sup>10</sup>; (2) subject to head (3) below, the rules on the admissibility of evidence that apply in civil proceedings in the appropriate court<sup>11</sup> in that part of the United Kingdom<sup>12</sup> in which the hearing takes place apply<sup>13</sup>; (3) the committee may hear or receive evidence which would not be admissible in such proceedings if it is satisfied that admission of that evidence is necessary in order to protect members of the public<sup>14</sup>; (4) where the health professional has been convicted of a criminal offence, a certified copy of the certificate of conviction<sup>15</sup> is admissible as proof of that conviction and of the findings of fact upon which it was based<sup>16</sup>; (5) the committee may require evidence to be given on oath or affirmation and for that purpose may administer oaths or affirmations in an appropriate form<sup>17</sup>; (6) the committee may adjourn the proceedings from time to time as it thinks fit<sup>18</sup>.

The committee may require any person, other than the health professional, to attend a hearing and give evidence or produce documents<sup>19</sup>. At the beginning of any hearing, the chairman must explain to the parties the order of proceedings which the committee proposes to adopt and, unless the committee determines otherwise, the parties are heard in the following order<sup>20</sup>: (a) the chairman invites the solicitor<sup>21</sup> to present the case against the health professional and to adduce the evidence in support of that case<sup>22</sup>; (b) any witness called by the solicitor is examined by him, may be cross-examined by the health professional or his representative, may be re-examined by the solicitor and may be questioned by the committee<sup>23</sup>; (c) at the conclusion of the case against the health professional, the chairman invites the health professional or his representative to address the committee and to adduce evidence as to the health professional's fitness to practise<sup>24</sup>; (d) any witness called by the health professional is examined by him or his representative, may be cross-examined by the solicitor, may be re-examined by the health professional or his representative and may be questioned by the committee<sup>25</sup>; (e) the chairman invites the solicitor to address the committee again<sup>26</sup>; (f) the health professional or his representative may then address the committee for a second time<sup>27</sup>. Where the health professional is neither present nor represented at a hearing in respect of a register entry allegation, the committee may nevertheless proceed with the hearing if it is satisfied that all reasonable steps have been taken to serve the notice of the hearing<sup>28</sup> on the health professional<sup>29</sup>.

1 As to the establishment of the investigating committee see PARA 313 et seq ante.

2 'Chairman' means the chairman of the investigating committee or, in relation to any proceedings conducted by a panel appointed by the investigating committee in accordance with the Health Professions

Order 2001, SI 2002/254, Sch 1 para 19(6) (see PARA 315 ante), the chairman of that panel: Health Professions Council (Investigating Committee) Procedure Rules Order of Council 2003, SI 2003/1574, r 2.

3 As to the right of a health professional to be represented in proceedings see PARA 353 note 13 ante.

4 Health Professions Council (Investigating Committee) Procedure Rules Order of Council 2003, SI 2003/1574, r 7(1).

5 le under the Health Professions Order 2001, SI 2002/254, art 32(3): see PARA 345 ante.

6 Health Professions Council (Investigating Committee) Procedure Rules Order of Council 2003, SI 2003/1574, r 7(2).

7 For the meaning of 'register entry allegation' see PARA 352 note 14 ante.

8 For the meaning of 'health professional' see PARA 352 note 4 ante.

9 'Complainant' means a person by whom an allegation has been made to the Council: Health Professions Council (Investigating Committee) Procedure Rules Order of Council 2003, SI 2003/1574, r 2. For the meaning of 'allegation' see PARA 352 note 1 ante. As to the Council see PARA 308 ante.

10 Ibid r 8(1)(a).

11 For these purposes, 'appropriate court' means the Court of Session in Scotland, the High Court of Justice in Northern Ireland and the High Court of Justice in England and Wales: ibid r 8(2)(a)-(c). As to the High Court of Justice in England and Wales see COURTS vol 10 (Reissue) PARA 602 et seq.

12 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

13 Health Professions Council (Investigating Committee) Procedure Rules Order of Council 2003, SI 2003/1574, r 8(1)(b). As to evidence in civil proceedings see CIVIL PROCEDURE vol 11 (2009) PARA 749 et seq.

14 Ibid r 8(1)(c).

15 As to certificates of conviction see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1500.

16 Health Professions Council (Investigating Committee) Procedure Rules Order of Council 2003, SI 2003/1574, r 8(1)(d).

17 Ibid r 8(1)(e). As to oaths and affirmations see CIVIL PROCEDURE vol 11 (2009) PARA 1021 et seq.

18 Ibid r 8(1)(f).

19 Ibid r 8(3). As to the consideration of documents by the committee see PARA 352 text to note 8 ante.

20 Ibid r 8(4).

21 'Solicitor' means: (1) any solicitor appointed by the Council to represent it at a hearing before the investigating committee which relates to an allegation against a health professional, or by the registrar to represent him at such a hearing in respect of a register entry allegation against a health professional; or (2) counsel instructed to represent the Council or registrar at any such hearing: ibid r 2. As to the registrar see PARA 324 ante.

22 Ibid r 8(4)(a).

23 Ibid r 8(4)(b).

24 Ibid r 8(4)(c).

25 Ibid r 8(4)(d).

26 Ibid r 8(4)(e).

27 Ibid r 8(4)(f).

28 le under ibid r 6(3): see PARA 353 text to note 17 ante. As to the service of notices and documents see PARA 352 note 3 ante.

29 Ibid r 9.

## **UPDATE**

### **354 Preliminary meetings; hearings**

TEXT AND NOTES--References to the 'chairman' are now to the 'chair': SI 2003/1574 rr 7, 8 (amended by SI 2009/1355). 'Chair' means the panel chair of any panel of members performing the functions of the investigating committee: SI 2003/1574 r 2 (definition substituted by SI 2009/1355).

TEXT AND NOTES 7-18--Add head (7) the investigating committee may exclude from the hearing any person whose conduct, in its opinion, is likely to disrupt the orderly conduct of the proceedings: SI 2003/1574 r 8(1)(g) (added by SI 2005/1625).

NOTE 19--For provisions relating to vulnerable witnesses see PARA 354A.

TEXT AND NOTES 20-27--References to the 'solicitor' are now to the 'presenting officer': SI 2003/1574 r 8(4) (amended by SI 2005/1625). 'Presenting officer' means a person appointed by (1) the Council to present the case on its behalf at any hearing before the investigating committee which relates to an allegation against a health professional; or (2) the registrar to represent him at any hearing before the investigating committee which relates to a register entry allegation against a health professional; and may include a solicitor or counsel: SI 2003/1574 r 2 (amended by SI 2005/1625).

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### **354A. Vulnerable witnesses before the investigating committee.**

In proceedings before the investigating committee<sup>1</sup> the following may, if the quality of their evidence is likely to be adversely affected as a result, be treated as a vulnerable witness: (1) any witness under the age of 17 at the time of the hearing<sup>2</sup>; (2) any witness with a mental disorder<sup>3</sup>; (3) any witness who is significantly impaired in relation to intelligence and social functioning<sup>4</sup>; (4) any witness with physical disabilities who requires assistance to give evidence<sup>5</sup>; (5) any witness, where the allegation<sup>6</sup> against the health professional<sup>7</sup> is of a sexual nature and the witness was the alleged victim<sup>8</sup>; and (6) any witness who complains of intimidation<sup>9</sup>.

Subject to the advice of the legal assessor<sup>10</sup>, and upon hearing representations from the parties, the investigating committee may adopt such measures as it considers desirable to enable it to receive evidence from a vulnerable witness<sup>11</sup>. Measures adopted by the investigating committee may include, but are not limited to: (a) use of video links; (b) use of recorded evidence as the evidence in chief of a witness, provided that the witness is available at the hearing for cross-examination and questioning by the investigating committee; (c) use of interpreters, including signers, or intermediaries; (d) use of screens or such other measures as the investigating committee consider necessary in the circumstances, in order to prevent the identity of the witness being revealed to the press or the general public or access to the witness by the health professional; and (e) the hearing of evidence by the investigating committee in private<sup>12</sup>.

Where the allegation against a health professional is based on facts which are sexual in nature, a witness is an alleged victim and the health professional is acting in person, the health professional must not, without the written consent of the witness, be allowed to cross-examine the witness in person<sup>13</sup>. In such circumstances, in the absence of written consent, the health professional must, no less than seven days before the hearing, appoint a legally qualified person to cross-examine the witness on his behalf and, in default, the General Medical Council must appoint such a person on behalf of the health professional<sup>14</sup>.

1 As to the establishment of the investigating committee see PARA 313 et seq.

2 Health Professions Council (Investigating Committee) (Procedure) Rules 2003, SI 2003/1574, r 8A(1)(a).

3 SI 2003/1574 r 8A(1)(b). The reference to a mental disorder is to such a disorder within the meaning of the Mental Health Act 1983 (see MENTAL HEALTH vol 30(2) (Reissue) PARA 402).

4 SI 2003/1574 r 8A(1)(c).

5 Ibid r 8A(1)(d).

6 For the meaning of 'allegation' see PARA 352.

7 For the meaning of 'health professional' see PARA 352.

8 SI 2003/1574 r 8A(1)(e).

9 Ibid r 8A(1)(f).

10 'Legal assessor' means a person appointed in accordance with the Health Professions Order 2001, SI 2002/254, art 34(1): SI 2003/1574 r 2 (added by SI 2005/1625).

11 SI 2003/1574 r 8A(2).

12 Ibid r 8A(3).

13 Ibid r 8A(4).

14 Ibid r 8A(5). As to the General Medical Council see PARA 308.

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### ***C. THE CONDUCT AND COMPETENCE COMMITTEE***

#### **355. Functions of the committee.**

The conduct and competence committee<sup>1</sup> must:

598 (1) having consulted the other practice committees<sup>2</sup> as it thinks appropriate, advise the Council<sup>3</sup>, whether on the Council's request or otherwise, on<sup>4</sup>:

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180. (a) the performance of the Council's functions in relation to standards of conduct, performance and ethics expected of registrants<sup>5</sup> and prospective registrants<sup>6</sup>;

181. (b) requirements as to good character and good health to be met by registrants and prospective registrants<sup>7</sup>; and

182. (c) the protection of the public from people whose fitness to practise is impaired<sup>8</sup>; and

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599 (2) consider: (a) any allegation referred to it by the Council, screeners<sup>9</sup>, the investigating committee<sup>10</sup> or the health committee<sup>11</sup>; and (b) any application for restoration referred to it by the registrar<sup>12</sup>.

1 As to the establishment of the conduct and competence committee see PARA 313 et seq ante.

2 For the meaning of 'practice committee' see PARA 315 note 2 ante.

3 For the meaning of 'the Council' see PARA 308 note 1 ante.

4 Health Professions Order 2001, SI 2002/254, art 27(a).

5 For the meaning of 'registrant' see PARA 318 note 4 ante.

6 Health Professions Order 2001, SI 2002/254, art 27(a)(i). As to the Council's functions generally see PARA 318 ante.

7 Ibid art 27(a)(ii).

8 Ibid art 27(a)(iii).

9 For the meaning of 'screeners' see PARA 346 note 3 ante.

10 As to the establishment of the investigating committee see PARA 313 et seq ante. As to the consideration of allegations by the investigating committee see PARAS 351-352 ante.

11 Health Professions Order 2001, SI 2002/254, art 27(b)(i). As to the establishment of the health committee see PARA 313 et seq ante. As to the consideration of allegations by the health committee see PARA 361 et seq post.

12 Ibid art 27(b)(ii). As to applications for restoration see PARA 360 post. As to the registrar see PARA 324 ante.

#### **UPDATE**

### **355 Functions of the committee**

TEXT AND NOTES 1-8--SI 2002/254 art 27(a) revoked: SI 2009/1182.

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### **356. Investigation of allegations.**

Where an allegation<sup>1</sup> is referred to the conduct and competence committee<sup>2</sup>, it must without delay<sup>3</sup>: (1) send to the health professional<sup>4</sup> a notice<sup>5</sup> setting out the allegation<sup>6</sup>; (2) invite the health professional to submit written representations to the committee and inform him that any such representations must be sent to the committee before the end of the period of 28 days beginning with the date on which the notice is sent<sup>7</sup>; (3) inform the health professional that he may, before the end of the period of 28 days beginning with the date on which the notice is sent, request that a hearing be held<sup>8</sup>, and that, even if he does not request a hearing, the committee may hold a hearing if it considers it to be desirable<sup>9</sup>; and (4) inform the health professional of his right to be heard, and to be represented, at such a hearing<sup>10</sup>. The Council must give notice of any allegation which is referred to the committee to: (a) where known, the employer of the health professional or any other person with whom he has an arrangement to provide professional services<sup>11</sup>; (b) where known, any other body by which the health professional is authorised to practise a health or social care profession<sup>12</sup>; and (c) the Secretary of State<sup>13</sup> and the National Assembly for Wales<sup>14</sup>.

Where it appears to the conduct and competence committee that an allegation which it is considering would be better dealt with by the health committee<sup>15</sup>, the committee may refer the allegation to the health committee for consideration and must suspend its consideration of the allegation<sup>16</sup>. If, following such a referral, the health committee certifies to the conduct and competence committee that the fitness to practise of the health professional is not impaired by reason of his physical or mental health, the conduct and competence committee must resume and conclude its consideration of the allegation<sup>17</sup>. If, however, the health committee certifies that it has dealt with the allegation and that no further action by the conduct and competence committee is required in relation to the allegation, the conduct and competence committee must take no further action in relation to the allegation<sup>18</sup>.

If the health professional has requested that a hearing be held or the conduct and competence committee determines that it would be desirable to hold a hearing, the committee must fix a day on which it is to hear the case and send the parties notice of the day, time and venue for the hearing<sup>19</sup>.

The committee or the chairman<sup>20</sup> may hold a preliminary meeting in private with the parties, their representatives and any other person it or he considers appropriate if such a meeting would, in its or his opinion, assist the committee to perform its functions<sup>21</sup>.

1 'Allegation' means any allegation of a kind mentioned in the Health Professions Order 2001, SI 2002/254, art 22(1)(a) (see PARA 344 ante) or any matter which is treated as an allegation by virtue of action taken under art 22(6) (see PARA 344 note 13 ante): Health Professions Council (Conduct and Competence Committee) (Procedure) Rules Order of Council 2003, SI 2003/1575, r 2.

2 As to the establishment of the conduct and competence committee see PARA 313 et seq ante. As to the functions of the conduct and competence committee see PARA 355 ante.

3 Health Professions Council (Conduct and Competence Committee) (Procedure) Rules Order of Council 2003, SI 2003/1575, r 5(1).



4 'Health professional' means a person whose name appears in the register against whom an allegation has been made and includes a person whose registration is currently suspended: *ibid* r 2. As to the register see *PARA* 325 ante. As to suspension orders and interim suspension orders see *PARAS* 367, 369 post.

5 In the Health Professions Council (Conduct and Competence Committee) (Procedure) Rules Order of Council 2003, SI 2003/1575, a reference to the sending of a notice or other document to any person is a reference to it being sent: (1) in the case of the Council, its committees or the registrar, to the offices of the Council (r 3(1)(a)); (2) in the case of a health professional, to his address as it appears in the register (r 3(1)(b)); and (3) in all other cases, to the last known address of that person (r 3(1)(c)). All communications to be sent for the purposes of the rules may be sent by post and any such communication is treated as having been sent on the day on which it was posted: r 3(2). As to the Council see *PARA* 308 ante; and as to its committees see *PARA* 313 et seq ante. As to the registrar see *PARA* 324 ante.

6 *Ibid* r 5(1)(a).

7 *Ibid* r 5(1)(b). The time for sending written representations specified in r 5(1)(b) may be extended by the chairman where he is satisfied that in all the circumstances it is reasonable to do so: Sch 14(c)(i). Where any written representations are made to the committee under r 5(1)(b), it may, if it sees fit, send a notice to the complainant notifying him of the representations and inviting him, before the end of the period of 14 days beginning with the date on which the invitation was sent, to deal with any points raised by the committee in respect of those representations: r 5(2). The time for dealing with any points raised by the committee in respect of any written representations mentioned in r 5(2) may be extended by the chairman where he is satisfied that in all the circumstances it is reasonable to do so: r 14(d). 'Complainant' means a person by whom an allegation has been made to the Council: r 2.

8 *Ibid* r 5(1)(c)(i). The time for requesting that a hearing be held may be extended by the chairman where he is satisfied that in all the circumstances it is reasonable to do so: Sch 14(a).

9 *Ibid* r 5(1)(c)(ii).

10 *Ibid* r 5(1)(d). A health professional may be represented in any proceedings by any person, whether or not legally qualified, except a member of the Council or any of its committees or a person employed by the Council: r 6(3). As to membership of the Council see *PARA* 308 ante. As to the committees see *PARA* 313 et seq ante. As to the power of the Council to employ persons see *PARA* 319 ante. As to the conduct of hearings see *PARA* 358 post.

11 *Ibid* r 5(3)(a).

12 *Ibid* r 5(3)(b).

13 As to the Secretary of State see *PARA* 5 ante.

14 Health Professions Council (Conduct and Competence Committee) (Procedure) Rules Order of Council 2003, SI 2003/1575, r 5(3)(c). As to the National Assembly for Wales see *CONSTITUTIONAL LAW AND HUMAN RIGHTS*.

15 'Health committee' is to be construed in accordance with the Health Professions Order 2001, SI 2002/254, art 3(9) (see *PARA* 313 ante): Health Professions Council (Conduct and Competence Committee) (Procedure) Rules Order of Council 2003, SI 2003/1575, r 2. As to the consideration of allegations by the health committee see *PARA* 361 et seq post.

16 *Ibid* r 4(1).

17 *Ibid* r 4(2).

18 See *ibid* r 4(3).

19 *Ibid* r 6(1). See also note 10 supra. The committee must fix a date for the hearing which is before the end of the period of 28 days beginning with the day on which the committee sent the notice referred to in r 6(1) to the health professional: r 6(2). As to the conduct of hearings see *PARA* 358 post.

20 'Chairman' means the chairman of the conduct and competence committee or, in relation to any proceedings conducted by a panel appointed by the committee in accordance with the Health Professions Order 2001, SI 2002/254, art 3, Sch 1 para 19(6) (see *PARA* 315 ante), the chairman of that panel: Health Professions Council (Conduct and Competence Committee) (Procedure) Rules Order of Council 2003, SI 2003/1575, r 2.

21 *Ibid* r 7(1). See also note 10 supra. At any such meeting which he conducts, the chairman may give directions under the Health Professions Order 2001, SI 2002/254, art 32(3) (see *PARA* 345 ante) and, with the

agreement of the parties, take any action which the conduct and competence committee would be competent to take at such a meeting: r 7(2).

## **UPDATE**

### **356 Investigation of allegations**

TEXT AND NOTES 1-14--The conduct and competence committee may consider and determine together two or more allegations against the same health professional or allegations against two or more health professionals, where it would be just to do so: SI 2003/1574 r 5(4) (added by SI 2005/1625).

TEXT AND NOTES 7, 20, 21--References to the 'chairman' are now to the 'chair': SI 2003/1575 rr 7, 14 (amended by SI 2009/1355). 'Chair' means the panel chair of any panel of members performing the functions of the conduct and competence committee: SI 2003/1575 r 2 (definition substituted by SI 2009/1355).

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### 357. Further investigations.

Before holding any hearing<sup>1</sup>, the conduct and competence committee<sup>2</sup> may carry out such investigations or seek such advice or assistance as it sees fit and, in particular, may<sup>3</sup>: (1) ask the health professional<sup>4</sup> to provide a written description of his practice<sup>5</sup>; (2) inspect a sample of the health professional's patient or client records<sup>6</sup>; (3) invite the health professional to take a test of competence<sup>7</sup>; or (4) interview the complainant<sup>8</sup>, the health professional and any person nominated by the health professional<sup>9</sup>. The committee may invite any person who, in its opinion, has an interest in the proceedings to submit written representations and any such representations must be sent to the committee before the end of the period of 14 days beginning with the date on which the invitation is sent to that person<sup>10</sup>. The committee must provide the health professional with any information or opinion which the committee has received and afford the health professional the opportunity to comment on that information or opinion either before or at any hearing<sup>11</sup>.

1 As to the holding of hearings see PARA 356 ante. As to the conduct of hearings see PARA 358 post.

2 As to the establishment of the conduct and competence committee see PARA 313 et seq ante. As to the functions of the conduct and competence committee see PARA 355 ante.

3 Health Professions Council (Conduct and Competence Committee) (Procedure) Rules Order of Council 2003, SI 2003/1575, r 8(1).

4 For the meaning of 'health professional' see PARA 356 note 4 ante.

5 Health Professions Council (Conduct and Competence Committee) (Procedure) Rules Order of Council 2003, SI 2003/1575, r 8(1)(a).

6 Ibid r 8(1)(b). The committee may only inspect patient or client records with the consent of the patient or client concerned unless the records are provided in a form from which the patient or client cannot be identified: r 8(2).

7 Ibid r 8(1)(c).

8 For the meaning of 'complainant' see PARA 356 note 7 ante.

9 Health Professions Council (Conduct and Competence Committee) (Procedure) Rules Order of Council 2003, SI 2003/1575, r 8(1)(d). The committee may only interview a person with his consent and a person who consents to be interviewed may be represented at that interview by any person, whether or not legally qualified, except a member of the Council or any of its committees or a person employed by the Council: r 8(3). As to membership of the Council see PARA 308 ante. As to the committees see PARA 313 et seq ante. As to the power of the Council to employ persons see PARA 319 ante.

10 Ibid r 8(4). The time for sending written representations specified in r 8(4) may be extended by the chairman where he is satisfied that in all the circumstances it is reasonable to do so: r 14(c)(ii). For the meaning of 'chairman' see PARA 356 note 20 ante.

11 Ie any hearing conducted under ibid r 10 (see PARA 358 post): r 8(5).

## UPDATE

### 357 Further investigations

NOTE 10--Reference to the chairman is now to the chair (see PARA 356): SI 2003/1575 r 14 (amended by SI 2009/1355).

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### **358. Conduct of hearings.**

At any hearing<sup>1</sup>:

- 600 (1) the proceedings are to be held in public unless the conduct and competence committee<sup>2</sup> is satisfied that, in the interests of justice or for the protection of the private life of the health professional<sup>3</sup>, the complainant<sup>4</sup>, any person giving evidence, or any patient or client, the public should be excluded from all or part of the hearing<sup>5</sup>;
- 601 (2) subject to head (3) below, the rules on the admissibility of evidence that apply in civil proceedings in the appropriate court<sup>6</sup> in that part of the United Kingdom<sup>7</sup> in which the hearing takes place apply<sup>8</sup>;
- 602 (3) the committee may hear or receive evidence which would not be admissible in such proceedings if it is satisfied that admission of that evidence is necessary in order to protect members of the public<sup>9</sup>;
- 603 (4) where the health professional has been convicted of a criminal offence, a certified copy of the certificate of conviction is admissible as proof of that conviction and of the findings of fact upon which it was based<sup>10</sup>;
- 604 (5) the committee may require evidence to be given on oath or affirmation and for that purpose may administer oaths or affirmations in an appropriate form<sup>11</sup>;
- 605 (6) the committee may adjourn the proceedings from time to time as it thinks fit<sup>12</sup>.

At the beginning of any hearing, the chairman<sup>13</sup> must explain to the parties the order of proceedings which the committee proposes to adopt and, unless the committee determines otherwise, the parties are heard in the following order<sup>14</sup>: (a) the chairman invites the solicitor<sup>15</sup> to present the case against the health professional and to adduce the evidence in support of that case<sup>16</sup>; (b) any witness called by the solicitor is examined by him, may be cross-examined by the health professional or his representative, may be re-examined by the solicitor and may be questioned by the committee<sup>17</sup>; (c) at the conclusion of the case against the health professional, the chairman invites the health professional or his representative<sup>18</sup> to address the committee and to adduce evidence as to the health professional's fitness to practise<sup>19</sup>; (d) any witness called by the health professional is examined by him or his representative, may be cross-examined by the solicitor, may be re-examined by the health professional or his representative and may be questioned by the committee<sup>20</sup>; (e) the chairman invites the solicitor to address the committee again<sup>21</sup>; (f) the health professional or his representative may then address the committee for a second time<sup>22</sup>.

The committee may require any person, other than the health professional, to attend a hearing and give evidence or produce documents<sup>23</sup>. Where the health professional is neither present nor represented at a hearing, the committee may nevertheless proceed with the hearing if it is satisfied that all reasonable steps have been taken to serve the notice of the hearing<sup>24</sup> on the health professional<sup>25</sup>.

1 As to the holding of hearings see PARA 356 ante.

- 2 As to the establishment of the conduct and competence committee see PARA 313 et seq ante. As to the functions of the conduct and competence committee see PARA 355 ante.
- 3 For the meaning of 'health professional' see PARA 356 note 4 ante.
- 4 For the meaning of 'complainant' see PARA 356 note 7 ante.
- 5 Health Professions Council (Conduct and Competence Committee) (Procedure) Rules Order of Council 2003, SI 2003/1575, r 10(1)(a).
- 6 For these purposes, 'appropriate court' means the Court of Session in Scotland, the High Court of Justice in Northern Ireland, and the High Court of Justice in England and Wales: *ibid* r 10(2)(a)-(c). As to the High Court of Justice in England and Wales see *COURTS* vol 10 (Reissue) PARA 602 et seq.
- 7 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.
- 8 Health Professions Council (Conduct and Competence Committee) (Procedure) Rules Order of Council 2003, SI 2003/1575, r 10(1)(b). As to evidence in civil proceedings see *CIVIL PROCEDURE* vol 11 (2009) PARA 749 et seq.
- 9 *Ibid* r 10(1)(c).
- 10 *Ibid* r 10(1)(d). As to certificates of conviction see *CRIMINAL LAW, EVIDENCE AND PROCEDURE* vol 11(3) (2006 Reissue) PARA 1500.
- 11 *Ibid* r 10(1)(e). As to oaths and affirmations see *CIVIL PROCEDURE* vol 11 (2009) PARA 1021 et seq.
- 12 *Ibid* r 10(1)(f).
- 13 For the meaning of 'chairman' see PARA 356 note 20 ante.
- 14 Health Professions Council (Conduct and Competence Committee) (Procedure) Rules Order of Council 2003, SI 2003/1575, r 10(4).
- 15 'Solicitor' means: (1) any solicitor appointed by the Council to represent it at a hearing before the committee which relates to an allegation against a health professional; or (2) counsel instructed to represent the Council at any such hearing: *ibid* r 2. As to the Council see PARA 308 ante.
- 16 *Ibid* r 10(4)(a).
- 17 *Ibid* r 10(4)(b).
- 18 As to the right of the health professional to be represented see PARA 356 note 10 ante.
- 19 Health Professions Council (Conduct and Competence Committee) (Procedure) Rules Order of Council 2003, SI 2003/1575, r 10(4)(c).
- 20 *Ibid* r 10(4)(d).
- 21 *Ibid* r 10(4)(e).
- 22 *Ibid* r 10(4)(f).
- 23 *Ibid* r 10(3).
- 24 *Ie* the notice under *ibid* r 6(1): see PARA 356 ante.
- 25 *Ibid* r 11.

## **UPDATE**

### **358 Conduct of hearings**

TEXT AND NOTES--For provisions relating to vulnerable witnesses see PARA 358A.

TEXT AND NOTES 1-12--Also head (4A) where it is alleged that the health professional has been included in a barred list (within the meaning of Safeguarding Vulnerable Groups Act 2006) by the Independent Barring Board (1) information provided by the Secretary of State under the 2006 Act that attests to the inclusion is conclusive evidence of it, unless the health professional can prove that he is not the person referred to in the information; and (2) a document from the Board, authenticated in whatever way the Council may approve, that provides a statement of the findings of fact made by the Board that led to the inclusion is conclusive evidence of the facts found proved by the Board: SI 2003/1575 r 10(1)(da) (added by SI 2009/1182) (in force on the coming into force of the Safeguarding Vulnerable Groups Act 2006 s 44(1) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 704)). As to the system under the 2006 Act see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 675 et seq.

Also head (7) the committee may exclude from the hearing any person whose conduct, in its opinion, is likely to disrupt the orderly conduct of the proceedings: SI 2003/1575 r 10(1)(g) (added by SI 2005/1625).

TEXT AND NOTES 13-22--References to the solicitor are now to the presenting officer and references to the chairman are now to the chair (see PARA 356): SI 2003/1575 r 10(4) (amended by SI 2005/1625, SI 2009/1355). 'Presenting officer' means a person appointed by the Council to present the case on its behalf at any hearing before the conduct and competence committee which relates to an allegation against a health professional and may include a solicitor or counsel: SI 2003/1575 r 2 (amended by SI 2005/1625).

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### **358A. Vulnerable witnesses before the conduct and competence committee.**

In proceedings before the conduct and competence committee<sup>1</sup> the following may, if the quality of their evidence is likely to be adversely affected as a result, be treated as a vulnerable witness: (1) any witness under the age of 17 at the time of the hearing<sup>2</sup>; (2) any witness with a mental disorder<sup>3</sup>; (3) any witness who is significantly impaired in relation to intelligence and social functioning<sup>4</sup>; (4) any witness with physical disabilities who requires assistance to give evidence<sup>5</sup>; (5) any witness, where the allegation<sup>6</sup> against the health professional<sup>7</sup> is of a sexual nature and the witness was the alleged victim<sup>8</sup>; and (6) any witness who complains of intimidation<sup>9</sup>.

Subject to the advice of the legal assessor<sup>10</sup>, and upon hearing representations from the parties, the conduct and competence committee may adopt such measures as it considers desirable to enable it to receive evidence from a vulnerable witness<sup>11</sup>. Measures adopted by the conduct and competence committee may include, but are not limited to: (a) use of video links; (b) use of recorded evidence as the evidence in chief of a witness, provided that the witness is available at the hearing for cross-examination and questioning by the conduct and competence committee; (c) use of interpreters, including signers, or intermediaries; (d) use of screens or such other measures as the conduct and competence committee consider necessary in the circumstances, in order to prevent the identity of the witness being revealed to the press or the general public or access to the witness by the health professional; and (e) the hearing of evidence by the conduct and competence committee in private<sup>12</sup>.

Where the allegation against a health professional is based on facts which are sexual in nature, a witness is an alleged victim and the health professional is acting in person, the health professional must not, without the written consent of the witness, be allowed to cross-examine the witness in person<sup>13</sup>. In such circumstances, in the absence of written consent, the health professional must, no less than seven days before the hearing, appoint a legally qualified person to cross-examine the witness on his behalf and, in default, the General Medical Council must appoint such person on behalf of the health professional<sup>14</sup>.

1 As to the establishment of the conduct and competence committee see PARA 313 et seq.

2 Health Professions Council (Conduct and Competence Committee) (Procedure) Rules 2003, SI 2003/1575, r 10A(1)(a) (r 10A added by SI 2005/1625).

3 SI 2003/1575 r 10A(1)(b). The reference to a mental disorder is to such a disorder within the meaning of the Mental Health Act 1983 (see MENTAL HEALTH vol 30(2) (Reissue) PARA 402).

4 SI 2003/1575 r 10A(1)(c)).

5 Ibid r 10A(1)(d).

6 For the meaning of 'allegation' see PARA 356.

7 For the meaning of 'health professional' see PARA 356.

8 SI 2005/1575 r 10A(1)(e)).

9 Ibid r 10A(1)(f)).



10 'Legal assessor' means a person appointed in accordance with the Health Professions Order 2001, SI 2002/254, art 34(1): SI 2003/1575 r 2 (added by SI 2005/1625).

11 SI 2003/1575 r 10A(2).

12 Ibid r 10A(3).

13 Ibid r 10A(4)).

14 Ibid r 10A(5)). As to the General Medical Council see PARA 308.

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### **359. Disposal of cases.**

Where the conduct and competence committee<sup>1</sup> has found that the health professional<sup>2</sup> has failed to comply with the standards of conduct, performance and ethics established by the Council<sup>3</sup>, the committee may take that failure into account but such failure is not to be taken of itself to establish that the fitness to practise of the health professional is impaired<sup>4</sup>. Where the committee concludes its consideration of an allegation<sup>5</sup>, it must dispose of the case in accordance with the provisions relating to orders of the committee<sup>6</sup>. The committee must notify the health professional and the complainant<sup>7</sup> of its decision and the reasons for reaching that decision, and inform the health professional of his right of appeal<sup>8</sup>.

1 As to the establishment of the conduct and competence committee see PARA 313 et seq ante. As to the functions of the conduct and competence committee see PARA 355 ante.

2 For the meaning of 'health professional' see PARA 356 note 4 ante.

3 I.e the standards established under the Health Professions Order 2001, SI 2002/254, art 21(1)(a): see PARA 343 ante. As to the Council see PARA 308 ante.

4 Health Professions Council (Conduct and Competence Committee) (Procedure) Rules Order of Council 2003, SI 2003/1575, r 9.

5 For the meaning of 'allegation' see PARA 356 note 1 ante.

6 I.e the provisions of the Health Professions Order 2001, SI 2002/254, art 29 (see PARA 367 post): Health Professions Council (Conduct and Competence Committee) (Procedure) Rules Order of Council 2003, SI 2003/1575, r 12(1).

7 For the meaning of 'complainant' see PARA 356 note 7 ante.

8 Health Professions Council (Conduct and Competence Committee) (Procedure) Rules Order of Council 2003, SI 2003/1575, r 12(2). As to appeals see PARA 376 et seq post.

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### **360. Review of orders and applications for restoration to the register.**

Where the conduct and competence committee<sup>1</sup> proposes to review an order<sup>2</sup>, or to consider an application for restoration<sup>3</sup>, it must without delay send a notice<sup>4</sup> to the relevant person<sup>5</sup> informing him of his right to appear, and to be represented<sup>6</sup>, before the committee to argue his case<sup>7</sup>. Where the relevant person, before the end of the period of 28 days beginning with the date on which such a notice is sent, sends a notice to the committee stating that he wishes to appear before it, the committee must fix a day on which it is to hear the case and send to the relevant person notice of the day, time and venue for the hearing<sup>8</sup>. The committee may require any person, other than the relevant person, to attend and give evidence or produce documents at any such hearing<sup>9</sup>; and it may invite any person who, in its opinion, has an interest in the proceedings to submit written representations<sup>10</sup>. The committee or the chairman<sup>11</sup> may hold a preliminary meeting in private with the parties, their representatives and any other person it or he considers appropriate if such a meeting would, in its or his opinion, assist the committee to perform its functions<sup>12</sup>.

The committee must notify the relevant person of its decision and the reasons for reaching that decision, and inform him of his right of appeal<sup>13</sup>.

1 As to the establishment of the conduct and competence committee see PARA 313 et seq ante. As to the functions of the conduct and competence committee see PARA 355 ante.

2 In accordance with the Health Professions Order 2001, SI 2002/254, art 30 (see PARA 368 post): Health Professions Council (Conduct and Competence Committee) (Procedure) Rules Order of Council 2003, SI 2003/1575, r 13(1)(a).

3 In accordance with the Health Professions Order 2001, SI 2002/254, art 33 (see PARA 371 post): Health Professions Council (Conduct and Competence Committee) (Procedure) Rules Order of Council 2003, SI 2003/1575, r 13(1)(b).

4 As to the service of notices and other documents see PARA 356 note 5 ante.

5 'Relevant person' means: (1) a person against whom an order has been made under the Health Professions Order 2001, SI 2002/254, art 29 (see PARA 367 post), which may be reviewed under art 30 (see PARA 368 post) (Health Professions Council (Conduct and Competence Committee) (Procedure) Rules Order of Council 2003, SI 2003/1575, r 13(2)(a)); or (2) a person applying under the Health Professions Order 2001, SI 2002/254, art 33 (see PARA 371 post) for restoration to the register (Health Professions Council (Conduct and Competence Committee) (Procedure) Rules Order of Council 2003, SI 2003/1575, r 13(2)(b)).

6 The relevant person may be represented in any proceedings by any person, whether or not legally qualified, except a member of the Council or any of its committees or a person employed by the Council: *ibid* r 13(5). As to membership of the Council see PARA 308 ante. As to the committees see PARA 313 et seq ante. As to the power of the Council to employ persons see PARA 319 ante.

7 *Ibid* r 13(1).

8 *Ibid* r 13(3). The time for a person giving notice that he wishes to appear before the committee specified in r 13(3) may be extended by the chairman where he is satisfied that in all the circumstances it is reasonable to do so: r 14(b). The committee must not fix a date for the hearing which is before the end of the period of 28 days beginning with the day on which the relevant person sends the notice referred to in r 13(3) to the committee: r 13(4). A hearing under r 13(3) must be conducted in accordance with r 10 (see PARA 358 ante) but, where the proceedings relate to an application made by the relevant person, the committee must adopt an order of proceedings which provides for that person to present his case first and for the solicitor to speak last: r 13(10). For the meaning of 'solicitor' see PARA 358 note 15 ante.

9 Ibid r 13(6).

10 See ibid r 13(7). Any such representations must be sent to the committee before the end of the period of 14 days beginning with the date on which the invitation is sent to the person concerned: see r 13(7). The time for sending written representations specified in r 13(7) may be extended by the chairman where he is satisfied that in all the circumstances it is reasonable to do so: r 14(c)(iii).

11 For the meaning of 'chairman' see PARA 356 note 20 ante.

12 Health Professions Council (Conduct and Competence Committee) (Procedure) Rules Order of Council 2003, SI 2003/1575, r 13(8). At any such meeting which he conducts, the chairman may give directions under the Health Professions Order 2001, SI 2002/254, art 32(3) (see PARA 345 ante) and, with the agreement of the parties, take any action which the committee would be competent to take at such a meeting: Health Professions Council (Conduct and Competence Committee) (Procedure) Rules Order of Council 2003, SI 2003/1575, r 13(9).

13 Ibid r 13(11). As to appeals see PARA 376 et seq post.

## **UPDATE**

### **360 Review of orders and applications for restoration to the register**

TEXT AND NOTES 8-12--References to the 'chairman' are now to the 'chair': SI 2003/1575 rr 13(8), (9), 14 (amended by SI 2009/1355). For the meaning of 'chair' see PARA 356.

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## ***D. THE HEALTH COMMITTEE***

### **361. Functions of the committee.**

The health committee<sup>1</sup> must consider: (1) any allegation referred to it by the Council<sup>2</sup>, screeners<sup>3</sup>, the investigating committee<sup>4</sup> or the conduct and competence committee<sup>5</sup>; and (2) any application for restoration<sup>6</sup> referred to it by the registrar<sup>7</sup>.

1 As to the establishment of the health committee see PARA 313 et seq ante.

2 For the meaning of 'the Council' see PARA 308 note 1 ante.

3 For the meaning of 'screeners' see PARA 346 note 3 ante.

4 As to the establishment of the investigating committee see PARA 313 et seq ante. As to the investigation of allegations by that committee see PARA 351 et seq ante.

5 Health Professions Order 2001, SI 2002/254, art 28(a). As to the establishment of the conduct and competence committee see PARA 313 et seq ante. As to the functions of the conduct and competence committee see PARA 355 ante.

6 As to applications for restoration see PARA 366 post.

7 Health Professions Order 2001, SI 2002/254, art 28(b). As to the registrar see PARA 324 ante.

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### **362. Investigation of allegations.**

Where an allegation<sup>1</sup> is referred to the health committee<sup>2</sup> it must without delay<sup>3</sup>: (1) send to the health professional<sup>4</sup> a notice<sup>5</sup> setting out the allegation<sup>6</sup>; (2) invite the health professional to submit written representations to the committee and inform him that any such representations must be sent to the committee before the end of the period of 28 days beginning with the date on which the notice is sent<sup>7</sup>; (3) inform the health professional that he may, before the end of the period of 28 days beginning with the date on which the notice is sent, request that a hearing be held<sup>8</sup>, and that, even if he does not request a hearing, the committee may hold a hearing if it considers it to be desirable<sup>9</sup>; and (4) inform the health professional of his right to be heard, and to be represented, at such a hearing<sup>10</sup>. The Council must give notice of any allegation which is referred to the committee to: (a) where known, the employer of the health professional or any other person with whom he has an arrangement to provide professional services<sup>11</sup>; (b) where known, any other body by which the health professional is authorised to practise a health or social care profession<sup>12</sup>; and (c) the Secretary of State<sup>13</sup> and the National Assembly for Wales<sup>14</sup>.

Where it appears to the health committee that an allegation which it is considering would be better dealt with by the conduct and competence committee<sup>15</sup>, the health committee may refer the allegation to that committee for consideration and must suspend its consideration of the allegation<sup>16</sup>. If, following such a referral, the conduct and competence committee certifies to the health committee that the fitness to practise of the health professional is not impaired by reason of misconduct, lack of competence or any other specified ground<sup>17</sup>, the health committee must resume and conclude its consideration of the allegation<sup>18</sup>. If, following such a referral, the conduct and competence committee certifies to the health committee that it has dealt with the allegation and that no further action by the health committee is required in relation to the allegation, the health committee must take no further action in relation to the allegation<sup>19</sup>.

If the health professional has requested that a hearing be held or the health committee determines that it would be desirable to hold a hearing, the committee must fix a day on which it is to hear the case and send the parties notice of the day, time and venue for the hearing<sup>20</sup>.

The committee or the chairman<sup>21</sup> may hold a preliminary meeting in private with the parties, their representatives and any other person it or he considers appropriate if such a meeting would, in its or his opinion, assist the committee to perform its functions<sup>22</sup>.

1 'Allegation' means any allegation of a kind mentioned in the Health Professions Order 2001, SI 2002/254, art 22(1)(a) (see PARA 344 ante) or any matter which is treated as an allegation by virtue of action taken under art 22(6) (see PARA 344 note 13 ante): Health Professions Council (Health Committee) (Procedure) Rules Order of Council 2003, SI 2003/1576, r 2.

2 As to the establishment of the health committee see PARA 313 et seq ante.

3 Health Professions Council (Health Committee) (Procedure) Rules Order of Council 2003, SI 2003/1576, r 5(1).

4 'Health professional' means a person whose name appears in the register against whom an allegation has been made and includes a person whose registration is currently suspended: *ibid* r 2. As to the register see PARA 325 ante. As to suspension orders and interim suspension orders see PARAS 367, 369 post.

5 In the Health Professions Council (Health Committee) (Procedure) Rules Order of Council 2003, SI 2003/1576, a reference to the sending of a notice or other document to any person is a reference to it being sent: (1) in the case of the Council, its committees or the registrar, to the offices of the Council (r 3(1)(a)); (2) in the case of a health professional, to his address as it appears in the register (r 3(1)(b)); and (3) in all other cases, to the last known address of that person (r 3(1)(c)). All communications to be sent for the purposes of the rules may be sent by post and any such communication is treated as having been sent on the day on which it was posted: r 3(2). As to the Council see PARA 308 ante; and as to its committees see PARA 313 et seq ante. As to the registrar see PARA 324 ante.

6 Ibid r 5(1)(a).

7 Ibid r 5(1)(b). The time for sending written representations specified in r 5(1)(b) may be extended by the chairman where he is satisfied that in all the circumstances it is reasonable to do so: r 14(c)(i). Where any written representations are made to the committee under r 5(1)(b), it may, if it sees fit, send a notice to the complainant notifying him of the representations and inviting him, before the end of the period of 14 days beginning with the date on which the invitation was sent, to deal with any points raised by the committee in respect of those representations: r 5(2). The time for dealing with any points raised by the committee in respect of any written representations mentioned in r 5(2) may be extended by the chairman where he is satisfied that in all the circumstances it is reasonable to do so: r 14(d). 'Complainant' means a person by whom an allegation has been made to the Council: r 2.

8 Ibid r 5(1)(c)(i). The time for requesting that a hearing be held specified in r 5(1)(c) may be extended by the chairman where he is satisfied that in all the circumstances it is reasonable to do so: r 14(a).

9 Ibid r 5(1)(c)(ii). As to the conduct of hearings see PARA 364 post.

10 Ibid r 5(1)(d). A health professional may be represented in any proceedings by any person, whether or not legally qualified, except a member of the Council or any of its committees or a person employed by the Council: r 6(3). As to membership of the Council see PARA 308 ante. As to the power of the Council to employ persons see PARA 319 ante.

11 Ibid r 5(3)(a).

12 Ibid r 5(3)(b).

13 As to the Secretary of State see PARA 5 ante.

14 Health Professions Council (Health Committee) (Procedure) Rules Order of Council 2003, SI 2003/1576, r 5(3)(c). As to the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

15 'Conduct and competence committee' is to be construed in accordance with the Health Professions Order 2001, SI 2002/254, art 3(9) (see PARA 313 ante): Health Professions Council (Health Committee) (Procedure) Rules Order of Council 2003, SI 2003/1576, r 2. As to the functions of the conduct and competence committee see PARA 355 ante.

16 Ibid r 4(1).

17 Is a ground specified in the Health Professions Order 2001, SI 2002/254, art 22(1)(a)(iii), (v): see PARA 344 ante.

18 Health Professions Council (Health Committee) (Procedure) Rules Order of Council 2003, SI 2003/1576, r 4(2).

19 Ibid r 4(3).

20 Ibid r 6(1). The committee must not fix a date for the hearing which is before the end of the period of 28 days beginning with the day on which the committee sent the notice to the health professional: r 6(2).

21 'Chairman' means the chairman of the health committee or, in relation to any proceedings conducted by a panel appointed by the committee in accordance with the Health Professions Order 2001, SI 2002/254, art 3, Sch 1 para 19(6) (see PARA 315 ante), the chairman of that panel: Health Professions Council (Health Committee) (Procedure) Rules Order of Council 2003, SI 2003/1576, r 2.

22 Ibid r 7(1). At any such meeting which he conducts, the chairman may give directions under the Health Professions Order 2001, SI 2002/254, art 32(3) (see PARA 345 ante) and, with the agreement of the parties, take any action which the committee would be competent to take at such a meeting: Health Professions Council (Health Committee) (Procedure) Rules Order of Council 2003, SI 2003/1576, r 7(2).

## **UPDATE**

### **362 Investigation of allegations**

TEXT AND NOTES 1-14--The health committee may consider and determine together two or more allegations against the same health professional or allegations against two or more health professionals, where it would be just to do so: SI 2003/1576 r 5(4) (added by SI 2005/1625).

TEXT AND NOTES 7, 8, 21, 22--References to the 'chairman' are now to the 'chair': SI 2003/1576 rr 7, 14 (amended by SI 2009/1355). 'Chair' means the panel chair of any panel of members performing the functions of the health committee: SI 2003/1576 r 2 (definition substituted by SI 2009/1355).



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### **363. Further investigations.**

Before holding any hearing<sup>1</sup>, the health committee<sup>2</sup> may carry out such investigations or seek such advice or assistance as it sees fit<sup>3</sup> and, in particular, may: (1) ask the health professional<sup>4</sup> to provide a written description of his practice<sup>5</sup>; (2) inspect a sample of the health professional's patient or client records<sup>6</sup>; (3) invite the health professional to take a test of competence<sup>7</sup>; (4) invite the health professional to undergo a medical examination by a registered medical practitioner<sup>8</sup> nominated by the committee<sup>9</sup>; or (5) interview the complainant<sup>10</sup>, the health professional and any person nominated by the health professional<sup>11</sup>. The committee may invite any person who, in its opinion, has an interest in the proceedings to submit written representations, and any such representations must be sent to the committee before the end of the period of 14 days beginning with the date on which the invitation is sent to that person<sup>12</sup>. The committee must provide the health professional with any information or opinion which the committee has received and afford the health professional the opportunity to comment on that information or opinion either before or at any hearing<sup>13</sup>.

1 As to the holding of hearings see PARA 362 ante.

2 As to the establishment of the health committee see PARA 313 et seq ante. As to the functions of the health committee see PARA 361 ante.

3 Health Professions Council (Health Committee) (Procedure) Rules Order of Council 2003, SI 2003/1576, r 8(1).

4 For the meaning of 'health professional' see PARA 362 note 4 ante.

5 Health Professions Council (Health Committee) (Procedure) Rules Order of Council 2003, SI 2003/1576, r 8(1)(a).

6 Ibid r 8(1)(b). The committee may only inspect patient or client records with the consent of the patient or client concerned unless the records are provided in a form from which the patient or client cannot be identified: r 8(2).

7 Ibid r 8(1)(c).

8 For the meaning of 'registered medical practitioner' see PARA 4 ante.

9 Health Professions Council (Health Committee) (Procedure) Rules Order of Council 2003, SI 2003/1576, r 8(1)(d).

10 For the meaning of 'complainant' see PARA 362 note 7 ante.

11 Health Professions Council (Health Committee) (Procedure) Rules Order of Council 2003, SI 2003/1576, r 8(1)(e). The committee may only interview a person with his consent and a person who consents to be interviewed may be represented at that interview by any person, whether or not legally qualified, except a member of the Council or any of its committees or a person employed by the Council: r 8(3). As to membership of the Council see PARA 308 ante. As to the committees see PARA 313 et seq ante. As to the power of the Council to employ persons see PARA 319 ante.

12 Ibid r 8(4). The time for sending written representations specified in r 8(4) may be extended by the chairman where he is satisfied that in all the circumstances it is reasonable to do so: r 14(c)(ii). For the meaning of 'chairman' see PARA 362 note 21 ante.

13 Ie a hearing conducted under ibid r 10 (see PARA 364 post): r 8(5).

**UPDATE**

**363 Further investigations**

NOTE 12--Reference to the 'chairman' is now to the 'chair': SI 2003/1576 r 14 (amended by SI 2009/1355). For the meaning of 'chair' see PARA 362.

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### **364. Conduct of hearings.**

At any hearing<sup>1</sup>:

- 606 (1) the proceedings must be held in public unless the health committee<sup>2</sup> is satisfied that, in the interests of justice or for the protection of the private life of the health professional<sup>3</sup>, the complainant<sup>4</sup>, any person giving evidence, or any patient or client, the public should be excluded from all or part of the hearing<sup>5</sup>;
- 607 (2) subject to head (3) below, the rules on the admissibility of evidence that apply in civil proceedings in the appropriate court<sup>6</sup> in that part of the United Kingdom<sup>7</sup> in which the hearing takes place apply<sup>8</sup>;
- 608 (3) the committee may hear or receive evidence which would not be admissible in such proceedings if it is satisfied that admission of that evidence is necessary in order to protect members of the public<sup>9</sup>;
- 609 (4) where the health professional has been convicted of a criminal offence, a certified copy of the certificate of conviction is admissible as proof of that conviction and of the findings of fact upon which it was based<sup>10</sup>;
- 610 (5) the committee may require evidence to be given on oath or affirmation and for that purpose may administer oaths or affirmations in an appropriate form<sup>11</sup>;
- 611 (6) the committee may adjourn the proceedings from time to time as it thinks fit<sup>12</sup>.

The committee may require any person, other than the health professional, to attend a hearing and give evidence or produce documents<sup>13</sup>. At the beginning of any hearing, the chairman<sup>14</sup> must explain to the parties the order of proceedings which the committee proposes to adopt and, unless the committee determines otherwise, the parties are heard in the following order<sup>15</sup>: (a) the chairman invites the solicitor<sup>16</sup> to present the case against the health professional and to adduce the evidence in support of that case<sup>17</sup>; (b) any witness called by the solicitor is examined by him, may be cross-examined by the health professional or his representative<sup>18</sup>, may be re-examined by the solicitor and may be questioned by the committee<sup>19</sup>; (c) at the conclusion of the case against the health professional, the chairman invites the health professional or his representative to address the committee and to adduce evidence as to the health professional's fitness to practise<sup>20</sup>; (d) any witness called by the health professional is examined by him or his representative, may be cross-examined by the solicitor, may be re-examined by the health professional or his representative and may be questioned by the committee<sup>21</sup>; (e) the chairman invites the solicitor to address the committee again<sup>22</sup>; (f) the health professional or his representative may then address the committee for a second time<sup>23</sup>.

Where the health professional is neither present nor represented at a hearing, the committee may nevertheless proceed with the hearing if it is satisfied that all reasonable steps have been taken to serve the notice of the hearing<sup>24</sup> on the health professional<sup>25</sup>.

1 As to the holding of hearings see PARA 362 ante.

2 As to the establishment of the health committee see PARA 313 et seq ante. As to the functions of the health committee see PARA 361 ante.

- 3 For the meaning of 'health professional' see PARA 362 note 4 ante.
- 4 For the meaning of 'complainant' see PARA 362 note 7 ante.
- 5 Health Professions Council (Health Committee) (Procedure) Rules Order of Council 2003, SI 2003/1576, r 10(1)(a).
- 6 For these purposes, 'appropriate court' means the Court of Session in Scotland, the High Court of Justice in Northern Ireland, and the High Court of Justice in England and Wales: *ibid* r 10(2). As to the High Court of Justice in England and Wales see COURTS vol 10 (Reissue) PARA 602 et seq.
- 7 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.
- 8 Health Professions Council (Health Committee) (Procedure) Rules Order of Council 2003, SI 2003/1576, r 10(1)(b). As to evidence in civil proceedings see CIVIL PROCEDURE vol 11 (2009) PARA 749 et seq.
- 9 *Ibid* r 10(1)(c).
- 10 *Ibid* r 10(1)(d). As to certificates of conviction see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1500.
- 11 *Ibid* r 10(1)(e). As to oaths and affirmations see CIVIL PROCEDURE vol 11 (2009) PARA 1021 et seq.
- 12 *Ibid* r 10(1)(f).
- 13 *Ibid* r 10(3).
- 14 For the meaning of 'chairman' see PARA 362 note 21 ante.
- 15 Health Professions Council (Health Committee) (Procedure) Rules Order of Council 2003, SI 2003/1576, r 10(4).
- 16 'Solicitor' means: (1) any solicitor appointed by the Council to represent it at a hearing before the health committee which relates to an allegation against a health professional; or (2) counsel instructed to represent the Council at any such hearing: *ibid* r 2. For the meaning of 'allegation' see PARA 362 note 1 ante. As to the Council see PARA 308 ante.
- 17 *Ibid* r 10(3)(a).
- 18 As to the right of a health professional to be represented see PARA 362 note 10 ante.
- 19 Health Professions Council (Health Committee) (Procedure) Rules Order of Council 2003, SI 2003/1576, r 10(3)(b).
- 20 *Ibid* r 10(3)(c).
- 21 *Ibid* r 10(3)(d).
- 22 *Ibid* r 10(3)(e).
- 23 *Ibid* r 10(3)(f).
- 24 *Ie* the notice under *ibid* r 6(1): see PARA 362 ante.
- 25 *Ibid* r 11.

## UPDATE

### 364 Conduct of hearings

TEXT AND NOTES--For provisions relating to vulnerable witnesses see PARA 364A.

TEXT AND NOTES 1-12--Add head (7) the committee may exclude from the hearing any person whose conduct, in its opinion, is likely to disrupt the orderly conduct of the proceedings: SI 2003/1576 r 10(1)(g) (added by SI 2005/1625).

TEXT AND NOTES 13-23--References to the 'solicitor' are now to the 'presenting officer' and references to the 'chairman' are now to the 'chair': SI 2003/1576 r 10(4) (amended by SI 2005/1625, SI 2009/1355). 'Presenting officer' means a person appointed by the Council to present the case on its behalf at any hearing before the health committee which relates to an allegation against a health professional and may include a solicitor or counsel: SI 2003/1576 r 2 (amended by SI 2005/1625). For the meaning of 'chair' see PARA 362.

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### **364A. Vulnerable witnesses before the health committee.**

In proceedings before the health committee<sup>1</sup> the following may, if the quality of their evidence is likely to be adversely affected as a result, be treated as a vulnerable witness: (1) any witness under the age of 17 at the time of the hearing<sup>2</sup>; (2) any witness with a mental disorder<sup>3</sup>; (3) any witness who is significantly impaired in relation to intelligence and social functioning<sup>4</sup>; (4) any witness with physical disabilities who requires assistance to give evidence<sup>5</sup>; (5) any witness, where the allegation<sup>6</sup> against the health professional<sup>7</sup> is of a sexual nature and the witness was the alleged victim<sup>8</sup>; and (6) any witness who complains of intimidation<sup>9</sup>.

Subject to the advice of the legal assessor<sup>10</sup>, and upon hearing representations from the parties, the health committee may adopt such measures as it considers desirable to enable it to receive evidence from a vulnerable witness<sup>11</sup>. Measures adopted by the health committee may include, but are not limited to: (a) use of video links; (b) use of recorded evidence as the evidence in chief of a witness, provided that the witness is available at the hearing for cross-examination and questioning by the health committee; (c) use of interpreters, including signers, or intermediaries; (d) use of screens or such other measures as the health committee consider necessary in the circumstances, in order to prevent the identity of the witness being revealed to the press or the general public or access to the witness by the health professional; and (e) the hearing of evidence by the health committee in private<sup>12</sup>.

Where the allegation against a health professional is based on facts which are sexual in nature, a witness is an alleged victim and the health professional is acting in person, the health professional must not, without the written consent of the witness, be allowed to cross-examine the witness in person<sup>13</sup>. In such circumstances, in the absence of written consent, the health professional must, no less than seven days before the hearing, appoint a legally qualified person to cross-examine the witness on his behalf and, in default, the General Medical Council must appoint such person on behalf of the health professional<sup>14</sup>.

1 As to the establishment of the health committee see PARA 313 et seq.

2 Health Professions Council (Health Competence Committee) (Procedure) Rules 2003, SI 2003/1576, r 10A(1)(a) (r 10A added by SI 2005/1625).

3 SI 2003/1576 r 10A(1)(b). The reference to a mental disorder is to such a disorder within the meaning of the Mental Health Act 1983 (see MENTAL HEALTH vol 30(2) (Reissue) PARA 402).

4 SI 2003/1576 r 10A(1)(c).

5 Ibid r 10A(1)(d).

6 For the meaning of 'allegation' see PARA 362.

7 For the meaning of 'health professional' see PARA 362.

8 SI 2003/1576 r 10A(1)(e).

9 Ibid r 10A(1)(f).

10 'Legal assessor' means a person appointed in accordance with the Health Professions Order 2001, SI 2002/254, art 34(1); SI 2003/1576 r 2 (added by SI 2005/1625).

- 11 SI 2003/1576 r 10A(2).
- 12 Ibid r 10A(3).
- 13 Ibid r 10A(4).
- 14 Ibid r 10A(5).

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### **365. Disposal of cases.**

Where the health committee<sup>1</sup> has found that the health professional<sup>2</sup> has failed to comply with the standards of conduct, performance and ethics established by the Council<sup>3</sup>, the committee may take that failure into account but such failure is not to be taken of itself to establish that the fitness to practise of the health professional is impaired<sup>4</sup>. Where the health committee concludes its consideration of an allegation<sup>5</sup>, it must dispose of the case in accordance with the provisions relating to orders of the committee<sup>6</sup>. The committee must notify the health professional and the complainant<sup>7</sup> of its decision and the reasons for reaching that decision, and inform the health professional of his right of appeal<sup>8</sup>.

1 As to the establishment of the health committee see PARA 313 et seq ante. As to the functions of the health committee see PARA 361 ante.

2 For the meaning of 'health professional' see PARA 362 note 4 ante.

3 Ie the standards established under the Health Professions Order 2001, SI 2002/254, art 21(1)(a): see PARA 343 ante. As to the Council see PARA 308 ante.

4 Health Professions Council (Health Committee) (Procedure) Rules Order of Council 2003, SI 2003/1576, r 9.

5 For the meaning of 'allegation' see PARA 362 note 1 ante.

6 Ie in accordance with the Health Professions Order 2001, SI 2002/254, art 29 (see PARA 367 post): Health Professions Council (Health Committee) (Procedure) Rules Order of Council 2003, SI 2003/1576, r 12(1).

7 For the meaning of 'complainant' see PARA 362 note 7 ante.

8 Health Professions Council (Health Committee) (Procedure) Rules Order of Council 2003, SI 2003/1576, r 12(2). As to appeals see PARA 376 et seq post.



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### **366. Review of orders and applications for restoration to the register.**

Where the health committee<sup>1</sup> proposes to review an order<sup>2</sup> or consider an application for restoration<sup>3</sup>, it must without delay send a notice<sup>4</sup> to the relevant person<sup>5</sup> informing him of his right to appear, and to be represented<sup>6</sup>, before the committee to argue his case<sup>7</sup>. Where the relevant person, before the end of the period of 28 days beginning with the date on which such a notice is sent, sends a notice to the health committee stating that he wishes to appear before it, the committee must fix a day on which it is to hear the case and send to the relevant person notice of the day, time and venue for the hearing<sup>8</sup>. The committee may require any person, other than the relevant person, to attend and give evidence or produce documents at any such hearing<sup>9</sup>, and may invite any person who, in its opinion, has an interest in the proceedings to submit written representations<sup>10</sup>.

The health committee or the chairman may hold a preliminary meeting in private with the parties, their representatives and any other person it or he considers appropriate if such a meeting would, in its or his opinion, assist the committee to perform its functions<sup>11</sup>.

The health committee must notify the relevant person of its decision and the reasons for reaching that decision, and inform him of his right of appeal<sup>12</sup>.

1 As to the establishment of the health committee see PARA 313 et seq ante. As to the functions of the health committee see PARA 361 ante.

2 In accordance with the Health Professions Order 2001, SI 2002/254, art 30 (see PARA 368 post): Health Professions Council (Health Committee) (Procedure) Rules Order of Council 2003, SI 2003/1576, r 13(1)(a).

3 In accordance with the Health Professions Order 2001, SI 2002/254, art 33 (see PARA 371 post): Health Professions Council (Health Committee) (Procedure) Rules Order of Council 2003, SI 2003/1576, r 13(1)(b).

4 As to the service of notices and other documents see PARA 362 note 5 ante.

5 'Relevant person' means: (1) a person against whom an order has been made under the Health Professions Order 2001, SI 2002/254, art 29 (see PARA 367 post) and which may be reviewed under art 30 (see PARA 368 post) (Health Professions Council (Health Committee) (Procedure) Rules Order of Council 2003, SI 2003/1576, r 13(2)(a)); or (2) a person applying under the Health Professions Order 2001, SI 2002/254, art 33 (see PARA 371 post) for restoration to the register (Health Professions Council (Health Committee) (Procedure) Rules Order of Council 2003, SI 2003/1576, r 13(2)(b)).

6 The relevant person may be represented in any proceedings by any person, whether or not legally qualified, except a member of the Council or any of its committees or a person employed by the Council: *ibid* r 13(5). As to membership of the Council see PARA 308 ante. As to the committees see PARA 313 et seq ante. As to the power of the Council to employ persons see PARA 319 ante.

7 *Ibid* r 13(1).

8 *Ibid* r 13(3). The time for a person giving notice that he wishes to appear before the committee specified in r 13(3) may be extended by the chairman where he is satisfied that in all the circumstances it is reasonable to do so: r 14(b). For the meaning of 'chairman' see PARA 362 note 21 ante. The health committee must not fix a date for the hearing which is before the end of the period of 28 days beginning with the day on which the relevant person sends the notice referred to in r 13(3) to the committee: r 13(4). A hearing under r 13(3) must be conducted in accordance with r 10 (see PARA 364 ante) but, where the proceedings relate to an application made by the relevant person, the committee must adopt an order of proceedings which provides for that person to present his case first and for the solicitor to speak last: r 13(10). For the meaning of 'solicitor' see PARA 364 note 16 ante.

9 Ibid r 13(6).

10 Ibid r 13(7). Any such representations must be sent to the health committee before the end of the period of 14 days beginning with the date on which the invitation is sent to that person: r 13(7). The time for sending written representations specified in r 13(7) may be extended by the chairman where he is satisfied that in all the circumstances it is reasonable to do so: r 14(c)(iii).

11 Health Professions Council (Health Committee) (Procedure) Rules Order of Council 2003, SI 2003/1576, r 13(8). At any such meeting which he conducts, the chairman may give directions under the Health Professions Order 2001, SI 2002/254, art 32(3) (see PARA 345 ante) and, with the agreement of the parties, take any action which the committee would be competent to take at such a meeting: Health Professions Council (Health Committee) (Procedure) Rules Order of Council 2003, SI 2003/1576, r 13(9).

12 Ibid r 13(11). As to appeals see PARA 376 et seq post.

## **UPDATE**

### **366 Review of orders and applications for restoration to the register**

TEXT AND NOTES 8-11--References to the 'chairman' are now to the 'chair': SI 2003/1576 rr 13(8), (9), 14 (amended by SI 2009/1355). For the meaning of 'chair' see PARA 362.

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## **E. ORDERS**

### **367. Orders of the health committee and the conduct and competence committee.**

If, having considered an allegation<sup>1</sup>, the health committee<sup>2</sup> or the conduct and competence committee<sup>3</sup>, as the case may be, concludes that it is not well founded: (1) where requested to do so by the person concerned<sup>4</sup>, it must make a declaration to that effect giving its reasons<sup>5</sup>; and (2) in any other case and with the consent of the person concerned, it may make such a declaration<sup>6</sup>. If, having considered an allegation, the health committee or the conduct and competence committee, as the case may be, concludes that it is well founded, it must proceed in accordance with the following provisions<sup>7</sup>.

The committee may refer the matter to screeners<sup>8</sup> for mediation<sup>9</sup> or itself undertake mediation<sup>10</sup>, or decide that it is not appropriate to take any further action<sup>11</sup>. Where a case does not fall within these provisions<sup>12</sup>, the committee must:

- 612 (a) make an order directing the registrar<sup>13</sup> to strike the person concerned off the register<sup>14</sup> (known as a 'striking-off order')<sup>15</sup>;
- 613 (b) make an order directing the registrar to suspend the registration of the person concerned for a specified period which must not exceed one year (known as a 'suspension order')<sup>16</sup>;
- 614 (c) make an order imposing conditions with which the person concerned must comply for a specified period which must not exceed three years (known as a 'conditions of practice order')<sup>17</sup>; or
- 615 (d) caution the person concerned and make an order directing the registrar to annotate the register accordingly for a specified period which must be not less than one year and not more than five years (known as a 'caution order')<sup>18</sup>.

The committee may specify in an order made under heads (a) to (d) above a period within which an application to vary, replace or revoke the order may not be made<sup>19</sup>.

The person concerned may appeal to the appropriate court against an order made under heads (a) to (d) above<sup>20</sup>. Any such appeal must be brought before the end of the period of 28 days beginning with the date on which notice of the order or decision appealed against is served on the person concerned<sup>21</sup>.

The committee must, when it makes, varies, replaces or revokes an order<sup>22</sup>, or when an order it has made ceases to have effect, give the registrar such directions as are appropriate as to annotation of the register to record the decision made or, as the case may be, the expiry of the order<sup>23</sup>.

1 As to allegations see PARA 344 ante.

2 As to the establishment of the health committee see PARA 313 et seq ante. As to the functions of the health committee see PARA 361 ante. As to the consideration of allegations by the health committee see PARA 362 et seq ante.

3 As to the establishment of the conduct and competence committee see PARA 313 ante. As to the functions of the conduct and competence committee see PARA 355 ante. As to the consideration of allegations by the

conduct and competence committee see PARA 356 et seq ante. As to the power to refer decisions of the conduct and competence committee to the court see PARAS 306-307 ante, 384 post.

4 For the meaning of 'the person concerned' see PARA 344 note 16 ante.

5 Health Professions Order 2001, SI 2002/254, art 29(1)(a). The publication of the decision mentioned in art 32(2)(k) (see PARA 345 ante) and the reasons for it may constitute such a declaration: art 29(2).

6 Ibid art 29(1)(b). See also note 5 supra.

7 Ibid art 29(3).

8 For the meaning of 'screeners' see PARA 346 note 3 ante.

9 As to mediation by screeners see PARA 349 ante.

10 Health Professions Order 2001, SI 2002/254, art 29(4)(a).

11 Ibid art 29(4)(b).

12 Ie ibid art 29(4): see the text to notes 8-11 supra.

13 As to the registrar see PARA 324 ante.

14 For the meaning of 'register' see PARA 325 note 2 ante

15 Health Professions Order 2001, SI 2002/254, art 29(5)(a). A striking-off order may not be made in respect of an allegation of the kind mentioned in art 22(1)(a)(ii), (iv) (see PARA 344 ante) unless the person concerned has been continuously suspended, or subject to a conditions of practice order, for a period of no less than two years immediately preceding the date of the decision of the committee to make such an order: art 29(6).

16 Ibid art 29(5)(b).

17 Ibid art 29(5)(c).

18 Ibid art 29(5)(d).

19 Ibid art 29(7). Such period: (1) in the case of a striking-off order, except where new evidence relevant to the order becomes available, must be expressed in terms of art 33(2) (see PARA 371 note 4 post) (art 29(7)(a)); (2) in the case of a suspension order, must not exceed 10 months (art 29(7)(b)); and (3) in the case of a conditions of practice order, must not exceed two years (art 29(7)(c)).

20 Ibid art 29(9). Article 38 (see PARA 382 post) applies to the appeal: art 29(9). No order mentioned in art 29(9) has effect: (1) before the expiry of the period within which an appeal against the order may be made (art 29(11)(a)); or (2) where an appeal against the order has been made, before the appeal is withdrawn or otherwise finally disposed of (art 29(11)(b)).

21 Ibid art 29(10).

22 Ie an order under ibid art 29 or art 30 (see PARA 368 post).

23 Ibid art 29(8).

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### **368. Review of orders.**

Before the expiry of a suspension order or a conditions of practice order<sup>1</sup> by the conduct and competence committee<sup>2</sup> or the health committee<sup>3</sup>, the committee which made the order or, if the matter has been referred to the other committee, that committee, must review the order and may<sup>4</sup>: (1) with effect from the date on which the order would, but for this provision, have expired, extend or further extend the period for which the order has effect<sup>5</sup>; (2) with effect from the expiry of the order, make an order which it could have made at the time it made the order being reviewed<sup>6</sup>; (3) with effect from the expiry of a suspension order, make a conditions of practice order with which the practitioner must comply if he resumes the practice of his registered profession<sup>7</sup> after the end of his period of suspension<sup>8</sup>. However, the committee may not extend a conditions of practice order by more than three years at a time or a suspension order by more than one year at a time<sup>9</sup>.

Subject to the provisions described above, on the application of the person concerned<sup>10</sup> or otherwise, at any time a suspension order, a conditions of practice order or a caution order<sup>11</sup> made by the conduct and competence committee or the health committee is in force, the committee which made the order or, if the matter has been referred to the other committee, that committee, may review the order<sup>12</sup> and may: (a) confirm the order<sup>13</sup>; (b) extend, or further extend, the period for which the order has effect<sup>14</sup>; (c) reduce the period for which the order has effect, but in the case of a caution order not so that it has effect for less than one year beginning with the date on which the order was made<sup>15</sup>; (d) replace the order with any order which it could have made at the time it made the order being reviewed, the replacement order having effect for the remainder of the term of the order it replaces<sup>16</sup>; (e) subject as provided<sup>17</sup>, revoke the order or revoke any condition imposed by the order<sup>18</sup>; (f) vary any condition imposed by the order<sup>19</sup>.

Where new evidence relevant to a striking-off order<sup>20</sup> becomes available after the making of the order, the committee which made the order or, where appropriate, the relevant committee<sup>21</sup> may review it<sup>22</sup>.

A striking-off order, conditions of practice order, suspension order or caution order which is in force by virtue of a decision made on appeal<sup>23</sup> to the appropriate court may be reviewed<sup>24</sup> by the committee which made the order appealed from<sup>25</sup>.

Before exercising its powers under these provisions<sup>26</sup>, a practice committee<sup>27</sup> must give the person concerned the opportunity to appear before it and to argue his case in accordance with rules<sup>28</sup> made by the Council<sup>29</sup>. The person concerned may appeal to the appropriate court against an order or decision made under these provisions<sup>30</sup>. Any such appeal must be brought before the end of the period of 28 days beginning with the date on which notice of the order or decision appealed against is served on the person concerned<sup>31</sup>; and on an appeal the Council is the respondent<sup>32</sup>.

1 As to suspension orders and conditions of practice orders see PARA 367 ante.

2 As to the establishment of the conduct and competence committee see PARA 313 ante. As to the functions of the conduct and competence committee see PARA 355 ante.

3 As to the establishment of the health committee see PARA 313 et seq ante. As to the functions of the health committee see PARA 361 ante.

4 Health Professions Order 2001, SI 2002/254, art 30(1). The provisions of art 30(1), (2) (see the text to notes 10-12 *infra*) apply to an order made on a review under art 30(1), (2) as they do to an order made under art 29(5)(b)-(d) (see PARA 367 heads (b)-(d) *ante*): art 30(3).

5 *Ibid* art 30(1)(a). See also note 4 *supra*.

6 *Ibid* art 30(1)(b). See also note 4 *supra*.

7 As to registration see PARA 324 *et seq ante*.

8 Health Professions Order 2001, SI 2002/254, art 30(1)(c). See also note 4 *supra*.

9 *Ibid* art 30(5).

10 For the meaning of 'the person concerned' see PARA 344 note 16 *ante*.

11 As to caution orders see PARA 367 *ante*.

12 Health Professions Order 2001, SI 2002/254, art 30(2). See also note 4 *supra*.

13 *Ibid* art 30(4)(a).

14 *Ibid* art 30(4)(b).

15 *Ibid* art 30(4)(c).

16 *Ibid* art 30(4)(d).

17 The committee may make the revocation of a suspension order subject to the applicant's satisfying such requirements as to additional education or training and experience as the Council has specified under *ibid* art 19(3) (see PARA 342 *ante*) and which apply to him: art 30(6). For the meaning of 'the Council' see PARA 308 note 1 *ante*.

18 *Ibid* art 30(4)(e).

19 *Ibid* art 30(4)(f).

20 As to striking-off orders see PARA 367 *ante*.

21 Is the committee mentioned in the Health Professions Order 2001, SI 2002/254, art 33(3)(b): see PARA 371 *post*.

22 *Ibid* art 30(7). The provisions of art 33(4)-(8) (see PARA 371 *post*) apply as if it were an application for restoration made under art 33: art 30(7).

23 As to appeals see PARA 376 *et seq post*.

24 Is in accordance with the Health Professions Order 2001, SI 2002/254, art 30(2) (see the text to notes 10-12 *supra*) or art 30(7) (see the text to notes 20-22 *supra*), as the case may be.

25 *Ibid* art 30(8). Any of the steps mentioned in art 30(4) (see heads (a)-(f) in the text) may be taken: art 30(8).

26 Is under *ibid* art 30(1), (2), (4), (6)-(8).

27 For the meaning of 'practice committee' see PARA 315 note 2 *ante*.

28 As to the making of rules see PARA 320 *ante*.

29 Health Professions Order 2001, SI 2002/254, art 30(9). The rules must include the matters referred to in art 32(2)(b), (g), (i)-(k), (m)-(o) (see PARA 345 *ante*): art 30(9). As to the rules that have been made see the Health Professions Council (Conduct and Competence Committee) (Procedure) Rules 2003, approved by the Health Professions Council (Conduct and Competence Committee) (Procedure) Rules Order of Council 2003, SI 2003/1575 (see PARAS 356-360 *ante*); and the Health Professions Council (Health Committee) (Procedure) Rules 2003, approved by the Health Professions Council (Health Committee) (Procedure) Rules Order of Council 2003, SI 2003/1576 (see PARAS 362-366 *ante*).

30 Is under the Health Professions Order 2001, SI 2002/254, art 30(1), (2), (4), (6)-(8): art 30(10).

31 Ibid art 30(11).

32 Ibid art 30(12).

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### **369. Interim orders.**

The following provisions apply where:

- 616 (1) an allegation<sup>1</sup> against a registered professional<sup>2</sup> has been referred to the investigating committee<sup>3</sup>, the conduct and competence committee<sup>4</sup> or the health committee<sup>5</sup> but:
- 128
183. (a) that committee has not reached a decision on the matter<sup>6</sup>; or
184. (b) the investigating committee refers the matter to another practice committee<sup>7</sup>;
- 129
- 617 (2) the investigating committee makes an order for the removal or amendment of an entry in the register<sup>8</sup>; or
- 618 (3) the conduct and competence committee or the health committee makes a striking-off order, a suspension order or a conditions of practice order<sup>9</sup>.

Subject as provided<sup>10</sup>, if the committee is satisfied that it is necessary for the protection of members of the public or is otherwise in the public interest, or is in the interests of the person concerned<sup>11</sup>, for the registration of that person to be suspended or to be made subject to conditions, it may either make an order directing the registrar to suspend the person's registration (known as an 'interim suspension order')<sup>12</sup> or make an order imposing conditions with which the person must comply (known as an 'interim conditions of practice order')<sup>13</sup> during such period not exceeding 18 months as may be specified in the order<sup>14</sup>. Where an interim suspension order or an interim conditions of practice order has been made<sup>15</sup>, the practice committee which made the order or, where the case has been referred to another practice committee, that committee, may: (i) revoke the order or revoke any condition imposed by the order<sup>16</sup>; (ii) confirm the order<sup>17</sup>; (iii) vary any condition imposed by the order<sup>18</sup>; (iv) if satisfied that to do so is necessary for the protection of members of the public or is otherwise in the public interest, or is in the interests of the person concerned, replace an interim conditions of practice order with an interim suspension order having effect for the remainder of the term of the former<sup>19</sup>; (v) if satisfied that the public interest, including the protection of members of the public, or the interests of the person concerned would be adequately served by an interim conditions of practice order, replace an interim suspension order with an interim conditions of practice order having effect for the remainder of the term of the former<sup>20</sup>. The committee must notify the person concerned giving its reasons where it makes an interim suspension order or an interim conditions of practice order or for any subsequent decision<sup>21</sup> and notify him of his right to apply to the court<sup>22</sup>.

An interim suspension order or an interim conditions of practice order ceases to have effect<sup>23</sup>: (A) in a case falling within head (1) above, when the committee reaches a decision in respect of the allegation in question<sup>24</sup>; and (B) in a case falling within head (2) or head (3) above, if there is no appeal against the order, when the period for appealing expires<sup>25</sup>, or if there is an appeal against that order, when the appeal is withdrawn or otherwise finally disposed of<sup>26</sup>. The committee must when it makes, varies, replaces or revokes an order under these provisions or when an order it has made ceases to have effect, give the registrar such directions as are appropriate as to annotation of the register to record the decision made or, as the case may be, the expiry of the order<sup>27</sup>.



- 1 As to allegations see PARA 344 ante.
- 2 For the meaning of 'registered professional' see PARA 315 note 9 ante.
- 3 As to the investigating committee see PARAS 313, 351 et seq ante.
- 4 As to the establishment of the conduct and competence committee see PARA 313 ante. As to the functions of the conduct and competence committee see PARA 355 ante.
- 5 As to the establishment of the health committee see PARA 313 et seq ante. As to the functions of the health committee see PARA 361 ante.
- 6 Health Professions Order 2001, SI 2002/254, art 31(1)(a)(i).
- 7 Ie in a case to which ibid art 26(6) (see PARA 351 ante) applies: art 31(1)(a)(ii). For the meaning of 'practice committee' see PARA 315 note 2 ante.
- 8 Ie an order under ibid art 26(7) (see PARA 351 ante): art 31(1)(b). In a case coming within art 31(1)(b) or art 31(1)(c) (see the text to note 9 infra), such an order may be made at the same time as an order made under art 26(7) or art 29(5)(a)-(c) (see PARA 367 ante): art 31(3).
- 9 Ie an order under ibid art 29(5)(a)-(c): art 31(1)(c). See also note 8 supra.
- 10 The investigating committee must not make an order in any case after it has referred the allegation in question to another practice committee: ibid art 31(4).
- 11 For the meaning of 'the person concerned' see PARA 344 note 16 ante.
- 12 Health Professions Order 2001, SI 2002/254, art 31(2)(a). References to an interim suspension order or interim conditions of practice order include such an order as extended by the court (see PARA 370 post): art 31(10). As to the registrar see PARA 324 ante. As to registration see PARA 324 et seq ante.
- 13 Ibid art 31(2)(b). As to references to interim conditions of practice orders see note 12 infra.
- 14 Ibid art 31(2). No order under art 31(2) may be made by any practice committee in respect of any person unless he has been afforded an opportunity of appearing before the committee and being heard on the question whether such an order should be made in his case: art 31(15). At any such hearing, the person concerned is entitled to be represented, whether by a legally qualified person or otherwise: art 31(16).  
  
The committee which made the order or, if the matter has been referred to another practice committee, that committee, must, in a case coming within art 31(1)(a) (see the text to notes 1-7 supra), review an order made under art 31(2): (1) within the period of six months beginning on the date on which the order was made, and must thereafter, for so long as the order continues in force, further review it before the end of the period of three months beginning on the date of the decision of the immediately preceding review (art 31(6)(a)); (2) where new evidence relevant to the order has become available after the making of the order (art 31(6)(b)). For the purposes of art 31(6), the first review after the court's extension of an order made by a practice committee (see PARA 370 post) or after a replacement order made by a practice committee under art 31(7)(d) or (e) (see the text to notes 19, 20 infra) must take place: (a) if the order (or the order which has been replaced) has not been reviewed at all under art 31(6), within the period of six months beginning on the date on which the court ordered the extension or on which a replacement order under art 31(7)(d) or (e) was made (art 31(11)(a)); and (b) if it has been reviewed under the provision, within the period of three months beginning on that date (art 31(11)(b)).
- 15 Ie under ibid art 31, including art 31(7) (see the text to notes 16-20 infra).
- 16 Ibid art 31(7)(a).
- 17 Ibid art 31(7)(b). See also note 18 infra.
- 18 Ibid art 31(7)(c). No order under art 31(7)(c)-(e), or, in a case where art 31(5)(b) (see the text to notes 25, 26 infra) applies, under art 31(7)(b), may be made by any practice committee in respect of any person unless he has been afforded an opportunity of appearing before the committee and being heard on the question whether such an order should be made in his case: art 31(15). At any such hearing, the person concerned is entitled to be represented, whether by a legally qualified person or otherwise: art 31(16).
- 19 Ibid art 31(7)(d). See also note 18 supra.

20 Ibid art 31(7)(e). See also note 18 supra.

21 Ie under ibid art 31(7): see the text to notes 15-20 supra.

22 Ibid art 31(14). As to applications to the court see PARA 370 post.

23 Ie subject to ibid art 31(6) (see note 14 supra), art 31(7) (see the text to notes 15-20 supra), art 31(9), (12) (see PARA 370 post).

24 Ibid art 31(5)(a).

25 Ibid art 31(5)(b)(i).

26 Ibid art 31(5)(b)(ii).

27 Ibid art 31(17).

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### **370. Interim orders; applications to the court.**

The Council<sup>1</sup> may apply to the court<sup>2</sup> for an interim order<sup>3</sup> made by a practice committee<sup>4</sup> to be extended, and may apply again for further extensions<sup>5</sup>. On such an application, the court may extend, or further extend, the period for which the order has effect for up to 12 months<sup>6</sup>. Where an order has effect<sup>7</sup>, the court may, on an application being made by the person concerned<sup>8</sup>:

- 619 (1) in the case of an interim suspension order, terminate the suspension<sup>9</sup>;
- 620 (2) in the case of an interim conditions of practice order, revoke or vary any condition imposed by the order<sup>10</sup>,

and it may, in either case, substitute for the period specified in the order, or in the order extending it, some other period which could have been specified in the order when it was made or in the order extending it<sup>11</sup>. The decision of the court under any such application is final<sup>12</sup>.

1 For the meaning of 'the Council' see PARA 308 note 1 ante.

2 'The court' has the same meaning as 'the appropriate court' in the Health Professions Order 2001, SI 2002/254, art 38 (see PARA 382 note 4 post): art 31(13).

3 ie an order made under ibid art 31(2) or (7): see PARA 369 ante.

4 For the meaning of 'practice committee' see PARA 315 note 2 ante.

5 Health Professions Order 2001, SI 2002/254, art 31(8).

6 Ibid art 31(9).

7 ie has effect under ibid art 31(2), (7), or (9).

8 For the meaning of 'the person concerned' see PARA 344 note 16 ante.

9 Health Professions Order 2001, SI 2002/254, art 31(12)(a).

10 Ibid art 31(12)(b).

11 Ibid art 31(12)(c).

12 Ibid art 31(12).

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### **371. Restoration to the register of persons who have been struck off.**

Where a person who has been struck off the register<sup>1</sup> by virtue of an order<sup>2</sup> made by a practice committee<sup>3</sup> or by the court wishes to be restored to the register, he must make an application for restoration to the registrar<sup>4</sup>. Any application for restoration must be referred by the registrar for determination to the committee which made the striking-off order<sup>5</sup> or, where any previous applications have been made in connection with the same striking-off order, the committee which last gave a decision on such an application<sup>6</sup>. Before making any decision on the application, the committee must give the applicant an opportunity to appear before it and to argue his case in accordance with rules made by the Council<sup>7</sup>. The committee must not grant an application for restoration unless it is satisfied, on such evidence as it may require, that the applicant not only satisfies the specified requirements<sup>8</sup> but, having regard in particular to the circumstances which led to the making of the order, is also a fit and proper person to practise the relevant profession<sup>9</sup>. The committee may make the granting of an application subject to the applicant satisfying such requirements as to additional education or training and experience as the Council has specified<sup>10</sup> and which apply to him<sup>11</sup>. On granting an application for restoration, the committee: (1) must direct the registrar to register the applicant in the relevant part of the register<sup>12</sup> on his satisfying any requirements imposed<sup>13</sup> and on payment of the prescribed fee<sup>14</sup>; and (2) may make a conditions of practice order with respect to him<sup>15</sup>.

If, while a striking-off order is in force, a second or subsequent application for restoration to the register, made by the person who has been struck off, is unsuccessful, the committee which determined that application may direct that that person's right to make any further such applications be suspended indefinitely<sup>16</sup>. A person in respect of whom such a direction is made may, after the expiration of three years from the date on which the direction was made, apply to the registrar for that direction to be reviewed and, thereafter, may make further applications for review but no such application may be made before the expiration of three years from the date of the most recent review decision<sup>17</sup>. The registrar must refer such an application to the committee which made the direction<sup>18</sup>.

A person whose application for the review of a direction or whose application for restoration is refused or made subject to his satisfying requirements<sup>19</sup> may appeal to the appropriate court<sup>20</sup>.

1 For the meaning of 'register' see PARA 325 note 2 ante.

2 As to striking-off orders see PARA 367 ante.

3 For the meaning of 'practice committee' see PARA 315 note 2 ante.

4 Health Professions Order 2001, SI 2002/254, art 33(1). Subject to art 30(7) (see PARA 368 ante), no such application may be made: (1) before the end of the period of five years beginning with the date on which the order under art 29, 30 or 38 (see PARAS 367-368 ante, 382 post) took effect (art 33(2)(a)); or (2) in any period of 12 months in which an application for restoration to the register has already been made by the person who has been struck off (art 33(2)(b)). As to the registrar see PARA 324 ante.

5 Ibid art 33(3)(a).

6 Ibid art 33(3)(b).

7 Ibid art 33(4). For the meaning of 'the Council' see PARA 308 note 1 ante. The rules must include the matters referred to in art 32(2)(b), (g), (i)-(k), (m)-(o) (see PARA 345 ante): see art 33(4). As to the rules that

have been made see the Health Professions Council (Registration and Fees) Rules 2003, approved by the Health Professions Council (Registration and Fees) Rules Order of Council 2003, SI 2003/1572 (as amended); the Health Professions Council (Conduct and Competence Committee) (Procedure) Rules 2003, approved by the Health Professions Council (Conduct and Competence Committee) (Procedure) Rules Order of Council 2003, SI 2003/1575 (see PARA 360 ante); and the Health Professions Council (Health Committee) (Procedure) Rules 2003, approved by the Health Professions Council (Health Committee) (Procedure) Rules Order of Council 2003, SI 2003/1576 (see PARA 366 ante). As to the making of rules generally see PARA 320 ante.

8     Ie the requirements of Health Professions Order 2001, SI 2002/254, art 9(2)(a), (b): see PARA 328 ante.

9     Ibid art 33(5). As to the power to refer a decision to restore a person to the register to the court see PARAS 306 ante, 384 post.

10    Ie specified under ibid art 19(3): see PARA 342 ante.

11    Ibid art 33(6).

12    As to the meaning of 'part of the register' see PARA 325 note 12 ante.

13    Ie under the Health Professions Order 2001, SI 2002/254, art 33(6): see the text to note 11 supra.

14    Ibid art 33(7)(a). For the meaning of 'prescribed' see PARA 328 note 7 ante. As to the payment of fees see PARA 336 ante.

15    Ibid art 33(7)(b). The provisions of art 29 (see PARA 367 ante) have effect in relation to such a conditions of practice order as they have effect in relation to a conditions of practice order made under art 29, and art 30 (see PARA 368 ante) applies as if the order were an order made under art 29: art 33(8).

16    Ibid art 33(9).

17    Ibid art 33(10).

18    Ibid art 33(11).

19    Ie under ibid art 33(6): see the text to note 11 supra.

20    Ibid art 33(12). Article 38 (see PARA 382 post) applies to that appeal: art 33(12). The appeal must be brought before the end of the period of 28 days beginning with the date on which notice of the decision rejecting the application, or granting it but imposing conditions under art 33(6), is served on the applicant: art 33(13).

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## **F. ASSESSORS**

### **372. Legal assessors.**

The Council<sup>1</sup> must appoint legal assessors<sup>2</sup>. Legal assessors have the general function of giving advice to screeners<sup>3</sup>, the statutory committees<sup>4</sup>, the registrar<sup>5</sup> or the Council<sup>6</sup> on questions of law arising in connection with any matter which any of those persons is considering<sup>7</sup>. Legal assessors have such other functions as may be conferred on them by rules made by the Council<sup>8</sup>. A legal assessor has the following additional functions: (1) to be present at any Part V hearing<sup>9</sup> held by a practice committee<sup>10</sup>; (2) to be present at any appeal hearing<sup>11</sup> held by the Council<sup>12</sup>; and (3) where he is present at any hearing referred to in head (1) or head (2) above, to inform the practice committee or Council, as the case may be, of any irregularity in its consideration of the matter which is the subject of the hearing, or in the conduct of the hearing, which may come to his knowledge and to advise on the steps which may be taken, if any, to remedy the irregularity<sup>13</sup>.

The Privy Council may make provision by order<sup>14</sup> with regard to the functions of legal assessors<sup>15</sup>. In particular, provision may be made requiring legal assessors when advising the Council or any of its committees to do so in the presence of the parties<sup>16</sup> or their representatives or, where advice is given in private, requiring the parties to be notified of the advice tendered by the legal assessors<sup>17</sup>, and requiring the parties to be notified in any case where the legal assessor's advice is not accepted<sup>18</sup>.

No person may be a legal assessor if he is: (a) a member of the Council<sup>19</sup>; (b) a member of a statutory committee<sup>20</sup>; (c) a screener, visitor<sup>21</sup> or medical or registrant assessor<sup>22</sup>; or (d) employed by the Council<sup>23</sup>.

The Council may make such provision in respect of legal assessors as it may determine for the payment of fees and allowances, including the payment of allowances to employers of legal assessors for the purposes of enabling legal assessors to perform their functions<sup>24</sup>, and for the reimbursement of such expenses as the legal assessors may reasonably have incurred in the course of carrying out those functions<sup>25</sup>.

1 For the meaning of 'the Council' see PARA 308 note 1 ante.

2 Health Professions Order 2001, SI 2002/254, art 34(1). To be qualified for appointment as a legal assessor, a person must: (1) have a 10 year general qualification within the meaning of the Courts and Legal Services Act 1990 s 71 (see LEGAL PROFESSIONS vol 65 (2008) PARA 742); or (2) be an advocate or solicitor in Scotland of at least 10 years' standing; or (3) be a member of the Bar of Northern Ireland of at least 10 years' standing: Health Professions Order 2001, SI 2002/254, art 34(5)(a)-(c).

3 Ibid art 34(2)(a). For the meaning of 'screeners' see PARA 346 note 3 ante.

4 Ibid art 34(2)(b). For the meaning of 'statutory committees' see PARA 313 note 1 ante.

5 Ibid art 34(2)(c). As to the registrar see PARA 324 ante.

6 Ibid art 34(2)(d).

7 Ie under ibid art 9 (see PARA 328 ante), art 10 (see PARA 333 ante), Pt V (arts 21-36) (see PARA 343 et seq ante), Pt VI (arts 37-38) (see PARAS 376, 382 post): ibid art 34(2). The legal assessors may, at the request of

such persons, assist in the drafting of any decision required by the Health Professions Order 2001, SI 2002/254 (as amended) to be issued under any of the provisions mentioned in art 34(2): art 34(3).

8 Ibid art 34(4). As to the rules that have been made see the Health Professions Council (Functions of Assessors) Rules 2003, approved by the Health Professions Council (Functions of Assessors) Rules Order of Council 2003, SI 2003/1577; and the text to notes 9-13 infra. As to the making of rules generally see PARA 320 ante.

9 'Part V hearing' means a hearing before: (1) the investigating committee in respect of an allegation under the Health Professions Order 2001, SI 2002/254, art 22(1)(b) (see PARA 344 ante) or any matter which is treated as such an allegation in accordance with art 22(6) (see PARA 344 note 13 ante); (2) the health committee under Pt V (see PARA 361 et seq ante); (3) the conduct and competence committee under Pt V (see PARA 355 et seq ante): Health Professions Council (Functions of Assessors) Rules Order of Council 2003, SI 2003/1577, r 2.

10 Ibid r 3(a). As to the practice committees see PARA 315 ante.

11 'Appeal hearing' means a hearing held to consider an appeal under the Health Professions Order 2001, SI 2002/254, art 37 (see PARA 376 post): Health Professions Council (Functions of Assessors) Rules Order of Council 2003, SI 2003/1577, r 2.

12 Ibid Sch 3(b).

13 Ibid Sch 3(c).

14 As to the exercise of powers of the Privy Council under the Health Professions Order 2001, SI 2002/254 (as amended) see PARA 323 ante. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

15 Ibid art 40(1). As to the order that has been made see the Health Professions Order 2001 (Legal Assessors) Order of Council 2003, SI 2003/1578; and PARA 373 post.

16 'Parties', except in respect of the Health Professions Order 2001, SI 2002/254, art 47 (see PARA 323 ante), means the Council and the person concerned except in respect of art 37 (see PARA 376 post) when it includes the education and training committee: art 2, Sch 3.

17 Ibid art 40(1)(a). The provisions of art 40(1)(a), (b) do not apply to advice given by a legal assessor in respect of the drafting of a decision mentioned in art 34(3) (see note 7 supra): art 40(2).

18 Ibid art 40(1)(b).

19 Ibid art 34(6)(a). As to membership of the Council see PARA 308 ante.

20 Ibid art 34(6)(b).

21 As to visitors see the para 339 ante.

22 Health Professions Order 2001, SI 2002/254, art 34(6)(c). As to medical assessors see PARA 374 post. As to registrant assessors see PARA 375 post.

23 Ibid art 34(6)(d). As to the power of the Council to employ persons see PARA 319 ante.

24 Ie their functions under art 34: ibid art 34(7)(a).

25 Ibid art 34(7)(b).

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### **373. Legal assessors; giving of advice.**

At a hearing before: (1) the investigating committee<sup>1</sup>, in respect of an allegation in relation to the procurement or making of an entry in the register<sup>2</sup>, or any matter which is treated as such an allegation<sup>3</sup>; (2) the health committee<sup>4</sup>, in relation to the fitness of a person to practise<sup>5</sup>; (3) the conduct and competence committee<sup>6</sup>, in relation to the fitness of a person to practise<sup>7</sup>; or (4) the Council<sup>8</sup>, in relation to an appeal<sup>9</sup>, any advice tendered by a legal assessor<sup>10</sup> to the Council or the committee<sup>11</sup> must be given in the presence of every party, or person representing a party, in attendance at the hearing<sup>12</sup>. However, where the Council or the committee has begun to deliberate on its decision<sup>13</sup> and considers that it would be prejudicial to the discharge of its functions for the advice to be tendered in the presence of the parties or their representatives<sup>14</sup>, the advice may be given in the absence of the parties or their representatives<sup>15</sup>. If on any occasion the Council or a committee do not accept the advice tendered by a legal assessor at a hearing, a record must be made by the legal assessor of the advice given together with any question which led to that advice, and of the decision not to accept it together with the reasons for that decision<sup>16</sup>; and a copy of the record must be given to every party or person representing a party in attendance at the hearing<sup>17</sup>. Copies of written advice<sup>18</sup> must be available, on application, to every party to the proceedings who does not attend, and is not represented at, the hearing before the Council or the committee<sup>19</sup>.

1 As to the investigating committee see PARAS 313, 351 et seq ante.

2 Ie under the Health Professions Order 2001, SI 2002/254, art 22(1)(b): see PARA 344 ante.

3 Ie in accordance with ibid art 22(6) (see PARA 344 note 13 ante): Health Professions Order 2001 (Legal Assessors) Order of Council 2003, SI 2003/1578, art 2(a).

4 As to the establishment of the health committee see PARA 313 et seq ante. As to the functions of the health committee see PARA 361 ante.

5 Ie under the Health Professions Order 2001, SI 2002/254, Pt V (arts 21-36): Health Professions Order 2001 (Legal Assessors) Order of Council 2003, SI 2003/1578, art 2(b).

6 As to the establishment of the conduct and competence committee see PARA 313 ante. As to the functions of the conduct and competence committee see PARA 355 ante.

7 Ie under the Health Professions Order 2001, SI 2002/254, Pt V: Health Professions Order 2001 (Legal Assessors) Order of Council 2003, SI 2003/1578, art 2(c).

8 As to the Council see PARA 308 ante. As to the functions of the Council see PARA 318 ante.

9 Ie an appeal under the Health Professions Order 2001, SI 2002/254, art 37 (see PARA 376 post): Health Professions Order 2001 (Legal Assessors) Order of Council 2003, SI 2003/1578, art 2(d).

10 As to legal assessors see PARA 372 ante.

11 'Committee', except in the title of a committee, means one of the committees mentioned in the Health Professions Order 2001 (Legal Assessors) Order of Council 2003, SI 2003/1578, art 2 (see the text to notes 1-9 supra): art 1(2).

12 Ibid art 2.

13 Ibid art 3(a).



14 Ibid art 3(b).

15 Ibid art 3. Where advice is given in the absence of the parties or their representatives in accordance with art 3, the legal assessor must: (1) as soon as practicable after completion of the deliberations, inform each of the parties (or their representatives) in attendance at the hearing, of the advice he gave, together with any question which led to that advice (art 4(a)); and (2) subsequently record those matters in writing and (unless that record forms part of a record made pursuant to art 5 (see the text to notes 16, 17 infra)) give a copy to those parties or their representatives (art 4(b)). For the meaning of 'writing' see PARA 20 note 22 ante.

16 Ibid art 5(a).

17 Ibid art 5(b).

18 Ie made for the purposes of ibid art 4 (see note 15 supra), art 5 (see the text to notes 16, 17 supra).

19 Ibid art 6.

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### **374. Medical assessors.**

The Council<sup>1</sup> may appoint registered medical practitioners<sup>2</sup> to be medical assessors<sup>3</sup>. Medical assessors have the general function of giving advice to: (1) screeners<sup>4</sup>; (2) the statutory committees<sup>5</sup>; (3) the registrar<sup>6</sup>; or (4) the Council<sup>7</sup>, on matters within their professional competence in connection with any matter which any of those persons is considering<sup>8</sup>. Medical assessors also have such other functions as may be conferred on them by rules made by the Council<sup>9</sup>. The following additional functions have been conferred on them: (a) to be present at any Part V hearing<sup>10</sup> held by a practice committee<sup>11</sup> as the practice committee may request<sup>12</sup>; (b) to be present at any appeal hearing<sup>13</sup> held by the Council as the Council may request<sup>14</sup>; (c) where he is present at any hearing referred to in head (a) or head (b) above and it appears to him that, without his advice, a mistake may be made in judging the medical significance of information or the absence of information in relation to the hearing, to inform the practice committee or Council and the parties to the proceedings of that<sup>15</sup>; and (d) at the request of a practice committee or the Council, to examine and report on the physical or mental condition of a person who is the subject of any hearing referred to in head (a) or head (b) above and who consents to such an examination<sup>16</sup>.

No person may be a medical assessor if he is a member of the Council<sup>17</sup>; a member of a statutory committee<sup>18</sup>; a screener, visitor<sup>19</sup> or legal or registrant assessor<sup>20</sup>; or employed by the Council<sup>21</sup>.

The Council may make such provision in respect of medical assessors as it may determine for the payment of fees and allowances, including the payment of allowances to employers of medical assessors for the purposes of enabling medical assessors to perform their functions<sup>22</sup>, and for the reimbursement of such expenses as the medical assessors may reasonably have incurred in the course of carrying out those functions<sup>23</sup>.

1 For the meaning of 'the Council' see PARA 308 note 1 ante.

2 For the meaning of 'registered medical practitioner' see PARA 4 ante.

3 Health Professions Order 2001, SI 2002/254, art 35(1).

4 Ibid art 35(2)(a). For the meaning of 'screeners' see PARA 346 note 3 ante.

5 Ibid art 35(2)(b). For the meaning of 'the statutory committees' see PARA 313 note 1 ante.

6 Ibid art 35(2)(c). As to the registrar see PARA 324 ante.

7 Ibid art 35(2)(d).

8 Ibid art 35(2).

9 Ibid art 35(3). As to the rules that have been made see the Health Professions Council (Functions of Assessors) Rules 2003, approved by the Health Professions Council (Functions of Assessors) Rules Order of Council 2003, SI 2003/1577; and the text to notes 10-16 infra. As to the making of rules generally see PARA 320 ante.

10 For the meaning of 'Part V hearing' see PARA 372 note 9 ante.

11 As to the practice committees see PARA 315 ante.

- 12 Health Professions Council (Functions of Assessors) Rules Order of Council 2003, SI 2003/1577, r 4(a).
- 13 For the meaning of 'appeal hearing' see PARA 372 note 11 ante.
- 14 Health Professions Council (Functions of Assessors) Rules Order of Council 2003, SI 2003/1577, r 4(b).
- 15 Ibid r 4(c).
- 16 Ibid r 4(d).
- 17 Health Professions Order 2001, SI 2002/254, art 35(4)(a). As to membership of the Council see PARA 308 ante.
- 18 Ibid art 35(4)(b).
- 19 As to visitors see PARA 339 ante.
- 20 Health Professions Order 2001, SI 2002/254, art 35(4)(c). As to legal assessors see PARA 372 ante. As to registrant assessors see PARA 375 post.
- 21 Ibid art 35(4)(d). As to the power of the Council to employ persons see PARA 319 ante.
- 22 Ie their functions under ibid art 35: art 35(5)(a).
- 23 Ibid art 35(5)(b).

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### **375. Registrant assessors.**

The Council<sup>1</sup> may appoint registered professionals<sup>2</sup> as registrant assessors<sup>3</sup>. Registrant assessors have the general function of giving advice to: (1) the Council<sup>4</sup>; (2) the committees of the Council<sup>5</sup>; (3) screeners<sup>6</sup>; or (4) the registrar<sup>7</sup>, on matters of professional practice arising in connection with any matter which any of those persons is considering<sup>8</sup>. The assessors also have such other functions as may be conferred on them by rules made by the Council<sup>9</sup>. The following additional functions have been conferred on them: (a) to be present at any Part V hearing<sup>10</sup> held by a practice committee<sup>11</sup> as the practice committee may request<sup>12</sup>; (b) to be present at any appeal hearing<sup>13</sup> held by the Council as the Council may request<sup>14</sup>; (c) where he is present at any hearing referred to in head (a) or head (b) above and it appears to him that, without his advice, a mistake may be made in judging the significance of information or the absence of information relating to any matter of professional practice within his professional competence in relation to the hearing, to inform the practice committee or Council and the parties to the proceedings of that<sup>15</sup>.

No person may be a registrant assessor if he is a member of the Council<sup>16</sup>; a member of a statutory committee<sup>17</sup>; a screener, visitor<sup>18</sup> or legal or medical assessor<sup>19</sup>; or employed by the Council<sup>20</sup>.

The Council may make such provision in respect of registrant assessors as it may determine for the payment of fees and allowances, including the payment of allowances to employers of registrant assessors for the purposes of enabling registrant assessors to perform their functions<sup>21</sup>, and for the reimbursement of such expenses as the registrant assessors may reasonably have incurred in the course of carrying out those functions<sup>22</sup>.

1 For the meaning of 'the Council' see PARA 308 note 1 ante.

2 For the meaning of 'registered professional' see PARA 315 note 9 ante.

3 Health Professions Order 2001, SI 2002/254, art 36(1).

4 Ibid art 36(2)(a).

5 Ibid art 36(2)(b). As to the committees of the Council see PARA 313 et seq ante.

6 Ibid art 36(2)(c). For the meaning of 'screeners' see PARA 346 note 3 ante.

7 Ibid art 36(2)(d). As to the registrar see PARA 324 ante.

8 Ibid art 36(2).

9 Ibid art 36(3). As to the rules that have been made see the Health Professions Council (Functions of Assessors) Rules 2003, approved by the Health Professions Council (Functions of Assessors) Rules Order of Council 2003, SI 2003/1577; and the text to notes 10-15 infra. As to the making of rules generally see PARA 320 ante.

10 For the meaning of 'Part V hearing' see PARA 372 note 9 ante.

11 As to the practice committees see PARA 315 ante.

12 Health Professions Council (Functions of Assessors) Rules Order of Council 2003, SI 2003/1577, r 5(a).

13 For the meaning of 'appeal hearing' see PARA 372 note 11 ante.

- 14 Health Professions Council (Functions of Assessors) Rules Order of Council 2003, SI 2003/1577, r 5(b).
- 15 Ibid r 5(c).
- 16 Health Professions Order 2001, SI 2002/254, art 36(4)(a). As to membership of the Council see PARA 308 ante.
- 17 Ibid art 36(4)(b). For the meaning of 'statutory committee' see PARA 313 note 1 ante.
- 18 As to visitors see PARA 339 ante.
- 19 Health Professions Order 2001, SI 2002/254, art 36(4)(c). As to legal assessors see PARA 372 ante. As to medical assessors see PARA 374 ante.
- 20 Ibid art 36(4)(d). As to the power of the Council to employ persons see PARA 319 ante.
- 21 Ie their functions under ibid art 36: art 36(5)(a).
- 22 Ibid art 36(5)(b).

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## **(v) Appeals**

### **A. APPEALS TO THE COUNCIL**

#### **376. Appeals against decisions of the education and training committee.**

Where the education and training committee<sup>1</sup>: (1) refuses an application for registration, readmission or renewal or for the inclusion of an additional entry<sup>2</sup>; (2) in determining an application for registration or readmission<sup>3</sup>, imposes additional conditions which must be satisfied before the applicant may be admitted to, readmitted to or retained on the register<sup>4</sup>; (3) removes the name of a registrant<sup>5</sup> from the register on the ground that he has breached a condition in respect of continuing professional development<sup>6</sup> or such additional education, training or experience as is required of persons who have not practised<sup>7</sup>, subject to which his registration has effect<sup>8</sup>; or (4) fails to issue a decision in relation to an application for registration<sup>9</sup>, then the person aggrieved may appeal to the Council<sup>10</sup> within the prescribed period<sup>12</sup>. Any appeal is subject to such rules as the Council may make for the purpose of regulating such appeals<sup>13</sup>. The rules must in particular provide:

- 621 (a) for the quorum of the Council considering such an appeal<sup>14</sup>;
  - 622 (b) that the members considering the appeal are to include registrants and lay members<sup>15</sup> and that the number of members who are registrants may exceed the number of lay members but may not exceed them by more than one<sup>16</sup>;
  - 623 (c) for a panel considering an appeal to consist of no fewer than three members who are to be selected with due regard to the matter under consideration and to include<sup>17</sup>:
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- 185. (i) one registrant registered in the same part of the register as the one in which the person concerned is, or is applying to be, registered<sup>18</sup>;
  - 186. (ii) one lay member, who must not be a registered medical practitioner<sup>19</sup>; and
  - 187. (iii) where the health of the person concerned is in issue, one registered medical practitioner<sup>20</sup>;
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- 624 (d) for the person presiding to be a Council member<sup>21</sup>;
  - 625 (e) that no one who has been involved in any other capacity in the case is to be considered is to be a member of the panel<sup>22</sup>;
  - 626 (f) for the decision to be made by a majority vote of the persons present<sup>23</sup>;
  - 627 (g) in the event of a tie, for the chairman to have an additional casting vote which he must exercise in the favour of the person concerned<sup>24</sup>;
  - 628 (h) for the education and training committee to be made a party to the proceedings<sup>25</sup>;
  - 629 (i) for similar provision to be made to that in the procedural rules relating to the investigation of allegations<sup>26</sup>.

Having considered the appeal, the Council may: (A) dismiss the appeal<sup>27</sup>; (B) allow the appeal and quash the decision appealed against<sup>28</sup>; (C) substitute for the decision appealed against any other decision that the education and training committee could have made<sup>29</sup>; or (D) remit the

case to the education and training committee to be disposed of in accordance with its directions<sup>30</sup>. The person concerned may appeal to a county court against an unfavourable decision made under head (A), (C) or (D) above<sup>31</sup>.

The Council must publish as soon as reasonably practicable a decision of the Council made under these provisions together with the reasons for it<sup>32</sup>. However, if the decision is favourable to the person concerned, the Council is not required to publish it unless the person concerned so requests but it may do so with the consent of the person concerned<sup>33</sup>.

- 1 As to the education and training committee see PARA 314 ante.
  - 2 Health Professions Order 2001, SI 2002/254, art 37(1)(a). As to applications for registration see PARA 330 ante. As to applications for readmission or renewal see PARA 333 ante.
  - 3 Ie an application under ibid arts 9, 10: see PARAS 328, 333 ante.
  - 4 Ibid art 37(1)(b). For the meaning of 'register' see PARA 325 note 2 ante.
  - 5 For the meaning of 'registrant' see PARA 318 note 4 ante.
  - 6 As to continuing professional development see PARA 342 ante.
  - 7 Ie as mentioned in the Health Professions Order 2001, SI 2002/254, art 19(3): see PARA 342 ante.
  - 8 Ibid art 37(1)(c).
  - 9 Ie within the terms of ibid art 9(7) (see PARA 328 note 6 ante): art 37(1)(d).
  - 10 For the meaning of 'the Council' see PARA 308 note 1 ante.
  - 11 For the meaning of 'prescribed' see PARA 328 note 7 ante.
  - 12 Health Professions Order 2001, SI 2002/254, art 37(1). No appeal lies to the Council where the person aggrieved has been refused registration solely because he has failed to pay the prescribed fee for registration or has failed to apply in the prescribed form and manner in accordance with art 9 or art 10: art 37(2). No decision removing a registrant from the register against which an appeal to the Council may be made under art 37(1) has effect before: (1) the expiry of the period within which such an appeal may be made (art 37(3)(a)); or (2) if an appeal is made, the appeal is withdrawn or otherwise finally disposed of (art 37(3)(b)).
  - 13 Ibid art 37(4). As to the rules that have been made see the Health Professions Council (Registration Appeals) Rules 2003, approved by the Health Professions Council (Registration Appeals) Rules Order of Council 2003, SI 2003/1579; and PARAS 377-381 post. As to the making of rules generally see PARA 320 ante.
- The Health Professions Order 2001, SI 2002/254, art 32(3) (see PARA 345 ante) applies to appeals under art 37 as if a reference to the committee concerned were a reference to the Council: art 37(6). Article 25 (see PARA 350 ante), with the exception of art 25(2), applies to appeals under art 37 as if a reference to a practice committee were a reference to the Council: art 37(7).
- A hearing provided for by the rules made under art 37(4) is to be held: (1) in the United Kingdom country in which the registered address of the person concerned is situated (art 37(8)(a)); (2) if he is not registered and resides in the United Kingdom, in the country in which he resides (art 37(8)(b)); or (3) in any other case, in England (art 37(8)(c)). For the meaning of 'United Kingdom country' see PARA 308 note 15 ante. For the meaning of 'United Kingdom' see PARA 1 note 3 ante.
- 14 Ibid art 37(5)(a).
  - 15 For the meaning of 'lay members' see PARA 308 ante.
  - 16 Health Professions Order 2001, SI 2002/254, art 37(5)(b).
  - 17 Ibid art 37(5)(c).
  - 18 Ibid art 37(5)(c)(i). As to the meaning of 'part of the register' see PARA 325 note 12 ante.
  - 19 Ibid art 37(5)(c)(ii). For the meaning of 'registered medical practitioner' see PARA 4 ante.

- 20 Ibid art 37(5)(c)(iii).
- 21 Ibid art 37(5)(d). As to membership of the Council see PARA 308 ante.
- 22 Ibid art 37(5)(e).
- 23 Ibid art 37(5)(f).
- 24 Ibid art 37(5)(g).
- 25 Ibid art 37(5)(h).
- 26 Ie in ibid art 32(2)(b), (f), (g), (i)-(k), (m)-(o) (see PARA 345 ante): art 37(5)(i).
- 27 Ibid art 37(9)(a).
- 28 Ibid art 37(9)(b).
- 29 Ibid art 37(9)(c).
- 30 Ibid art 37(9)(d).
- 31 Ibid art 37(10). Article 38 (see PARA 382 post) applies to such an appeal: see art 37(10). As to county courts see COURTS.
- 32 Ibid art 37(11).
- 33 Ibid art 37(12).

## **UPDATE**

### **376 Appeals against decisions of the education and training committee**

TEXT AND NOTE 12--Add head (5) refuses to register a person under SI 2002/254 art 13A (visiting health professionals from other EEA states or Switzerland): art 37(1)(aa) (added by SI 2007/3101).

TEXT AND NOTE 14--Rules must also provide for the membership of any panel considering such an appeal on the Council's behalf: SI 2002/254 art 37(5)(a) (amended by SI 2009/1182).

TEXT AND NOTE 19--Reference to the lay member not being a registered medical practitioner omitted: SI 2002/254 art 37(5)(c)(ii) (amended by SI 2009/1182). 'Lay member' now defined as meaning a person who is not and never has been (1) a registrant or registered under the Professions Supplementary to Medicine Act 1960; (2) a member of the Association of Operating Department Practitioners, the Association of Educational Psychologists or the British Psychological Society; or (3) a registered medical practitioner: SI 2002/254 art 37(5A)(a)-(c) (added by SI 2009/1182).

TEXT AND NOTE 24--Reference to 'chairman' replaced by reference to 'chair': SI 2002/254 art 37(5)(g) (amended by SI 2009/1182).



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### **377. Period for appeal and notice of appeal.**

The period within which the person aggrieved may appeal to the Council<sup>1</sup> is: (1) where the appeal is against a decision relating to registration<sup>2</sup>, before the end of the period of 28 days beginning with the day on which the committee<sup>3</sup> made the decision<sup>4</sup>; or (2) where the appeal is against a failure to issue a decision<sup>5</sup>, before the end of the period of 28 days beginning with the day after the end of the period<sup>6</sup> within which a decision on the application is to be notified<sup>7</sup>.

An appeal<sup>8</sup> must be made by giving notice in writing<sup>9</sup>. The notice must be addressed to the registrar at the offices of the Council and must<sup>10</sup>:

- 630 (a) include: (i) the name and address of the appellant<sup>11</sup>; (ii) his registration number, where applicable<sup>12</sup>; (iii) where the appeal is against a decision relating to registration, the date, nature and other relevant details of the decision against which the appeal is brought<sup>13</sup>; (iv) where the appeal is against a failure to issue a decision, the date, nature and other relevant details of the application in respect of which there has been a failure to issue a decision<sup>14</sup>; (v) a concise statement of the grounds of the appeal<sup>15</sup>; and (vi) the name and address of the appellant's representative, if any, and a statement as to whether the Council should correspond with that representative concerning the appeal instead of with the appellant<sup>16</sup>;
- 631 (b) state that the notice is a notice of appeal<sup>17</sup>; and
- 632 (c) be signed by or on behalf of the appellant<sup>18</sup>.

The appellant must attach to the notice of appeal a copy of any documents on which he proposes to rely for the purposes of the appeal<sup>19</sup>.

Upon receiving a valid notice of appeal, the Council must send the appellant a notice acknowledging its receipt and informing the appellant<sup>20</sup> that he may before the end of the period of 28 days beginning with the date on which the notice was sent request that a hearing be held<sup>21</sup>; that, even if he does not request a hearing, the Council may hold a hearing if it considers it to be desirable<sup>22</sup>; and that he may be heard and be represented at such a hearing<sup>23</sup>.

1    Ie under the Health Professions Order 2001, SI 2002/254, art 37(1): see PARA 376 ante. For the meaning of 'the Council' see PARA 308 note 1 ante.

2    Ie a decision referred to in *ibid* art 37(1)(a), (b) or (c).

3    For these purposes, 'committee' means the education and training committee of the Council: Health Professions Council (Registration Appeals) Rules Order of Council 2003, SI 2003/1579, r 2.

4    *Ibid* r 4(a).

5    Ie as referred to in the Health Professions Order 2001, SI 2002/254, art 37(1)(d).

6    Ie the period specified in the applicable regulations referred to in *ibid* art 9(5): see PARA 328 note 6 ante.

7    Health Professions Council (Registration Appeals) Rules Order of Council 2003, SI 2003/1579, r 4(b).

8 'Appeal' means an appeal which is made to the Council in accordance with the Health Professions Order 2001, SI 2002/254, art 37(1) (see PARA 376 ante): Health Professions Council (Registration Appeals) Rules Order of Council 2003, SI 2003/1579, r 2.

9 Ibid r 5(1). In the Health Professions Council (Registration Appeals) Rules Order of Council 2003, SI 2003/1579, a reference to the sending of a notice or other document to any person is a reference to it being sent: (1) in the case of the Council, the committee, an appeal panel or the registrar, to the offices of the Council (r 3(1)(a)); (2) in the case of the appellant, to the address identified in his notice of appeal (r 3(1)(b)); and (3) in all other cases, to the last known address of that person (r 3(1)(c)). All communications to be sent for the purposes of the rules may be sent by post and any such communication is treated as having been sent on the day on which it was posted: r 3(2). For the meaning of 'appeal panel' see PARA 379 note 4 post. As to the registrar see PARA 324 ante. For the meaning of 'writing' see PARA 20 note 22 ante.

10 Health Professions Council (Registration Appeals) Rules Order of Council 2003, SI 2003/1579, r 5(2).

11 Ibid r 5(2)(a)(i). 'Appellant' means a person who makes an appeal: r 2.

12 Ibid r 5(2)(a)(ii).

13 Ibid r 5(2)(a)(iii).

14 Ibid r 5(2)(a)(iv).

15 Ibid r 5(2)(a)(v).

16 Ibid r 5(2)(a)(vi).

17 Ibid r 5(2)(b).

18 Ibid r 5(2)(c).

19 Ibid r 5(3).

20 Ibid r 6.

21 Ibid r 6(a).

22 Ibid r 6(b).

23 Ibid r 6(c).

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### **378. Notice of hearing; representation.**

If the appellant<sup>1</sup> has requested that a hearing be held, or the Council<sup>2</sup> determines that it would be desirable to hold a hearing, the Council must fix a day on which it is to hear the case and send notice to the parties of the day, time and venue for the hearing<sup>3</sup>. Before the end of the period of 28 days beginning with the day on which such notice is sent, the parties must inform the Council whether or not they intend to attend or be represented<sup>4</sup> at the hearing and whether or not they intend to call any witnesses and, if so, must provide their names and addresses to the Council<sup>5</sup>. An appellant who does not intend to attend or be represented at a hearing may, before the beginning of the period of seven days ending with the date on which the hearing is to be held, send to the Council additional written representations in support of his appeal<sup>6</sup>. The committee<sup>7</sup> is the respondent in any proceedings<sup>8</sup>. The Council may invite any person who, in its opinion, has an interest in the proceedings to make written representations, and any such representations must be sent to the Council before the end of the period of 14 days beginning with the date on which the invitation is sent to that person<sup>9</sup>. Where the Council has fixed a date for a hearing<sup>10</sup> and the appellant has informed the Council that he intends to attend or be represented<sup>11</sup> but he does not attend and is not represented<sup>12</sup>, the appeal panel<sup>13</sup> may nevertheless proceed with the hearing if it is satisfied that all reasonable steps have been taken to give notice of the hearing to the appellant<sup>14</sup>.

1 For the meaning of 'appellant' see PARA 377 note 11 ante.

2 As to the Council see PARA 308 ante.

3 Health Professions Council (Registration Appeals) Rules Order of Council 2003, SI 2003/1579, r 7(1). The Council must not fix a date for the hearing which is before the end of the period of 28 days beginning with the day on which the Council sent the notice referred to in r 7(1) to the appellant: r 7(2). As to the service of notices and other documents see PARA 377 note 9 ante.

4 The appellant may be represented in any proceedings by any person, whether or not legally qualified, except a member of the Council or any of its committees or a person employed by the Council: *ibid* r 8(4). As to membership of the Council see PARA 308 ante. As to the Council's committees see PARA 313 et seq ante. As to the power of the Council to employ persons see PARA 319 ante.

5 *Ibid* r 8(1).

6 *Ibid* r 8(2). For the meaning of 'appeal' see PARA 377 note 8 ante.

7 For the meaning of 'committee' see PARA 377 note 3 ante.

8 Health Professions Council (Registration Appeals) Rules Order of Council 2003, SI 2003/1579, r 8(3).

9 *Ibid* r 8(5).

10 *Ibid* r 13(a).

11 *Ibid* r 13(b).

12 *Ibid* r 13(c).

13 For the meaning of 'appeal panel' see PARA 379 note 4 post.

14 Health Professions Council (Registration Appeals) Rules Order of Council 2003, SI 2003/1579, r 13.



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### **379. Appeal panels.**

Except where the Council<sup>1</sup> considers an appeal<sup>2</sup> itself<sup>3</sup>, an appeal must be considered by an appeal panel<sup>4</sup> appointed by the Council for that purpose<sup>5</sup>. An appeal panel must comprise not fewer than three persons selected with due regard to the matter under consideration and must include<sup>6</sup>: (1) a person who is registered in the same part of the register<sup>7</sup> as that in which the appellant<sup>8</sup> is, or is applying to be, registered<sup>9</sup>; (2) a person who has never been admitted to the register<sup>10</sup> and who is not a registered medical practitioner<sup>11</sup>; and (3) where the health of the appellant is in issue, a registered medical practitioner<sup>12</sup>. A member of the Council must be appointed as chairman<sup>13</sup>. A person who has been involved in any other capacity in a case which is to be considered by an appeal panel must not be appointed as a member of that panel<sup>14</sup>. Decisions by an appeal panel are made by a majority vote of those present and, in the event of a tie, the chairman has an additional casting vote which must be exercised in favour of the appellant<sup>15</sup>.

1 As to the Council see PARA 308 ante.

2 For the meaning of 'appeal' see PARA 377 note 8 ante.

3 Where the Council considers an appeal, references in the Health Professions Council (Registration Appeals) Rules Order of Council 2003, SI 2003/1579, to an appeal panel (other than in the definition in r 2 of 'appeal panel' (see note 4 infra), r 3(1)(a) (see PARA 377 note 9 ante) and r 9(1), (3)) are to be construed as references to the Council: r 17. The quorum of the Council when considering an appeal is seven and consists of registrant members and lay members and the number of members who are registrants may exceed the number of lay members but may not exceed them by more than one: r 9(2). As to registrant members and lay members see PARA 308 ante.

4 'Appeal panel' means a panel appointed under ibid r 9 to consider an appeal: r 2.

5 Ibid r 9(1).

6 Ibid r 9(3).

7 As to the parts of the register see PARA 326 ante.

8 For the meaning of 'appellant' see PARA 377 note 11 ante.

9 Health Professions Council (Registration Appeals) Rules Order of Council 2003, SI 2003/1579, r 9(3)(a). As to registration see PARA 324 et seq ante.

10 Or to any register kept under the Professions Supplementary to Medicine Act 1960: Health Professions Council (Registration Appeals) Rules Order of Council 2003, SI 2003/1579, r 9(3)(b).

11 Ibid r 9(3)(b). For the meaning of 'registered medical practitioner' see PARA 4 ante.

12 Ibid r 9(3)(c).

13 Ibid r 9(4). 'Chairman' means the chairman of an appeal panel: r 2. As to the membership of the Council see PARA 308 ante.

14 Ibid r 9(5).

15 Ibid r 9(6).

### **UPDATE**

### 379 Appeal panels

TEXT AND NOTES 6-12--An appeal panel must now comprise not fewer than three members appointed by the Council and must include (1) a person who is registered in the same part of the register as that in which the appellant is, or is applying to be, registered; (2) a person who (a) is not and never has been a registrant, or registered under the Professions Supplementary to Medicine Act 1960 or in the Association of Operating Department Practitioners register, the Association of Educational Psychologists register or the British Psychological Society register; and (b) does not hold a qualification that would entitle them to apply for registration under the Health Professions Order 2001, SI 2002/254; and (3) where the health of the appellant is in issue, a registered medical practitioner: SI 2003/1579 r 9(3) (substituted by SI 2009/1355). The chair may also count as the registrant or lay person mentioned in head (2)(a), (b) above: SI 2003/1579 r 9(4) (amended by SI 2009/1355).

TEXT AND NOTES 13-15--References to the 'chairman' are now to the 'chair': SI 2003/1579 r 9(4), (6) (amended by SI 2009/1355). 'Chair' means the chair of an appeal panel: SI 2003/1579 r 2 (definition substituted by SI 2009/1355). The members of an appeal panel, other than the chair, must be appointed from among the members of the practice committees: SI 2003/1579 r 9(7) (r 9(7), (8) added by SI 2009/1355). A person (1) is not eligible to be appointed to, or sit as a member of, an appeal panel if he is disqualified or suspended from membership of the Council or a practice committee; and (2) must cease to be a member of an appeal panel if (a) he resigns, which he may do at any time by notice in writing to the Council; (b) the Council votes (by a majority at a quorate meeting) to terminate his appointment; or (c) he ceases to be a member of the Council or a practice committee: SI 2003/1579 r 9(8).

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### 380. Powers of appeal panels.

The appeal panel<sup>1</sup> or the chairman<sup>2</sup> may hold a preliminary meeting in private with the parties, their representatives<sup>3</sup> and any other person it or he considers appropriate if such a meeting would, in its or his opinion, assist the panel to perform its functions<sup>4</sup>. The appeal panel may determine an appeal<sup>5</sup> without an oral hearing on the basis of any documents provided by the appellant<sup>6</sup> where: (1) the Council<sup>7</sup> does not receive a reply from the appellant within the time specified<sup>8</sup> and the appeal panel is satisfied that all reasonable steps have been taken to give notice<sup>9</sup>, or the appellant replies<sup>10</sup> to the effect that he does not wish to attend or be represented<sup>11</sup>; (2) the appeal panel has notified the appellant and the committee<sup>12</sup> of its intention to do so<sup>13</sup>; and (3) the appeal panel considers it desirable to do so having taken into account any representations received in response to the notice referred to in head (2) above<sup>14</sup>. If the appeal panel decides to determine an appeal without an oral hearing, it may take into account any written representations provided<sup>15</sup>, or written representations from the committee received by the Council before the beginning of the period of seven days ending with the date on which the appeal panel determines the appeal<sup>16</sup>. The appeal panel, either of its motion or at the request of a party to the hearing, may postpone a hearing at any time before it begins and may adjourn the proceedings from time to time as it thinks fit<sup>17</sup>. Where a hearing is postponed, the registrar<sup>18</sup> must send the appellant notice of the date on which the appeal panel is to hold the postponed hearing<sup>19</sup>.

1 For the meaning of 'appeal panel' see PARA 379 note 4 ante.

2 For the meaning of 'chairman' see PARA 379 note 13 ante.

3 As to the right of the appellant to be represented in proceedings see PARA 378 note 4 ante.

4 Health Professions Council (Registration Appeals) Rules Order of Council 2003, SI 2003/1579, r 10(1). At any such preliminary meeting he conducts, the chairman may give directions under the Health Professions Order 2001, SI 2002/254, art 32(3) (see PARA 345 ante) and, with the agreement of the parties, take any action which the appeal panel would be competent to take at such a meeting: Health Professions Council (Registration Appeals) Rules Order of Council 2003, SI 2003/1579, r 10(2). As to the functions of an appeal panel see PARA 379 ante.

5 For the meaning of 'appeal' see PARA 377 note 8 ante.

6 Ie under the Health Professions Council (Registration Appeals) Rules Order of Council 2003, SI 2003/1579, r 5 (see PARA 377 ante), r 8(2) (see PARA 378 ante). For the meaning of 'appellant' see PARA 377 note 11 ante.

7 As to the Council see PARA 308 ante.

8 Ie specified in the Health Professions Council (Registration Appeals) Rules Order of Council 2003, SI 2003/1579, r 8(1): see PARA 378 ante.

9 Ie under ibid r 7(1): see PARA 378 ante.

10 Ie under ibid r 8(1): see PARA 378 ante.

11 Ibid r 11(1)(a).

12 For the meaning of 'committee' see PARA 377 note 3 ante.

13 Health Professions Council (Registration Appeals) Rules Order of Council 2003, SI 2003/1579, r 11(1)(b).

14 Ibid r 11(1)(c).

15 le in accordance with ibid r 8(5): see PARA 378 ante.

16 Ibid r 11(2).

17 Ibid r 12(1).

18 As to the registrar see PARA 324 ante.

19 Health Professions Council (Registration Appeals) Rules Order of Council 2003, SI 2003/1579, r 12(2). The date for a postponed hearing must not be fixed for any date before the end of the period of 14 days beginning with the day on which the registrar sends the notice referred to in r 12(2) to the appellant: r 12(3). As to the service of notices and other documents see PARA 377 note 9 ante.



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### **381. Conduct of hearing.**

The hearing must be held in public unless the appeal panel<sup>1</sup> is satisfied that, in the interests of justice or for the protection of the private life of the health professional, the complainant, any person giving evidence, or any patient or client, the public should be excluded from all or part of the hearing<sup>2</sup>. At the beginning of the hearing the chairman<sup>3</sup> must explain to the parties the order of proceedings which the appeal panel proposes to adopt<sup>4</sup>. The appeal panel must conduct the hearing in such manner as it considers most suitable to the clarification of the issues before it and generally to the just handling of the proceedings<sup>5</sup>. The parties must be heard in such order as the panel determines, having regard to the following<sup>6</sup>:

- 633 (1) the appellant<sup>7</sup> may present his case in support of his appeal<sup>8</sup>;
- 634 (2) the appellant or any person called on his behalf may be cross-examined by the committee<sup>9</sup> and, in the case of a person called on his behalf, re-examined by the appellant<sup>10</sup>;
- 635 (3) the committee may present its case in support of the decision appealed against or its failure to issue a decision<sup>11</sup>;
- 636 (4) the committee or any person called on its behalf may be cross-examined by the appellant and, in the case of a person called on its behalf, re-examined by the committee<sup>12</sup>;
- 637 (5) the committee may address the appeal panel on its case in respect of the decision appealed against or its failure to issue a decision<sup>13</sup>; and
- 638 (6) the appellant may address the appeal panel on his case in respect of his appeal<sup>14</sup>.

The parties are entitled to give evidence, to call witnesses, to question any witnesses and to address the appeal panel both on the evidence and generally on the subject matter of the appeal<sup>15</sup>. The rules on the admissibility of evidence that apply in civil proceedings in the appropriate court<sup>16</sup> in that part of the United Kingdom<sup>17</sup> in which the hearing takes place apply<sup>18</sup>. However, the appeal panel may hear or receive evidence which would not be admissible in such proceedings if it is satisfied that admission of that evidence is necessary in order to protect members of the public<sup>19</sup>. The appeal panel may require evidence to be given on oath or affirmation and for that purpose may administer oaths or affirmations in an appropriate form<sup>20</sup>. Where the appellant has been convicted of a criminal offence, a certified copy of the certificate of conviction is admissible as proof of that conviction and of the findings of fact upon which it was based<sup>21</sup>. The appeal panel may require any person, other than the appellant, to attend a hearing and give evidence or produce documents<sup>22</sup>. At any hearing the appeal panel may, if it is satisfied that it is just and reasonable to do so, permit a party to rely on grounds not stated in the notice of appeal<sup>23</sup> or to adduce any evidence not presented to the committee before it took the disputed decision<sup>24</sup>.

The appeal panel must notify the appellant of its decision and the reasons for reaching that decision, and inform the appellant of his right to appeal to a county court<sup>25</sup>.

1 For the meaning of 'appeal panel' see PARA 379 note 4 ante.

2 Health Professions Council (Registration Appeals) Rules Order of Council 2003, SI 2003/1579, r 14(1).

- 3 For the meaning of 'chairman' see PARA 379 note 13 ante.
- 4 Health Professions Council (Registration Appeals) Rules Order of Council 2003, SI 2003/1579, r 14(2).
- 5 Ibid r 14(3). Subject to r 14(6), where the appellant or the committee (see note 9 infra) is represented, references in r 14(3), (4) to the committee or the appellant presenting the case, calling or questioning witnesses, cross-examining or re-examining witnesses, or addressing the panel, are to be read as references to the representative of the committee or the appellant, as the case may be: r 14(5). Except as provided in r 14(5), references in r 14(3) to the committee are references to the chairman of the committee or any other person nominated by the committee to appear on its behalf: r 14(6).
- 6 Ibid r 14(3). See also note 5 supra.
- 7 For the meaning of 'appellant' see PARA 377 note 11 ante.
- 8 Health Professions Council (Registration Appeals) Rules Order of Council 2003, SI 2003/1579, r 14(3)(a). See also note 5 supra. For the meaning of 'appeal' see PARA 377 note 8 ante.
- 9 For the meaning of 'committee' see PARA 377 note 3 ante.
- 10 Health Professions Council (Registration Appeals) Rules Order of Council 2003, SI 2003/1579, r 14(3)(b). See also note 5 supra.
- 11 Ibid r 14(3)(c). See also note 5 supra.
- 12 Ibid r 14(3)(d). See also note 5 supra.
- 13 Ibid r 14(3)(e). See also note 5 supra.
- 14 Ibid r 14(3)(f). See also note 5 supra.
- 15 Ibid r 14(4). See also note 5 supra.
- 16 For these purposes, 'appropriate court' means a county court: see ibid r 15(2). As to county courts see COURTS.
- 17 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.
- 18 Health Professions Council (Registration Appeals) Rules Order of Council 2003, SI 2003/1579, r 15(1). As to evidence in civil proceedings see CIVIL PROCEDURE vol 11 (2009) PARA 749 et seq.
- 19 Ibid r 15(3).
- 20 Ibid r 15(7). As to oaths and affirmations see CIVIL PROCEDURE vol 11 (2009) PARA 1021 et seq.
- 21 Ibid r 15(6). As to certificates of conviction see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1500.
- 22 Ibid r 15(4).
- 23 As to the notice of appeal see PARA 377 ante.
- 24 Health Professions Council (Registration Appeals) Rules Order of Council 2003, SI 2003/1579, r 15(5).
- 25 Ie the right of appeal under the Health Professions Order 2001, SI 2002/254, art 37(10) (see PARA 376 ante): Health Professions Council (Registration Appeals) Rules Order of Council 2003, SI 2003/1579, r 16.

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## ***B. APPEALS TO THE COURT***

### **382. Appeals.**

An appeal from: (1) any order or decision of the health committee<sup>1</sup> or the conduct and competence committee<sup>2</sup>, other than an interim order<sup>3</sup>, lies to the appropriate court<sup>4</sup>; and (2) any decision of the Council<sup>5</sup> or of the investigating committee<sup>6</sup> lies to a county court<sup>7</sup>. In any such appeal the Council is the respondent<sup>8</sup>. The court may<sup>9</sup>:

- 639 (a) dismiss the appeal<sup>10</sup>;
- 640 (b) allow the appeal and quash the decision appealed against<sup>11</sup>;
- 641 (c) substitute for the decision appealed against any other decision the practice committee<sup>12</sup> concerned or the Council, as the case may be, could have made<sup>13</sup>; or
- 642 (d) remit the case to the practice committee concerned or the Council, as the case may be, to be disposed of in accordance with the directions of the court<sup>14</sup>,

and may make such order as to costs as it thinks fit<sup>15</sup>.

1 As to the establishment of the health committee see PARA 313 et seq ante. As to the functions of the health committee see PARA 361 ante.

2 As to the establishment of the conduct and competence committee see PARA 313 ante. As to the functions of the conduct and competence committee see PARA 355 ante.

3 Ie an interim order made under the Health Professions Order 2001, SI 2002/254, art 31: see PARA 369 ante.

4 Ibid art 38(1)(a). 'The appropriate court' means: (1) in the case of a person whose registered address is (or, if he were registered, would be) in Scotland, the Court of Session (art 38(4)(a)); (2) in the case of a person whose registered address is (or, if he were registered, would be) in Northern Ireland, the High Court of Justice in Northern Ireland (art 38(4)(b)); and (3) in any other case, the High Court of Justice in England and Wales (art 38(4)(c)). As to registration see PARA 324 et seq ante. As to the High Court of Justice in England and Wales see COURTS vol 10 (Reissue) PARA 602 et seq.

5 Ie under ibid art 37: see PARA 376 ante. For the meaning of 'the Council' see PARA 308 note 1 ante.

6 Ie under ibid art 26(7), (12): see PARA 351 ante. As to the establishment of the investigating committee see PARA 313 ante. As to the functions of the investigating committee see PARA 351 et seq ante.

7 Ibid art 38(1)(b). As to county courts see COURTS.

8 Ibid art 38(2).

9 For cases relevant to the exercise by the court of its appellate jurisdiction see PARAS 188 note 14 ante, 478 note 6 post.

10 Health Professions Order 2001, SI 2002/254, art 38(3)(a).

11 Ibid art 38(3)(b).

12 For the meaning of 'practice committee' see PARA 315 note 2 ante.

13 Health Professions Order 2001, SI 2002/254, art 38(3)(c).

14 Ibid art 38(3)(d).

15 Ibid art 38(3). As to costs generally see CIVIL PROCEDURE vol 12 (2009) PARA 1729 et seq.

## **UPDATE**

### **382 Appeals**

TEXT AND NOTES--SI 2002/254 art 38(1) amended, art 38(1A) added: SI 2007/3101.

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## (vi) Offences

### 383. Offences.

A person commits an offence if:

- 643 (1) with intent to deceive, whether expressly or by implication<sup>1</sup>:  
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- 188. (a) he falsely represents himself to be registered in the register<sup>2</sup>, or a particular part of it<sup>3</sup>, or to be the subject of any entry in the register<sup>4</sup>;
- 189. (b) he uses a designated title<sup>5</sup> to which he is not entitled<sup>6</sup>;
- 190. (c) he falsely represents himself to possess qualifications in a relevant profession<sup>7</sup>;
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- 644 (2) with intent that any person is deceived, whether expressly or by implication, he causes or permits another person to make any representation about himself which, if made by himself with intent to deceive would be an offence<sup>8</sup>;
- 645 (3) with intent to deceive, he makes with regard to another person any representation which<sup>9</sup> is false to his own knowledge<sup>10</sup> and if made by the other person with that intent would be an offence by him<sup>11</sup>;
- 646 (4) if he fraudulently procures, or tries to procure, the making, amendment, removal or restoration of an entry in the register<sup>12</sup>;
- 647 (5) if he, without reasonable excuse, fails to comply with any requirement<sup>13</sup> imposed by the Council<sup>14</sup> or a practice committee<sup>15</sup>.

A person guilty of any such offence is liable on summary conviction to a fine<sup>16</sup>.

1 Health Professions Order 2001, SI 2002/254, art 39(1).

2 For the meaning of 'register' see PARA 325 note 2 ante.

3 As to the meaning of 'part of the register' see PARA 325 note 12 ante.

4 Health Professions Order 2001, SI 2002/254, art 39(1)(a). As to registration generally see PARA 324 et seq ante.

5 I.e a title referred to in ibid art 6(2): see PARA 325 ante.

6 Ibid art 39(1)(b). If a person has been practising a relevant profession to which the title mentioned in art 39(1)(b) relates before the coming into force of an order under art 6(1) (see PARA 325 ante) which relates to that profession, he will not be guilty of an offence under art 39(1)(b): (1) during the relevant period mentioned in art 13(1)(b) (see PARA 331 note 1 ante) (art 39(2)(a)); or (2) if he applies during the relevant period for admission to the register, until his application and any appeal from a decision on that application has been finally disposed of (art 39(2)(b)).

7 Ibid art 39(1)(c). For the meaning of 'relevant profession' see PARA 318 note 2 ante.

8 I.e under ibid art 39(1) (see the text to notes 1-7 supra): art 39(3)(a).

9 Ibid art 39(3)(b).

10 Ibid art 39(3)(b)(i).

11 le under art 39(1): art 39(3)(b)(ii).

12 Ibid art 39(4).

13 le under ibid art 25(1), (2) (see PARA 350 ante) or rules made by virtue of art 32(2)(m) (see PARA 345 ante) or under any corresponding rule made by virtue of art 26, art 33 or art 37 (see PARAS 351, 371, 376 ante): see art 39(5).

14 Ibid art 39(5)(a). For the meaning of 'the Council' see PARA 308 note 1 ante.

15 Ibid art 39(5)(b). For the meaning of 'practice committee' see PARA 315 note 2 ante.

16 Ibid art 39(6). The penalty is a fine not exceeding level 5 on the standard scale: see art 39(6). As to the standard scale see PARA 185 note 11 ante.

## **UPDATE**

### **383 Offences**

NOTE 6--In head (1), reference to art 13(1)(b) now reference to art 13(1)(d): SI 2002/254 art 39(2)(a) (amended by SI 2009/1182).

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## **(vii) External Regulation**

### **384. External regulation of the profession.**

The Health Professions Council<sup>1</sup> is subject to the oversight of the Council for the Regulation of Health Care Professionals<sup>2</sup> and must in the exercise of its functions co-operate with that Council<sup>3</sup>.

Where it considers the decision to be unduly lenient, or that it should not have been made, and that it would be desirable for the protection of members of the public<sup>4</sup>, the Council for the Regulation of Health Care Professionals has powers to refer to the High Court a decision of the conduct and competence committee of the Health Professions Council that the fitness to practise of a practitioner whose profession is regulated by it is impaired otherwise than by reason of his physical or mental health<sup>5</sup>, a final decision of the committee not to take any disciplinary measure<sup>6</sup>, and a decision of the Council, one of its committees or officers, to restore a person to the register following removal from it following disciplinary proceedings<sup>7</sup>.

The provisions of the Competition Act 1998 prohibiting agreements which have as their object the prevention, restriction or distortion of competition within the United Kingdom apply to rules made by professional bodies<sup>8</sup>.

1 As to the Health Professions Council see PARA 308 ante.

2 See the National Health Service Reform and Health Care Professions Act 2002 s 25(2), (3)(i); and PARA 303 ante. As to the Council for the Regulation of Health Care Professionals, its duties and powers, see PARA 294 et seq ante.

3 See *ibid* s 27(1); and PARA 304 ante. As to the power of the Council for the Regulation of Health Care Professionals to give directions requiring the Health Professions Council to make rules where it considers that it would be desirable to do so for the protection of members of the public see s 27(2); and PARA 304 ante. As to the power of the Secretary of State to make provision in regulations about the investigation by the Council for the Regulation of Health Care Professionals of complaints made to it about the way in which the Health Professions Council has exercised any of its functions see s 28; and PARA 305 ante. As to the Secretary of State see PARA 5 ante.

4 See *ibid* s 29; and PARA 306 ante.

5 See *ibid* s 29(1)(j); and PARA 306 ante. As to orders of the conduct and competence committee see PARA 367 ante.

6 See *ibid* s 29(2)(a); and PARA 306 ante.

7 See *ibid* s 29(2)(c); and PARA 306 ante. As to restoration to a register see PARA 371 ante.

8 See the Competition Act 1998 Ch 1 (ss 1-11); and COMPETITION vol 18 (2009) PARA 116 et seq.

## **UPDATE**

### **384 External regulation of the profession**

TEXT AND NOTES--Council for the Regulation of Health Care Professionals renamed Council for Healthcare Regulatory Excellence: see the Health and Social Care Act 2008 s 113(1).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(1) REGULATION OF THE PROFESSION/385. In general.

### **3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE**

#### **(1) REGULATION OF THE PROFESSION**

##### **385. In general.**

The profession and practice of dentistry is governed by the Dentists Act 1984. The general management of the profession is entrusted to the General Dental Council<sup>1</sup>, whose general concern is to promote high standards of dental education and of professional conduct among dentists, and which has various functions assigned to it by the Act<sup>2</sup>. For this purpose, various powers and duties have been conferred and imposed on the Council to make rules and regulations, which are generally subject to the approval of the Privy Council<sup>3</sup>.

1 As to the General Dental Council see PARA 389 et seq post.

2 Dentists Act 1984 s 1(2).

3 As to the power to make regulations prescribing new forms of title see PARA 411 post; as to regulations in respect of the form and keeping of the register see PARA 438 post; as to the power to make rules for the professional conduct committee see PARA 462 et seq post; as to the regulations for the form of statement returnable by dental companies see PARA 407 post; and as to regulations establishing classes of dental auxiliaries see PARA 486 et seq post. As to the exercise by the Privy Council of its powers under the Dentists Act 1984 see PARA 388 post. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

#### **UPDATE**

##### **385 In general**

TEXT AND NOTE 2--The general concern of the General Dental Council is now expressed to be to promote high standards of education at all its stages in all aspects of dentistry, and to promote high standards of professional conduct, performance and practice among persons registered under the 1984 Act: s 1(2) (substituted by the Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011).



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(1) REGULATION OF THE PROFESSION/386. Arrangements for general dental services under the national health service.

### **386. Arrangements for general dental services under the national health service.**

It is the duty of every primary care trust and of every health authority, in accordance with regulations made for the purpose, to make as respects its area arrangements with dental practitioners<sup>1</sup> or dental corporations<sup>2</sup> under which any person in the area for whom a dental practitioner or dental corporation undertakes in accordance with the arrangements to provide dental treatment and appliances must receive such treatment and appliances<sup>3</sup>. Where the registration of a dental practitioner in the dentists register is suspended<sup>4</sup>, the suspension does not terminate any arrangements made with him for the provision of general dental services, but he must not provide such services in person during the suspension<sup>5</sup>.

Regulations may provide as to the arrangements to be made<sup>6</sup> and must include provision for the preparation and publication by each primary care trust and health authority of a list of dental practitioners and dental corporations who undertake to provide general dental services for persons in its area<sup>7</sup>, for conferring a right, subject to certain exceptions, on any dental practitioner or dental corporation to be included in any such list<sup>8</sup>, and for the removal from the list of dental practitioners and dental corporations where they have never provided, or have ceased to provide, general dental services<sup>9</sup>. The regulations must also include provision for constituting the Dental Practice Board for the purpose of carrying out such duties as may be prescribed with respect to dental treatment and appliances, and to the remuneration of dental practitioners providing general dental services<sup>10</sup>.

1 'Dental practitioner' means a person registered in the dentists register under the Dentists Act 1984: National Health Service Act 1977 s 128(1) (amended by the Dentists Act 1984 s 54(1), Sch 5 para 9). As to the dentists register see PARA 417 et seq post.

2 'Dental corporation' means a body corporate which carries on the business of dentistry within the meaning of the Dentists Act 1984 s 40 (see PARA 405 post): National Health Service Act 1977 s 35(5) (prospectively repealed). As from a day to be appointed, ss 35-37 are repealed by the Health and Social Care (Community Health and Standards) Act 2003 ss 172(2), 196, Sch 14 Pt 4. At the date at which this volume states the law no such day had been appointed.

3 National Health Service Act 1977 s 35(1) (substituted by the Family Practitioner Committees (Consequential Modifications) Order 1985, SI 1985/39, art 7; amended by the Health Authorities Act 1995 s 2(1), Sch 1 para 24; the National Health Service (Primary Care) Act 1997 s 41(11), Sch 2 Pt II para 72; the Health and Social Care Act 2001 s 22(1), (2)(a); and the National Health Service Reform and Health Care Professions Act 2002 s 2(5), Sch 2 Pt 1 paras 1, 9; prospectively repealed). The services so provided are called general dental services: National Health Service Act 1977 s 35(1A) (added by the Family Practitioner Committees (Consequential Modifications) Order 1985, SI 1985/39, art 7; prospectively repealed). As to the provision of such services see further HEALTH SERVICES vol 54 (2008) PARA 277 et seq.

4 Ie by an order under the Dentists Act 1984 s 32 (interim suspension: see PARA 459 post) or by a direction or an order of the health committee (see PARA 482 post).

5 National Health Service Act 1977 s 35(3) (added by the Health and Social Services and Social Security Adjudications Act 1983 s 15; amended by the Dentists Act 1984 s 54(1), Sch 5 para 8; prospectively repealed).

6 Ie under the National Health Service Act 1977 s 35 (as substituted and amended; prospectively repealed): see the text to note 3 supra.

7 Ibid s 36(1)(a) (s 36(1) renumbered by the Health and Social Security Act 1984 s 5(4), Sch 3 para 5; substituted by the National Health Service Reform and Health Care Professions Act 2002 s 2(5), Sch 2 Pt 1 paras 1, 10(1), (2); prospectively repealed).

8 National Health Service Act 1977 s 36(1)(b) (as renumbered (see note 7 supra); amended by the National Health Service and Community Care Act 1990 s 24(2); the Health and Medicines Act 1988 s 25, Sch 2 para 4; the Health Act 1999 s 9(3); and the Health and Social Care Act 2001 ss 20(1), (4)(a), 22(1), (3)(b); prospectively repealed).

9 National Health Service Act 1977 s 36(1)(c) (as renumbered (see note 7 supra); amended by the Health Authorities Act 1995 s 2(1), Sch 1 para 25(a); and the Health and Social Care Act 2001 s 22(1), (3)(c); prospectively repealed). As to such regulations see HEALTH SERVICES vol 54 (2008) PARA 277 et seq.

10 National Health Service Act 1977 s 37(1)(a) (s 37(1) renumbered by the Health and Medicines Act 1988 s 12(2); amended by the Health and Medicines Act 1988 ss 12, 25, Sch 3; prospectively repealed).

## **UPDATE**

### **386 Arrangements for general dental services under the national health service**

TEXT AND NOTES--For consolidation of health service enactments see National Health Service Act 2006, National Health Service (Wales) Act 2006 and National Health Service (Consequential Provisions) Act 2006; and HEALTH SERVICES vol 54 (2008) PARA 277 et seq.

NOTE 3--SI 1985/39 art 7 revoked: National Health Service (Consequential Provisions) Act 2006 Sch 4.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(1) REGULATION OF THE PROFESSION/387. Assumption of designation of medical or surgical practitioner.

**387. Assumption of designation of medical or surgical practitioner.**

A degree or licence in dentistry granted by a dental authority<sup>1</sup> does not confer any right or title to be registered under the Medical Act 1983 nor to assume any name, title or designation implying that the holder of the degree or licence is by law recognised as a practitioner or licentiate in medicine or general surgery<sup>2</sup>.

1 For the meaning of 'dental authority' see PARA 421 note 3 post.

2 Dentists Act 1984 s 7. As to registration under the Medical Act 1983 see PARA 34 et seq ante.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(1) REGULATION OF THE PROFESSION/388. Powers of the Privy Council.

### **388. Powers of the Privy Council.**

A number of powers are conferred on the Privy Council by the Dentists Act 1984<sup>1</sup>. The powers so conferred on the Privy Council are exercisable by any two or more members of the Privy Council<sup>2</sup>.

1 Eg the power to make orders in respect of inadequate courses of study or examinations (see PARA 425 post) and particular theories of dentistry (see PARA 426 post); the power to appoint lay members (see PARAS 391-392 post); and the power to specify requirements in relation to visitors (see PARA 401 post).

2 Dentists Act 1984 s 51 (amended by the National Health Service Reform and Health Care Professions Act 2002 ss 31(1), (4), 37(2), Sch 9 Pt 2). As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

### **UPDATE**

### **388 Powers of the Privy Council**

TEXT AND NOTES--1984 Act s 51 further amended: SI 2005/2011, SI 2009/1182.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(2) THE GENERAL DENTAL COUNCIL/(i) Constitution, Members and Officers/389. Constitution and general duties.

## **(2) THE GENERAL DENTAL COUNCIL**

### **(i) Constitution, Members and Officers**

#### **389. Constitution and general duties.**

The General Dental Council is a body corporate<sup>1</sup>. It is the general concern of the Council to promote high standards of dental education at all its stages and high standards of professional conduct among dentists, and it must in particular perform the functions assigned to it by the Dentists Act 1984<sup>2</sup>. The Council is constituted as Her Majesty may provide by Order in Council<sup>3</sup>.

The Council consists of members who are registered dentists<sup>4</sup>, members of classes of dental auxiliaries established by regulations under the Dentists Act 1984<sup>5</sup>, and lay members<sup>6</sup>. The numbers of each of the three categories of member is provided by Order in Council<sup>7</sup>, and the number of registered dentist members must exceed the combined number of the other members<sup>8</sup>. There are fifteen members who are registered dentists<sup>9</sup>, four members who are dental auxiliaries<sup>10</sup>, and ten lay members<sup>11</sup>. A person is not disqualified from being appointed or elected as a member of the Council merely because he has already been a member<sup>12</sup>.

1 Dentists Act 1984 s 1(1). As to bodies corporate see COMPANIES; CORPORATIONS.

2 Ibid s 1(2). No proceedings of the Council or of any of the Council's committees are invalidated by any defect in the appointment of a member: s 1(3), Sch 1 para 6(4) (both amended by the Dentists Act 1984 (Amendment) Order 2001, SI 2001/3926, arts 2, 3(b), 4(1), (3)(b)). As to dental education see PARA 421 et seq post. As to professional conduct see PARA 456 et seq post. As to the Council as competent authority for the purposes of the European Union requirements relating to the mutual recognition of qualifications see PARA 419 post. As to the Council's committees see PARA 395 post.

3 Dentists Act 1984 s 1(2A) (s 1(2A)-(2C) added by the Dentists Act 1984 (Amendment) Order 2001, SI 2001/3926, arts 2, 3(a)). An Order in Council may contain such incidental, consequential, saving, transitional or supplementary provisions as appear to Her Majesty to be necessary or expedient, and is subject to annulment in pursuance of a resolution of either House of Parliament: Dentists Act 1984 s 1(2B), (2C) (as so added). As to Orders in Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 907. As to the annulment of statutory instruments see STATUTES vol 44(1) (Reissue) PARA 1516. As to the order that has been made see the General Dental Council (Constitution) Order 2002, SI 2002/1625; and the text to notes 9-11 infra.

4 Dentists Act 1984 Sch 1 para 1(1)(a) (Sch 1 para 1 substituted by the Dentists Act 1984 (Amendment) Order 2001, SI 2001/3926, arts 2, 4(1), (2)). As to such members see further PARA 390 post. For the meaning of 'registered dentist' see PARA 417 note 6 post.

5 Dentists Act 1984 Sch 1 para 1(1)(b) (as substituted: see note 4 supra). As to such members see further PARA 390 post. As to dental auxiliaries see PARA 486 et seq post.

6 Ibid Sch 1 para 1(1)(c) (as substituted: see note 4 supra). For the meaning of 'lay member' see PARA 391 note 2 post. As to such members see further PARA 391 post.

7 Ibid Sch 1 para 1(2) (as substituted: see note 4 supra).

8 Ibid Sch 1 para 1(3) (as substituted: see note 4 supra).

9 General Dental Council (Constitution) Order 2002, SI 2002/1625, art 2(a).

10 Ibid art 2(b).

11 Ibid art 2(c).

12 Dentists Act 1984 Sch 1 para 1(4) (as substituted: see note 4 supra).

## UPDATE

### 389 Constitution and general duties

TEXT AND NOTE 2--When exercising its functions under the Dentists Act 1984, the General Dental Council must have proper regard for the interests of persons using or needing the services of registered dentists or registered dental care professionals in the United Kingdom, and any differing interests of different categories of registered dentists or registered dental care professionals: Dentists Act 1984 s 1(1A)(a), (b) (added by SI 2009/1182). For the meaning of 'registered dental care professional' see PARA 498A.2 NOTE 1. As to the dental care professionals register see PARA 498B.1. The general concern of the General Dental Council is now expressed to be to promote high standards of education at all its stages in all aspects of dentistry, and to promote high standards of professional conduct, performance and practice among persons registered under the Dentists Act 1984: s 1(2) (s 1(2), (2A) substituted by SI 2005/2011). The Council is constituted as provided by order of the Privy Council: Dentists Act 1984 s 1(2A).

An order of the Privy Council under s 1(2A) must include provision with regard to (1) the numbers of registrant members and lay members of the Council; (2) the terms of office for which members of the Council are appointed, and the order may provide that these are to be determined by the Privy Council on appointment; (3) the grounds on which persons are to be disqualified from appointment as registrant or lay members of the Council; (4) the appointment of a chair of the Council and the chair's term of office, and the order may provide that the term is to be determined by whoever makes the appointment as chair on appointment; (5) deputising arrangements in respect of the chair; (6) the quorum of the Council; and (7) the circumstances in which members cease to hold office or may be removed or suspended from office: Dentists Act 1984 Sch 1 para 1B(1)(a)-(g) (Sch 1 para 1B added by SI 2009/1182). Such an order must not include any provision which would have the effect that a majority of the members of the Council would be lay members: Dentists Act 1984 Sch 1 para 1B(2). An order under s 1(2A) may include provision with regard to (a) the maximum period for which a member of the Council may hold office as a member during a specified period; (b) the maximum period for which a member of the Council may serve as chair of the Council during a specified period; (c) the education and training of members of the Council, and the order may provide for the Council to include the requirements with regard to education and training of its members in standing orders, and for those standing orders to provide for (i) that education and training to be the responsibility of another body; and (ii) those requirements to be set and varied by that body from time to time; (d) the attendance of members of the Council at meetings of the Council; and (e) the effect (if any) of any vacancy in the membership of the Council or any defect in the appointment of a member: Dentists Act 1984 Sch 1 para 1B(3)(a)-(e). An order may make different provision for different cases or different classes of case and may contain such incidental, consequential, transitional, transitory, saving or supplementary provisions as appear to the Privy Council to be necessary or expedient: Dentists Act 1984 Sch 1 para 1B(4). In exercise of the powers conferred by the Dentists Act 1984 s 1(2A), Sch 1 para 1B, the Privy Council has made the General Dental Council (Constitution) Order 2009, SI 2009/1808.

Now only proceedings of any of the Council's committees are not invalidated by a defect in the appointment of a member: Dentists Act 1984 Sch 1 para 6(4) (amended by SI 2009/1182).

TEXT AND NOTES 4-12--SI 2002/1625 lapsed on repeal of enabling authority; see TEXT AND NOTE 2. The General Dental Council must now consist of (1) registrant members, that is members who are registered dentists or registered dental care professionals; and (2) lay members, that is members who (a) are not and never have been registered dentists or registered dental care professionals; and (b) do not hold qualifications which would entitle them to apply for registration as a registered dentist or registered dental care professional: Dentists Act 1984 Sch 1 para 1A(1)(a), (b) (Sch 1 para 1A added by SI 2009/1182). The members of the Council must be appointed by the Privy Council: Dentists Act 1984 Sch 1 para 1A(2). The Privy Council must ensure that, at any time, at least one member of the Council lives or works wholly or mainly in each of England, Scotland, Wales and Northern Ireland: Dentists Act 1984 Sch 1 para 1A(3). Before the Privy Council directs the Appointments Commission under the Health Act 2006 s 60(1) (see HEALTH SERVICES vol 54 (2008) PARA 821) to exercise any function of the Privy Council relating to the appointment of members of the Council, the Privy Council must consult the Council: Dentists Act 1984 Sch 1 para 1A(4). For transitional and saving measures relating to the Council see Health Care and Associated Professions (Miscellaneous Amendments and Practitioner Psychologists) Order 2009, SI 2009/1182, art 7; Dentists Act 1984 (Medical Authorities) Order 2009, SI 2009/1358.

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### **390. Registered dentist and dental auxiliary members.**

An Order in Council<sup>1</sup> must, in relation to the members of the General Dental Council who are registered dentists and dental auxiliaries<sup>2</sup>, make provision for their tenure and termination of office<sup>3</sup>, by-elections<sup>4</sup>, and any other matter which appears to Her Majesty to be necessary or expedient in relation to the registered dentist and dental auxiliary membership of the Council<sup>5</sup>. The Council must make rules to provide for an election scheme for the election of such members<sup>6</sup>, and the rules may provide for a scheme which makes different provision in relation to the two categories of member<sup>7</sup>, and makes different provision for different cases or classes of case<sup>8</sup>. The election scheme must secure that the Council's membership includes at least one registered dentist from each of England, Scotland, Wales and Northern Ireland<sup>9</sup>.

1    le made under the Dentists Act 1984 s 1(2A) (as added): see PARA 389 ante.

2    le such members as are mentioned in *ibid* s 1(3) (as amended), Sch 1 para (1)(a), (b) (as substituted): see PARA 389 ante. As to the constitution and duties of the General Dental Council see PARA 389 ante.

3    Ibid Sch 1 para 3(1)(a) (Sch 1 para 3 substituted by the Dentists Act 1984 (Amendment) Order 2001, SI 2001/3926, arts 2, 4(1), (2)). As to tenure and termination of office see PARA 392 post.

4    Dentists Act 1984 Sch 1 para 3(1)(b) (as substituted: see note 3 *supra*). In the event of a person who is a registered dentist or dental auxiliary member ceasing to be a member of the Council by virtue of the provisions relating to termination of office (see the General Dental Council (Constitution) Order 2002, SI 2002/1625, art 3B (as added); and PARA 392 post), a by-election must be held to fill any such vacancy which occurs more than 12 months before the end of the period for which that member had been elected and the newly elected member's term of office is for the remainder of the unexpired term: art 3C (added by SI 2002/3134). For the meaning of 'unexpired term' see PARA 392 note 13 post.

5    Dentists Act 1984 Sch 1 para 3(1)(c) (as substituted: see note 3 *supra*).

6    Ibid Sch 1 para 3(2) (as substituted: see note 3 *supra*).

7    Ibid Sch 1 para 3(3)(a) (as substituted: see note 3 *supra*).

8    Ibid Sch 1 para 3(3)(b) (as substituted: see note 3 *supra*). The rules may also contain such incidental, consequential, saving, transitional or supplementary provisions as appear to the Council to be necessary or expedient: Sch 1 para 3(3) (as so substituted). The rules do not come into force until approved by order of the Privy Council contained in a statutory instrument: Sch 1 para 3(6) (as so substituted). As to the rules that have been made see the General Dental Council (Election of Members) Rules Order of Council 2002, SI 2002/2463. As to the exercise by the Privy Council of its powers under the Dentists Act 1984 see PARA 388 ante. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

9    Ibid Sch 1 para 3(4) (as substituted: see note 3 *supra*). A registered dentist is 'from' England, Scotland, Wales or Northern Ireland if his address in the register is there at the time of his nomination: Sch 1 para 3(5) (as so substituted).

## **UPDATE**

### **390 Registered dentist and dental auxiliary members**

TEXT AND NOTES--1984 Act Sch 1 para 3 repealed: SI 2009/1182. As to the constitution of the General Dental Council see PARA 389.

NOTE 4--SI 2002/1625 lapsed on repeal of enabling authority.



NOTE 8--SI 2002/2463 amended: SI 2007/3006. Any power in the 1984 Act to make rules is exercisable by the General Dental Council and the rules do not come into force until approved by the Privy Council by order of council (except in the case of rules made under ss 36B(4), 36D(6) and (7), 36E, 43A(5) and (6), and Sch 1 para 8(1)(b)): s 50C(1)-(3) (ss 50C, 50D added by SI 2005/2011; s 50C amended by SI 2009/1182). The Privy Council may approve rules as submitted to it, or subject to such modifications as appears to it to be requisite: 1984 Act s 50C(4). Any power to make rules may be exercised (1) so as to make different provision with respect to different cases or different classes of case or different provision in respect of the same case or class of case for different purposes of the 1984 Act; and (2) either in relation to all cases to which the power extends or in relation to all those cases subject to specified exceptions: s 50C(5). Any power to make rules includes power to make any incidental, consequential, saving, transitional, transitory or supplementary provision which the General Dental Council considers necessary or expedient: s 50C(6). The General Dental Council must consult certain bodies and persons before it makes rules under Sch 3 or 4B: see s 50D.

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### **391. Lay members.**

An Order in Council<sup>1</sup> must make provision for the appointment of lay members<sup>2</sup> to the General Dental Council<sup>3</sup>, their tenure and termination of office<sup>4</sup>, and any other matter which appears to Her Majesty to be necessary or expedient in relation to the lay membership of the Council<sup>5</sup>. The lay members must be appointed by the Privy Council<sup>6</sup>, and must include at least one person from each of England, Scotland, Wales and Northern Ireland<sup>7</sup>. The Privy Council may appoint as lay members persons whom it considers to have such qualifications or experience as will be of value to the General Dental Council in the performance of its duties<sup>8</sup>.

1    le an order made under the Dentists Act 1984 s 1(2A) (as added): see PARA 389 ante.

2    'Lay member' means a member who is neither a registered dentist nor a dental auxiliary: *ibid* s 1(3), Sch 1 para 1(5) (s 1(3) amended, and Sch 1 para 1 substituted, by the Dentists Act 1984 (Amendment) Order 2001, SI 2001/3926, arts 2, 3(b), 4(1), (2); and the Dentists Act 1984 Sch 1 para 1(5) amended by the Health and Social Care (Community Health and Standards) Act 2003 s 187(8), Sch 12 para 3(1), (2)).

3    Dentists Act 1984 Sch 1 para 2(1)(a) (Sch 1 para 2(1) substituted by the Dentists Act 1984 (Amendment) Order 2001, SI 2001/3926, arts 2, 4(1), (2)). As to the constitution and duties of the General Dental Council see PARA 389 ante.

4    Dentists Act 1984 Sch 1 para 2(1)(b) (as substituted: see note 3 *supra*).

5    *Ibid* Sch 1 para 2(1)(c) (as substituted: see note 3 *supra*).

6    *Ibid* Sch 1 para 2(2) (Sch 1 para 2(2), (3) substituted, and Sch 1 paras 2(4), 2A added, by the Health and Social Care (Community Health and Standards) Act 2003 s 187(8), Sch 12 para 3(1), (3), (4)). If, under the Health and Social Care (Community Health and Standards) Act 2003 s 187, the Secretary of State has given a direction to a special health authority to exercise any function of a Minister of the Crown relating to the making of appointments to a body mentioned in s 187, the Privy Council may direct the special health authority to exercise to the extent specified in the direction its functions in relation to the appointment of persons to be lay members of the Council: Dentists Act 1984 Sch 1 para 2A(1), (2)(a) (as so added). As to the Secretary of State see PARA 5 ante. As to special health authorities see HEALTH SERVICES vol 54 (2008) PARA 136 et seq. As to the exercise by the Privy Council of its powers under the Dentists Act 1984 see PARA 388 ante. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

7    *Ibid* Sch 1 para 2(3) (as substituted: see note 6 *supra*). A person is from England, Scotland, Wales or Northern Ireland (as the case may be) if he lives or works there or mainly lives or works there: Sch 1 para 2(4) (as added: see note 6 *supra*).

8    General Dental Council (Constitution) Order 2002, SI 2002/1625, art 3 (substituted by SI 2004/2627).

## **UPDATE**

### **391 Lay members**

TEXT AND NOTES--1984 Act Sch 1 para 1 replaced; Sch 1 para 2 repealed: SI 2009/1182. As to the constitution of the General Dental Council see PARA 389.

NOTE 6--1984 Act Sch 1 para 2A repealed: Health Act 2006 Sch 9.

TEXT AND NOTE 8--SI 2002/1625 lapsed on repeal of enabling authority.

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### **392. Tenure and termination of office of members of the Council.**

The term of office of each member of the General Dental Council<sup>1</sup> is for a period of five years<sup>2</sup>. A person ceases to be a member of the Council if: (1) he is a registered dentist member<sup>3</sup> and his name is erased from the register<sup>4</sup>, or his registration in the register is suspended<sup>5</sup>; (2) he is a dental auxiliary member<sup>6</sup> and his name is erased from a roll or record of dental auxiliaries<sup>7</sup>; (3) he is a lay member<sup>8</sup> and there is a change in his position or circumstances such that it appears to the Privy Council<sup>9</sup> that he will no longer contribute to the Council's exercise of its functions in such a manner as justifies his continued membership<sup>10</sup>. A member may resign at any time by giving notice in writing<sup>11</sup> addressed to the registrar<sup>12</sup>. Where a lay member ceases to be a member, the Council must inform the Privy Council<sup>13</sup>.

In the event of a registered dentist or dental auxiliary member ceasing to be a member of the General Dental Council<sup>14</sup>, a by-election must be held to fill any such vacancy which occurs more than 12 months before the end of the period for which that member had been elected, and the newly elected member's term of office is for the remainder of the unexpired term<sup>15</sup>.

The powers of the Council and of any of its committees may be exercised notwithstanding any vacancy<sup>16</sup>.

1 As to the constitution and duties of the General Dental Council see PARA 389 ante.

2 General Dental Council (Constitution) Order 2002, SI 2002/1625, art 3A (arts 3A-3C added by SI 2002/3134).

3 As to such members see PARA 390 ante.

4 General Dental Council (Constitution) Order 2002, SI 2002/1625, art 3B(1)(a)(i) (as added: see note 2 supra). For the meaning of 'the register' see PARA 417 note 1 post. As to erasure from the register see PARAS 441-443, 445, 461 post.

5 Ibid art 3B(1)(a)(ii) (as added: see note 2 supra). 'Suspended' does not include suspended under the Dentists Act 1984 ss 30(3), 32 (see PARAS 459, 461, 482 post): General Dental Council (Constitution) Order 2002, SI 2002/1625, art 1(2) (definition added by SI 2002/3134). As to suspension from the register generally see PARAS 461, 482 post.

6 As to such members see PARA 390 ante.

7 General Dental Council (Constitution) Order 2002, SI 2002/1625, art 3B(1)(b) (as added: see note 2 supra). As to such erasure see PARA 495 et seq post.

8 For the meaning of 'lay member' see PARA 391 note 2 ante.

9 As to the appointment of lay members by the Privy Council see PARA 391 ante. As to the exercise by the Privy Council of its powers under the Dentists Act 1984 see PARA 388 ante. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

10 General Dental Council (Constitution) Order 2002, SI 2002/1625, art 3B(1)(c) (as added: see note 2 supra). If, under the Health and Social Care (Community Health and Standards) Act 2003 s 187, the Secretary of State has given a direction to a special health authority to exercise any function of a Minister of the Crown relating to the making of appointments to a body mentioned in s 187, the Privy Council may direct the special health authority to exercise to the extent specified in the direction its functions in relation to the termination of the appointment of a lay member: Dentists Act 1984 s 1(3) (amended by the Dentists Act 1984 (Amendment) Order 2001, SI 2001/3926, arts 2, 3(b)); Dentists Act 1984 Sch 1 para 2A(1), (2)(b) (added by the Health and

Social Care (Community Health and Standards) Act 2003 s 187(8), Sch 12 para 3(1), (4)). As to the Secretary of State see PARA 5 ante. As to special health authorities see HEALTH SERVICES vol 54 (2008) PARA 136 et seq.

11 For the meaning of 'writing' see PARA 20 note 22 ante.

12 General Dental Council (Constitution) Order 2002, SI 2002/1625, art 3B(2) (as added: see note 2 supra). For the meaning of 'the registrar' see PARA 396 note 1 post.

13 Ibid art 3B(3) (as added: see note 2 supra). When a lay member's successor is appointed during the unexpired term, the successor's term of office is for the remainder of the unexpired term: art 3B(4) (as so added). 'The unexpired term' means the period beginning with the date on which the member ceased to be a member and ending with the date on which his full term of office would otherwise have expired: art 1(2) (definition added by SI 2002/3134).

14 Ie by virtue of the General Dental Council (Constitution) Order 2002, SI 2002/1625, art 3B (as added): see the text to notes 3-13 supra.

15 Ibid art 3C (as added: see note 2 supra).

16 Dentists Act 1984 Sch 1 para 6(3). As to the Council's committees see PARA 395 post.

## **UPDATE**

### **392 Tenure and termination of office of members of the Council**

TEXT AND NOTES 1-15--SI 2002/1625 lapsed on repeal of enabling authority.

NOTE 10--1984 Act Sch 1 para 2A repealed: Health Act 2006 Sch 9.

TEXT AND NOTE 16--Now only the powers of any of the Council's committees may be exercised notwithstanding any vacancy: Dentists Act 1984 Sch 1 para 6(3) (amended by SI 2009/1182).

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### **393. Fees and expenses.**

The General Dental Council<sup>1</sup> has power to pay to its members such fees and travelling, subsistence or other allowances as it may determine<sup>2</sup>. The Council also has power to pay the members of any of its committees such allowances and expenses as the Council may determine<sup>3</sup>.

1 As to the General Dental Council and its membership see PARAS 389-392 ante.

2 Dentists Act 1984 s 1(3), Sch 1 para 6(2) (both amended by the Dentists Act 1984 (Amendment) Order 2001, SI 2001/3926, arts 2, 3(b), 4(1), (3)(a)). As to the powers of the General Dental Council generally see PARA 397 post.

3 Dentists Act 1984 Sch 1 para 6(2A) (added by the Dentists Act 1984 (Amendment) Order 2001, SI 2001/3926, arts 2, 7(1), (2)). As to the Council's committees see PARA 395 post.

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### **394. President.**

The members of the General Dental Council<sup>1</sup> must elect one of their number to be president of the Council<sup>2</sup>. The Council must make rules providing for the method by which the president is to be elected and for any matters concerning the holding of the office of president that it deems necessary<sup>3</sup>. No person may be elected as president more than once<sup>4</sup>.

1 As to the General Dental Council and its membership see PARAS 389-392 et seq ante.

2 Dentists Act 1984 s 1(3), Sch 1 para 4(1) (s 1(3) amended, and Sch 1 para 4 substituted, by the Dentists Act 1984 (Amendment) Order 2001, SI 2001/3926, arts 2, 3(b), 4(1), (2)).

3 Dentists Act 1984 Sch 1 para 4(2) (as substituted: see note 2 supra). Such rules may provide that the only persons eligible to be candidates are to be persons of a description specified in the rules: Sch 1 para 4(3) (as so substituted). The rules do not come into force until approved by order of the Privy Council: Sch 1 para 4(5) (as so substituted). Rules have been made, providing for the election of the first president of the Council after its reconstitution by s 1(2A) (as added) (see PARA 389 ante): see the General Dental Council (President of the Council) Rules Order of Council 2002, SI 2002/2464. As to the exercise by the Privy Council of its powers under the Dentists Act 1984 see PARA 388 ante. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

4 Ibid Sch 1 para 4(4) (as substituted: see note 2 supra).

### **UPDATE**

### **394 President**

TEXT AND NOTES--1984 Act Sch 1 para 4 repealed: SI 2009/1182. As to the constitution of the General Dental Council see PARA 389.

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### **395. Committees.**

The General Dental Council<sup>1</sup> has the following committees: the preliminary proceedings committee<sup>2</sup>, the dental auxiliaries committee<sup>3</sup>, the professional conduct committee<sup>4</sup>, the health committee<sup>5</sup>, and the continuing professional development committee<sup>6</sup>. These committees must be constituted as provided by order of the Privy Council<sup>7</sup>. Some or all of the members of the committees may be persons who are not members of the Council<sup>8</sup>.

1 As to the constitution and duties of the General Dental Council see PARA 389 ante.

2 See the Dentists Act 1984 s 2(1) (amended by the Dentists Act 1984 (Amendment) Order 2001, SI 2001/3926, arts 2, 5(2)(a)). As to the preliminary proceedings committee see PARA 457 et seq post.

3 See the Dentists Act 1984 s 2(1) (as amended: see note 2 supra). As to the dental auxiliaries committee see PARA 495 et seq post.

4 See ibid s 2(2). As to the professional conduct committee see PARA 460 et seq post. The professional conduct committee was formerly known as the disciplinary committee.

5 See ibid s 2(4) (s 2(4) amended, and s 2(4A), (6)-(8) added, by the Dentists Act 1984 (Amendment) Order 2001, SI 2001/3926, arts 2, 6(b)-(d)). As to the health committee see PARA 481 et seq post.

6 See the Dentists Act 1984 s 2(4A) (as added: see note 5 supra). As to the continuing professional development committee see PARA 444 post.

7 Ibid s 2(6) (as added: see note 5 supra). Such an order must be contained in a statutory instrument, and may contain such incidental, consequential, saving, transitional or supplementary provisions as appear to the Privy Council to be necessary or expedient: s 2(7) (as so added). As to the order that has been made see the General Dental Council (Constitution of Committees) Order of Council 2003, SI 2003/1081; and PARAS 444, 454, 460, 481 post. As to the exercise by the Privy Council of its powers under the Dentists Act 1984 see PARA 388 ante. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

8 Ibid s 2(8) (as added: see note 5 supra).

## **UPDATE**

### **395 Committees**

TEXT AND NOTES 1-6--Replaced. The General Dental Council has the following committees: the professional conduct committee, the health committee, the investigating committee, the professional performance committee, the interim orders committee, and the registration appeals committee: 1984 Act s 2(1), (2) (s 2(1)-(3) substituted by SI 2005/2011). In the 1984 Act 'practice committee' means the professional conduct committee, the health committee or the professional performance committee: s 2(3). The preliminary proceedings committee, the continuing professional development committee and the dental auxiliaries committee are abolished, as are the former professional conduct committee and the former health committee: SI 2005/2011. As to transitional, transitory and saving provisions, see art 50, Sch 7, and SI 2006/1671.

TEXT AND NOTES 7, 8--The committees must now be constituted as provided by rules contained in a statutory instrument: Dentists Act 1984 s 2(6) (s 2(6) amended; s 2(6A)

added by SI 2009/1182). Rules so made may provide for the functions of a committee to be exercised by one or more panels comprised of members of the committee and may make provision with regard to the constitution of the panels: Dentists Act 1984 s 2(6A). Dentists Act 1984 s 2(7), (8) repealed: SI 2009/1182. SI 2003/1081 revoked: SI 2006/1665. See now SI 2009/1813.



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### **396. Registrar and assistant registrar.**

The register is kept by a registrar<sup>1</sup> who performs such duties in connection with the register as the General Dental Council<sup>2</sup> may direct, and in the execution of his duties he must act on such evidence as in each case appears sufficient<sup>3</sup>. Any appointment to the office of registrar is made by the Council, and any person appointed holds office for such period and receives such salary as may be fixed by the Council<sup>4</sup>. The Council may also appoint a person to act as assistant registrar who is paid such salary or remuneration as it may from time to time determine<sup>5</sup>.

1 For the meaning of 'the registrar' see PARA 417 note 1 post. 'The registrar' means the person for the time being appointed under the Dentists Act 1984 s 14(3) (see the text and note 4 infra): s 53(1).

2 As to the constitution and duties of the General Dental Council see PARA 389 ante.

3 Dentists Act 1984 s 14(2). As to the keeping of the register and its custody see PARA 417 post.

4 Ibid s 14(3).

5 Ibid s 14(4).

### **UPDATE**

### **396 [Registrar]**

TEXT AND NOTES--Replaced.

The dentists register is kept by a registrar<sup>1</sup> appointed by the General Dental Council<sup>2</sup>. Any person appointed to the office of registrar holds the office for such period and receives such salary as may be fixed by the Council<sup>3</sup>. The registrar must perform such duties in connection with the register as the Council may direct, and in the execution of his duties he must act on such evidence as in each case appears to him sufficient<sup>4</sup>. The registrar may delegate, either generally or specifically, any of his functions to any of the Council's officers<sup>5</sup>.

1 As to the dentists register see PARA 417. 'The registrar' means the person for the time being appointed under the Dentists Act 1984 s 14(2) (see TEXT AND NOTE 2): s 53(1) (amended by the Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011). The register is to consist of the following lists: (1) the principal list, which is to contain particulars of persons who under the Dentists Act 1984 s 15 are entitled to be registered in the register; (2) the list of temporary registrants, which is to contain particulars of persons who under s 17 are directed to be registered in the register; and (3) the list of visiting dentists from relevant European states, which is to contain particulars of persons who under Sch 4 are entitled to be registered in the register: s 14(1A) (added by SI 2007/3101).

2 Dentists Act 1984 s 14(1), (2) (s 14 substituted by the Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011). As to the constitution and duties of the General Dental Council see PARA 389.

3 1984 Act s 14(3).

4 Ibid s 14(4).

5 Ibid s 14(5).



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## **(ii) Business and Functions**

### **397. General powers of the Council.**

The General Dental Council<sup>1</sup> has power to do anything which in its opinion is calculated to facilitate the proper discharge of its functions<sup>2</sup>. In particular, the Council has power to pay to its members such fees and travelling, subsistence or other allowances as it may determine<sup>3</sup>, and also to pay the members of any of its committees such allowances and expenses as it may determine<sup>4</sup>. The powers of the Council and of any of its committees may be exercised notwithstanding any vacancy<sup>5</sup>, and no proceedings of the Council or of any of its committees are invalidated by any defect in the appointment of a member<sup>6</sup>.

1 As to the constitution and duties of the General Dental Council see PARA 389 ante.

2 Dentists Act 1984 s 1(3) (amended by Dentists Act 1984 (Amendment) Order 2001, SI 2001/3926, arts 2, 3(b)); Dentists Act 1984 Sch 1 para 6(1). This power is expressed to be subject to the provisions of Sch 1 paras 7, 8: see PARAS 398-399 post.

3 Ibid Sch 1 para 6(2) (amended by the Dentists Act 1984 (Amendment) Order 2001, SI 2001/3926, arts 2, 4(1), (3)(a)). As to the membership of the General Dental Council see PARAS 389-393 ante.

4 Dentists Act 1984 Sch 1 para 6(2A) (added by the Dentists Act 1984 (Amendment) Order 2001, SI 2001/3926, arts 2, 7(1), (2)). As to the Council's committees see PARA 395 ante.

5 Dentists Act 1984 Sch 1 para 6(3).

6 Ibid Sch 1 para 6(4).

## **UPDATE**

### **397 General powers of the Council**

NOTES--Provision is made regarding the Council's duty to co-operate with other bodies (see PARA 397A), and the preparation of annual reports and accounts (see PARAS 397B, 397C). Provision has also been made for the establishment of a consumer complaints procedure (see PARA 397D), and for the appointment of legal, medical and professional advisers (see PARA 401A).

TEXT AND NOTES 5, 6--Now only the powers of any of the Council's committees may be exercised notwithstanding any vacancy and only proceedings of any of its committees are not invalidated by a defect in the appointment of a member: Dentists Act 1984 Sch 1 para 6(3), (4) (amended by SI 2009/1182).

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**397A. Duty to co-operate.**

In the exercise of its functions, the General Dental Council<sup>1</sup> must co-operate in so far as reasonably practicable with public authorities, and other bodies and persons, if they fall within the following categories<sup>2</sup>:

- 648 (1) they are concerned with the employment, whether or not under a contract of service, of registered dentists or registered dental care professionals<sup>3</sup>;
- 649 (2) they provide, assess or fund education or training for those who are, or seek to become, registered dentists or registered dental care professionals, or they propose to do so;
- 650 (3) they regulate services in the provision of which registered dentists or registered dental care professionals are engaged;
- 651 (4) they carry out activities in connection with the provision, supervision or management of national health services; or
- 652 (5) they are responsible for regulating or co-ordinating the regulation of health or social care professions not regulated under the 1984 Act<sup>4</sup>.

In carrying out its duty to co-operate under the above provisions, the Council must have regard to any differing considerations in relation to the practice of dentistry which apply in England, Scotland, Wales and Northern Ireland<sup>5</sup>.

1 As to the constitution and duties of the General Dental Council see PARA 389.

2 Dentists Act 1984 s 2A(1) (s 2A added by SI 2005/2011 and amended by SI 2009/1182).

3 For the meaning of 'registered dental care professional' see PARA 498A.2 NOTE 1.

4 1984 Act s 2A(2).

5 Ibid s 2A(3).

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### **397B. Annual reports, statistical reports and strategic plans.**

The General Dental Council<sup>1</sup> must publish, by a date in each year specified by the Privy Council, (1) a report on the exercise of its functions that includes a description of the arrangements that the Council has put in place to ensure that it adheres to good practice in relation to equality and diversity<sup>2</sup>; (2) a statistical report which indicates the efficiency and effectiveness of, and which includes a description of, the arrangements that the Council has put in place to protect members of the public from persons who are registered dentists or registered dental care professionals and whose fitness to practise is impaired, together with the Council's observations on the report; and (3) a strategic plan for the Council in respect of a number of years to be determined by the Council<sup>3</sup>.

The General Dental Council must submit copies of the reports and the plan so published to the Privy Council and the Privy Council must lay copies of the reports and the plan before each House of Parliament<sup>4</sup>.

1 As to the constitution and duties of the General Dental Council see PARA 389.

2 'Equality' and 'diversity' have the meanings given in the Equality Act 2006 s 8(2): see DISCRIMINATION vol 13 (2007 Reissue) PARA 316.

3 Dentists Act 1984 s 2B(1)(a), (b), (c) (s 2B added by SI 2005/2011 and substituted by SI 2009/1182).

4 Dentists Act 1984 s 2B(2).

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### **397C. Accounts.**

The General Dental Council<sup>1</sup> must keep accounts, and prepare a statement of accounts in respect of each calendar year, in such form as the Privy Council may determine in writing<sup>2</sup>. The General Dental Council must appoint an auditor to audit each statement of accounts prepared in accordance with the above provision, and the auditor must prepare a report on each statement of accounts<sup>3</sup>.

The Council must, as soon as reasonably practicable after the end of each calendar year, publish the statement of accounts for that year, together with the auditor's report on it, and send a copy of the statement of accounts and the report to the Privy Council and the Comptroller and Auditor General<sup>4</sup>. The Comptroller and Auditor General must examine, certify and report on each statement of accounts so received and for these purposes may inspect accounts kept by the Council<sup>5</sup>. The Comptroller and Auditor General must send a copy of each report prepared by him under the above provision to the Council and the Privy Council<sup>6</sup>.

The Privy Council must, as soon as reasonably practicable after the end of each calendar year, lay before each House of Parliament a copy of (1) the statement of accounts for that year as certified by the Comptroller and Auditor General; (2) the auditor's report for that year; and (3) the report of the Comptroller and Auditor General for that year<sup>7</sup>.

1 As to the constitution and duties of the General Dental Council see PARA 389.

2 Dentists Act 1984 s 2C(1) (s 2C added by SI 2005/2011 and amended by SI 2008/948; SI 2009/1182).

3 1984 Act s 2C(2) (as added: see NOTE 2). The auditor appointed must be eligible for appointment as a statutory auditor under the Companies Act 2006 Pt 42 (ss 1209-1264): 1984 Act s 2C(3).

4 1984 Act s 2C(4).

5 Ibid s 2C(5).

6 Ibid s 2C(6).

7 Ibid s 2C(7).

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### **397D. Complaints.**

The General Dental Council<sup>1</sup> may incur expenditure for the purposes of investigating and resolving dental complaints<sup>2</sup>. The Council may also incur expenditure for the purposes of assisting the parties to the dental complaint in reaching a satisfactory resolution of that complaint<sup>3</sup>.

1 As to the constitution and duties of the General Dental Council see PARA 389.

2 Dentists Act 1984 s 2D(1) (s 2D added by SI 2005/2011). For these purposes 'dental complaints' means complaints made by users of the services of registered dentists or the services of registered dental care professionals about (1) the dental services provided by a registered dentist, a registered dental care professional or a body corporate carrying on the business of dentistry; or (2) the goods or materials provided to persons, or the facilities provided for persons, using those dental services: 1984 Act s 2D(2). For the meaning of 'registered dental care professional' see PARA 498A.2 NOTE 1.

3 Ibid s 2D(3).

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**397E. Registration of members' private interests.**

The General Dental Council<sup>1</sup> must establish and maintain a system for the declaration and registration of private interests of its members<sup>2</sup>. The Council must publish entries recorded in the register of members' private interests<sup>3</sup>.

1 As to the constitution and duties of the General Dental Council see PARA 389.

2 Dentists Act 1984 s 2E(1) (s 2E added by SI 2009/1182).

3 Dentists Act 1984 s 2E(2).



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### **398. Application of money.**

The General Dental Council<sup>1</sup> may, after paying its expenses including authorised payments to its members and to the members of its committees and the salaries or remuneration of its officers<sup>2</sup>, allocate any money received by it, whether by way of fees or otherwise, to purposes connected with dental education and research or any other public purposes connected with the profession of dentistry in such manner as it thinks fit<sup>3</sup>. The Council must keep accounts of all sums received or paid by it under the Dentists Act 1984, and the accounts must be audited in the manner prescribed by regulations made by the Privy Council<sup>4</sup>, and must be published annually and laid before Parliament<sup>5</sup>.

1 As to the constitution and duties of the General Dental Council see PARA 389 ante.

2 As to such payments see PARAS 393, 396 ante. As to the Council's committees see PARA 395 ante.

3 Dentists Act 1984 s 1(3), Sch 1 para 7(1) (both amended by Dentists Act 1984 (Amendment) Order 2001, SI 2001/3926, arts 2, 3(b), 7(1), (3)).

4 Such regulations are not made by statutory instrument and are not recorded in this work. As to the exercise by the Privy Council of its powers under the Dentists Act 1984 see PARA 388 ante. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

5 Ibid Sch 1 para 7(2). As to the laying of documents before Parliament see PARLIAMENT vol 34 (Reissue) PARA 941.

## **UPDATE**

### **398 Application of money**

TEXT AND NOTES--The Council may also allocate any of its income to purposes connected with education or research in relation to professions complementary to dentistry or any other public purpose connected with those professions: see the 1984 Act Sch 1 para 7 (substituted by the Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011).

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### **399. Procedure and delegation of functions.**

The General Dental Council<sup>1</sup> may make rules<sup>2</sup>: (1) for regulating its proceedings, including quorum<sup>3</sup>; (2) for delegating its functions to committees<sup>4</sup>; and (3) for appointing the members and regulating the proceedings, including quorum, of any committees<sup>5</sup> and any sub-committees<sup>6</sup>. This power includes power to make rules as to the procedure to be followed and rules of evidence to be observed in proceedings before the professional conduct committee<sup>7</sup>; but such rules do not come into force until approved by order of the Privy Council contained in a statutory instrument, and before making any such rules the General Dental Council must consult such bodies of persons representing dentists as appear to it requisite to be consulted<sup>8</sup>.

1 As to the constitution and duties of the General Dental Council see PARA 389 ante.

2 Such rules are not made by statutory instrument and are not recorded in this work. Nothing in the Dentists Act 1984 Sch 1 para 8 authorises the Council to delegate any power of making rules or regulations under any other provision of the Dentists Act 1984: s 1(3) (amended by the Dentists Act 1984 (Amendment) Order 2001, SI 2001/3926, arts 2, 3(b)); Dentists Act 1984 Sch 1 para 8(4).

3 Ibid Sch 1 para 8(1)(a).

4 Ie including the committees referred to in ibid s 2 (see PARA 395 ante): Sch 1 para 8(1)(b) (Sch 1 para 8(1)(b), (c) amended by the Dentists Act 1984 (Amendment) Order 2001, SI 2001/3926, arts 2, 7(1), (4)(a)). This provision is expressed to be subject to the provisions of the Dentists Act 1984.

5 Ie including the committees referred to in ibid s 2: see PARA 395 ante. Rules which include provision for appointing the members of the committees mentioned in s 2 do not come into force until approved by order of the Privy Council: Sch 1 para 8(2) (Sch 1 para 8(2) substituted, and Sch 1 para 8(2A) added, by the Dentists Act 1984 (Amendment) Order 2001, SI 2001/3926, arts 2, 7(1), (4)(b), (c)). Some or all of the members of committees of the Council may be persons who are not members of the Council: Dentists Act 1984 Sch 1 para 8(2A) (as so added). As to the exercise by the Privy Council of its powers under the Dentists Act 1984 see PARA 388 ante. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

6 Ibid Sch 1 para 8(1)(c) (as amended: see note 4 supra). This provision is expressed to be subject to the provisions of the Dentists Act 1984.

7 Ie other than proceedings under ibid s 27: see PARA 456 post. As to the professional conduct committee see PARA 460 et seq post.

8 Ibid Sch 1 para 8(3). It is submitted that, although expressed to be made only under Sch 3 para 2(4), the General Dental Council Professional Conduct Committee (Procedure) Rules Order of Council 1984, SI 1984/1517 (see PARA 465 et seq post) was made partly under the Dentists Act 1984 Sch 1 para 8(3).

## **UPDATE**

### **399 Procedure and delegation of functions**

TEXT AND NOTES--1984 Act Sch 1 para 8(1) amended, Sch 1 para 8(1A) added; Sch 1 para 8(2), (3) repealed by SI 2005/2011. As to the making of rules under the 1984 Act see PARA 390. The Privy Council is not required to approve of rules by statutory instrument made under Sch 1 para 8(1)(a), (b): s 50C(2) (s 50C added by SI 2005/2011). See the General Dental Council (Constitution of Committees) Rules 2009, approved by the General Dental Council (Constitution of Committees) Rules Order of Council 2009, SI 2009/1813.

Subject to any provision made by the Dentists Act 1984 or by rules under the 1984 Act, the General Dental Council may regulate its procedures and the procedures of its committees and sub-committees, other than the committees referred to in the Dentists Act 1984 s 2, by standing orders: Dentists Act 1984 Sch 1 para 8A(1) (Sch 1 para 8A added by SI 2009/1182). Standing orders of the Council may make provision with regard to the provisional suspension of a member of the Council from office, pending the taking of a decision about the suspension or removal from office of the member in accordance with the provisions of an order under the Dentists Act 1984 s 1(2A): Dentists Act 1984 Sch 1 para 8A(2). Subject to any provision made by the Dentists Act 1984, by rules under the 1984 Act, or by standing orders made by virtue of the above provision, each committee and sub-committee of the Council may regulate its own procedures: Dentists Act 1984 Sch 1 para 8A(3).

TEXT AND NOTE 3--1984 Act Sch 1 para 8(1)(a) repealed: SI 2009/1182.

TEXT AND NOTE 6--Rules made under the Dentists Act 1984 Sch 1 para 8(1)(c) may make provision for a body (including a committee of the General Dental Council which is not one of the committees referred to in the Dentists Act 1984 s 2) to assist the Council in connection with the exercise of any function relating to the appointment of members or particular members of the Council's committees: Dentists Act 1984 Sch 1 para 8(1B) (Sch 1 para 8(1B), (1C) added by SI 2009/1182). Rules made under Sch 1 para 8(1)(c) by virtue of this provision may authorise a body to appoint committee members on behalf of the Council or to perform any function relating to tenure of office or suspension or removal from office: Dentists Act 1984 Sch 1 para 8(1C)(a), (b).

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**400. Proof of documents.**

Prima facie evidence of any document issued by the General Dental Council<sup>1</sup> may be given in all legal proceedings by the production of a copy or extract purporting to be certified to be a true copy or extract by the registrar<sup>2</sup> or some other officer of the Council authorised to give a certificate<sup>3</sup>. No proof is required of the handwriting or official position or authority of any person so certifying<sup>4</sup>.

1 As to the constitution and duties of the General Dental Council see PARA 389 ante.

2 For the meaning of 'the registrar' see PARA 396 note 1 ante.

3 Dentists Act 1984 s 52(2). As to the evidential effect of certificates admissible by statute see CIVIL PROCEDURE VOL 11 (2009) PARA 897.

4 Ibid s 52(3).

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#### **401. Visitors at dental schools.**

The General Dental Council<sup>1</sup> may appoint persons to visit, subject to any directions which the Privy Council<sup>2</sup> deems it expedient to give, and to compliance with any conditions specified in those directions, places where instruction is given to dental students under the direction of a dental authority<sup>3</sup> or to post-graduate students in dentistry under the direction of a dental authority or any other body<sup>4</sup>. Such visitors must report to the General Dental Council as to the sufficiency of the instruction given in the places they visit, and as to any other matters relating to the instruction which may be specified by the Council either generally or in any particular case; but no visitor may interfere with the giving of any instruction<sup>5</sup>. On the receipt of a visitor's report, the Council must send a copy to the dental authority or other body under whose direction the instruction in question was given<sup>6</sup>. On receiving the copy, the authority or body may, within such period as the Council may have specified at the time it sent the copy of the report<sup>7</sup>, make to the Council observations on the report or objections to it<sup>8</sup>. As soon as possible after the expiration of the specified period, the Council must send to the Privy Council a copy of the report and of any observations or objections duly made, together with its comments on the report and any such observations or objections<sup>9</sup>.

1 As to the constitution and duties of the General Dental Council see PARA 389 ante.

2 As to the exercise by the Privy Council of its powers under the Dentists Act 1984 see PARA 388 ante. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

3 Ibid s 9(1)(a). For the meaning of 'dental authority' see PARA 421 note 3 post.

4 Ibid s 9(1)(b). The Council may remunerate persons who are not members of the Council for acting as visitors: see s 9(5). As to remuneration of members of the Council see PARA 393 ante. As to dental education see PARAS 421-426 post.

5 Ibid s 9(2).

6 Ibid s 9(3).

7 The period must not be less than one month: ibid s 9(3). For the meaning of 'month' see PARA 13 note 14 ante.

8 Ibid s 9(3).

9 Ibid s 9(4).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(2) THE GENERAL DENTAL COUNCIL/ (ii) Business and Functions/401A. Advisers.

#### **401A. Advisers.**

The General Dental Council<sup>1</sup> must appoint persons to be legal advisers<sup>2</sup>, may appoint registered medical practitioners<sup>3</sup> to be medical advisers<sup>4</sup>, and may appoint persons registered in either the dentists register<sup>5</sup> or the dental care professionals register<sup>6</sup> to be professional advisers<sup>7</sup>. Advisers have the general function of giving advice to (1) the registrar<sup>8</sup>; (2) the Council; (3) the investigating committee; (4) the professional conduct committee; (5) the professional performance committee; (6) the interim orders committee; (7) the health committee; and (8) the registration appeals committee<sup>9</sup>. Legal advisors must give advice on questions of law arising in connection with any matter under consideration by a person or body listed in heads (1)-(8) above<sup>10</sup>, and medical and professional advisors must give advice on matters within their professional competence arising in connection with any matter under consideration by such a person or body<sup>11</sup>. Advisers have such other functions as may be conferred on them by rules<sup>12</sup>. The Council may pay such fees, allowances or expenses to persons appointed as advisers as it may determine<sup>13</sup>.

1 As to the General Dental Council see PARA 389.

2 Dentists Act 1984 Sch 4C para 1(1) (Sch 4C added by SI 2005/2011). To be qualified for appointment as a legal adviser, a person must have a ten year general qualification within the meaning of the Courts and Legal Services Act 1990 s 71 (see LEGAL PROFESSIONS vol 65 (2008) PARA 742), be an advocate or solicitor in Scotland of at least ten years' standing or be a member of the Bar of Northern Ireland or solicitor of the Court of Judicature of Northern Ireland of at least ten years' standing: 1984 Act Sch 4C para 1(5); amended by Constitutional Reform Act 2005 Sch 11 para 5.

3 For the meaning of 'registered medical practitioner' see PARA 4.

4 1984 Act Sch 4C para 2(1).

5 As to the dentists register see PARA 417 et seq.

6 As to the dental care professionals register see PARA 498B.1.

7 1984 Act Sch 4C para 3(1).

8 For the meaning of 'the registrar' see PARA 396 NOTE 1.

9 1984 Act Sch 4C paras 1(2), 2(2), 3(2). No person who has been appointed as the registrar or appointed to the Council or a committee listed in heads (3)-(8) in the text may be appointed a legal adviser, a medical advisor or a professional adviser: Sch 4C paras 1(3), 2(3), 3(3). As to the committees of the General Dental Council see PARA 395.

10 Ibid Sch 4C para 1(2).

11 Ibid Sch 4C paras 2(2), 3(2).

12 Ibid Sch 4C paras 1(4), 2(4), 3(4). In particular provision may be made relating to legal advisers in relation to any proceedings (1) requiring a legal adviser, when advising the Council or any of its committees, to do so in the presence of every party, or person representing a party, to the proceedings who appears at the proceedings, or, where advice is given in private, requiring every such party or person to be notified of the advice given by a legal adviser; or (2) requiring every party, or person representing a party, to the proceedings to be notified in any case where a legal adviser's advice is not accepted by the person or body in receipt of the advice: Sch 4C paras 1(4). As to the making of rules under the 1984 Act see PARA 390. As to the rules that have been made see the General Dental Council have made the General Dental Council (Fitness to Practise) Rules

2006, rr 62-64, approved by the General Dental Council (Fitness to Practise) Rules Order of Council 2006, SI 2006/1663 (see PARA 456).

A notification under the 1984 Act which is required to be served on or sent to any person may be served by delivering it to that person personally, leaving it at that person's proper address, sending it by a registered post service, or sending it by a postal service which provides for the delivery of the notification by post to be recorded: s 50A(1), (9) (s 50A added by SI 2005/2011). Rules may provide for a notification which is required to be served on any person under the 1984 Act to be served by an electronic communication: see s 50A(6)-(8). As to references to service by post see PARA 20 NOTE 22.

13 Ibid Sch 4C paras 1(6), 2(5), 3(5).

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### **(iii) External Regulation of the Profession**

#### **402. External regulation of the profession.**

The General Dental Council<sup>1</sup> is subject to the oversight of the Council for the Regulation of Health Care Professionals<sup>2</sup> and must in the exercise of its functions co-operate with that Council<sup>3</sup>. Where it considers that the decision is unduly lenient, or that it should not have been made, and that it would be desirable for the protection of members of the public<sup>4</sup>, the Council for the Regulation of Health Care Professionals has powers to refer to the High Court a determination by the professional conduct committee<sup>5</sup> of the General Dental Council relating to the erasure or suspension of registration for crime or misconduct<sup>6</sup>, and a decision of the General Dental Council, or one of its committees or officers, to restore a person to the register following his removal from it<sup>7</sup>.

Her Majesty may by Order in Council<sup>8</sup> make provision modifying the regulation of the dental profession<sup>9</sup> so far as appears to be necessary or expedient for the purpose of securing or improving the regulation of the profession or the services which the profession provides or to which it contributes<sup>10</sup>, and modifying, as respects the General Dental Council, the range of functions of that body in relation to which the Council for the Regulation of Health Care Professionals performs its functions<sup>11</sup>.

The provisions of the Competition Act 1998 prohibiting agreements which have as their object the prevention, restriction or distortion of competition within the United Kingdom apply to rules made by professional bodies<sup>12</sup>.

1 As to the constitution and duties of the General Dental Council see PARA 389 ante.

2 See the National Health Service Reform and Health Care Professions Act 2002 s 25(3)(b); and PARA 294 note 8 ante. As to the Council for the Regulation of Health Care Professionals, its duties and powers see PARA 294 et seq ante.

3 See *ibid* s 27(1); and PARA 304 ante. As to the power of the Council for the Regulation of Health Care Professionals to give directions requiring the General Dental Council to make rules where it considers that it would be desirable to do so for the protection of members of the public see PARA 304 ante. As to the power of the Secretary of State to make provision in regulations about the investigation by the Council for the Regulation of Health Care Professionals of complaints made to it about the way in which the General Dental Council has exercised any of its functions see PARA 305 ante. As to the Secretary of State see PARA 5 ante.

4 See *ibid* s 29; and PARA 306 ante.

5 I.e a determination under the Dentists Act 1984 s 27: see PARAS 456, 461 post. As to the professional conduct committee see PARA 460 post.

6 See the National Health Service Reform and Health Care Professions Act 2002 s 29(1)(e).

7 I.e a decision of the General Dental Council, or one of its committees or officers, to restore a person to the register following his removal from it in accordance with the Dentists Act 1984 s 27 (see the text to notes 5, 6 *supra*): see the National Health Service Reform and Health Care Professions Act 2002 s 29(2)(c); and PARA 306 ante.

8 As to Orders in Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 907.

9 I.e the profession regulated by the Dentists Act 1984.



10 See the Health Act 1999 s 60(1)(a), (2); and PARA 291 ante.

11 See *ibid* s 60(1)(e) (as added); and PARA 291 ante. As to the scope of such orders and the procedure for making them see PARAS 292-293 ante.

12 See the Competition Act 1998 Ch 1 (ss 1-11); and COMPETITION vol 18 (2009) PARA 116 et seq.

## **UPDATE**

### **402 External regulation of the profession**

TEXT AND NOTES--Council for the Regulation of Health Care Professionals renamed Council for Healthcare Regulatory Excellence: Health and Social Care Act 2008 s 113(1).

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### **(3) THE PRACTICE OF DENTISTRY**

#### **(i) In general**

#### **403. The meaning of the practice of dentistry.**

The practice of dentistry is deemed to include the performance of any such operation<sup>1</sup> and the giving of any such treatment, advice or attendance<sup>2</sup> as is usually performed or given by dentists, and any person who performs any operation or gives any treatment, advice or attendance on or to any person as preparatory to, or for the purpose of, or in connection with, the fitting, insertion or fixing of dentures, artificial teeth or other dental appliances is deemed to have practised dentistry<sup>3</sup>.

Dental work is not treated as amounting to the practice of dentistry if it is undertaken under the direct personal supervision of a registered dentist<sup>4</sup>:

- 653 (1) by a person recognised by a dental authority<sup>5</sup> as a student of dentistry, or by a person recognised by a medical authority<sup>6</sup> as a medical student, as part of a course of instruction approved by that authority for students of that kind, or as part of an examination so approved<sup>7</sup>; or
- 654 (2) by any person as part of a course of instruction which he is following in order to qualify for membership of a class of dental auxiliaries or as part of examinations which must be passed in order to qualify for membership of a class of dental auxiliaries<sup>8</sup>,

but, subject to that, a person who undertakes dental work in the course of his studies, whether or not under the supervision of a registered dentist, is treated as practising dentistry if he would have been treated as practising dentistry if he had undertaken that work in the course of earning his livelihood<sup>9</sup>.

1 'Operation' means an operation in a surgical sense on the mouth of the patient: *Hennan & Co Ltd v Duckworth* [1904-1907] All ER Rep 862, (1904) 90 LT 546.

2 'Treatment, advice or attendance' includes taking an impression of the mouth for the purpose of repairing a denture: *Almy v Thomas* [1953] 2 All ER 1050, [1953] 1 WLR 1296, DC. It does not include the mere alteration of an existing denture unconnected with the fitting to the mouth itself: *Twyford v Puntschart* [1947] 1 All ER 773, DC.

3 Dentists Act 1984 s 37(1). References to 'the practice of dentistry' are to be construed in accordance with s 37: s 53(2).

4 For the meaning of 'registered dentist' see PARA 417 note 6 post.

5 For the meaning of 'dental authority' see PARA 421 note 3 post.

6 'Medical authority' means one of the universities or other bodies listed in the Medical Act 1983 s 4(2) (see PARA 94 ante) which is entitled to hold qualifying examinations for the purpose of granting one or more primary United Kingdom medical qualifications: Dentists Act 1984 s 37(3) (substituted by the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, art 16(1), Sch 1 Pt I para 11). For the meaning of 'primary United Kingdom qualification' see PARA 93 ante.

- 7 Dentists Act 1984 s 37(2)(a). As to dental education see PARA 421 et seq post.
- 8 Ibid s 37(2)(b). As to dental auxiliaries see PARA 486 et seq post. As to exemptions enabling dental auxiliaries to practise dentistry see PARA 487 post.
- 9 Ibid s 37(2).

## UPDATE

### 403 The meaning of the practice of dentistry

TEXT AND NOTES 1-3--The practice of dentistry is deemed not to include the performance of any medical task by a person who is qualified to carry out such a task and is a member of a profession regulated by a regulatory body, other than the General Dental Council, listed in the National Health Service Reform and Health Care Professions Act 2002 s 25(3): 1984 Act s 37(1A) (added by SI 2005/2011).

TEXT AND NOTES 4-9--1984 Act s 37(2) now s 37(2), (2A), (2B) (substituted by SI 2005/2011). Dental work is not be treated for the purposes of the 1984 Act as amounting to the practice of dentistry if it is undertaken under the direct personal supervision of a registered dentist or a registered dental care professional of a kind authorised in rules under s 37 to carry out such supervision, where that dental work is undertaken (1) by a person recognised by a dental authority as a student of dentistry or by a medical authority as a medical student and as part of a course of instruction or training approved by that authority for students of that kind or as part of an examination so approved; or (2) by a person as part of a course of instruction or training which he is following in order to qualify for registration in the dental care professionals register under a particular title or titles, or as part of an examination which he must pass in order to satisfy the requirements for registration in that register under a particular title or titles: s 37(2), (2A), (2B). For the meaning of 'registered dental care professional' see PARA 498A.2 NOTE 1. As to the dental care professionals register see PARA 498B.1. As to the making of rules under the 1984 Act see PARA 390. See also the General Dental Council (Professions Complementary to Dentistry) (Qualifications and Supervision of Dental Work) Rules 2006, approved by the General Dental Council (Professions Complementary to Dentistry) (Qualifications and Supervision of Dental Work) Rules Order of Council 2006, SI 2006/1669.

NOTE 6--Dentists Act 1984 s 37(3) amended: SI 2008/1774.

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## **(ii) The Right to Practise; Prohibition of Unqualified Practitioners**

### **A. INDIVIDUALS**

#### **404. Prohibition of practice by unqualified persons.**

A person who is not a registered dentist<sup>1</sup>, a visiting EEA practitioner entered in the list of such practitioners<sup>2</sup>, or a registered medical practitioner<sup>3</sup> must not practise or hold himself out, whether directly or by implication, as practising or as being prepared to practise dentistry<sup>4</sup>. Any person who acts in contravention of this provision is liable on summary conviction to a fine<sup>5</sup>.

1 For the meaning of 'registered dentist' see PARA 417 note 6 post.

2 For the meaning of 'visiting EEA practitioner entered in the list of such practitioners' see PARA 431 post.

3 For the meaning of 'registered medical practitioner' see PARA 4 ante.

4 Dentists Act 1984 s 38(1) (amended by the Dental Qualifications (Recognition) Regulations 1996, SI 1996/1496, reg 6(3)). For the meaning of 'the practice of dentistry' see PARA 403 ante.

5 Dentists Act 1984 s 38(2). The penalty is a fine not exceeding level 5 on the standard scale: see s 38(2). As to the standard scale see PARA 185 note 11 ante.

Summary proceedings for such an offence may be brought within the period of six months beginning with the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to his knowledge; but no such proceedings may be brought more than two years after the commission of the offence: s 38(3). For these purposes, a certificate signed by or on behalf of the prosecutor and stating the date on which the evidence came to his knowledge is conclusive evidence of that date, and any certificate purporting to be so signed must be taken to have been so signed unless the contrary is proved: s 38(4). As to the evidential effect of certificates admissible by statute see CIVIL PROCEDURE vol 11 (2009) PARA 897.

### **UPDATE**

#### **404 Prohibition of practice by unqualified persons**

TEXT AND NOTES 2, 3--For 'a visiting EEA practitioner entered in the list of such practitioners, or a registered medical practitioner' read 'or a registered dental care professional': 1984 Act s 38(1) (amended SI 2005/2011, SI 2007/3101). For the meaning of 'registered dental care professional' see PARA 498A.2.

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#### **405. The business of dentistry and restrictions on carrying on such business.**

An individual who is not a registered dentist<sup>1</sup> or a registered medical practitioner<sup>2</sup> may not carry on the business of dentistry<sup>3</sup> unless he was so engaged on 21 July 1955<sup>4</sup>. This exemption does not extend to any person who has at any time ceased to be a registered dentist in consequence of his name being erased from the register, or his registration in it being suspended by the professional conduct committee, for crime or misconduct<sup>5</sup>. An individual who contravenes this provision is liable on summary conviction to a fine<sup>6</sup>.

For the purposes of the Dentists Act 1984, a person is treated as carrying on the business of dentistry if, and only if, he or a partnership of which he is a member receives payment for services rendered in the course of the practice of dentistry<sup>7</sup> by him or by a partner of his, or by an employee of his or of all or any of his partners<sup>8</sup>. However, the receipt of payments by: (1) an authority providing national health services<sup>9</sup>; (2) a person providing primary dental services<sup>10</sup>; (3) a person, other than one falling within head (2) above, providing personal dental services<sup>11</sup>; (4) a person providing dental treatment for his employees without a view to profit<sup>12</sup>; or (5) a person providing dental treatment without a view to profit under conditions approved by the Secretary of State<sup>13</sup>, do not constitute the carrying on of the business of dentistry<sup>14</sup>.

1 For the meaning of 'registered dentist' see PARA 417 note 6 post.

2 For the meaning of 'registered medical practitioner' see PARA 4 ante.

3 For the meaning of 'the business of dentistry' see the text to notes 7-14 infra.

4 Dentists Act 1984 s 41(1). There are four exceptions to this restriction: (1) where a registered dentist or a registered medical practitioner who died on or after 4 July 1956 was at his death carrying on a business or practice constituting the business of dentistry, his personal representatives, or his widow, or any of his children, or trustees on behalf of his widow or children, may carry on the business of dentistry in continuance of that business or practice during the three years beginning with his death (s 41(4)); (2) where a registered dentist or a registered medical practitioner died before that date and was at that time carrying on such a business or practice, his widow, or trustees on her behalf, may continue to carry on that business or practice at any time during her life (s 41(5)); (3) where a registered dentist or registered medical practitioner becomes bankrupt at a time when he is carrying on a business or practice constituting the business of dentistry, his trustee in bankruptcy may carry on the business of dentistry in continuance of that business or practice during the three years beginning with the bankruptcy (s 41(6)); (4) a person whose registration in the dentists register has been suspended by a direction under Pt III (ss 14-36) or an order under s 30(3)(b) or s 32 (see PARAS 459, 484 post), may carry on the business of dentistry during the period of suspension, and heads (1) and (3) supra apply in relation to such a person (s 41(3)). As to personal representatives see EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARA 1 et seq. As to bankruptcy see BANKRUPTCY AND INDIVIDUAL INSOLVENCY.

5 Ibid s 41(2). As to crime and misconduct, and the professional conduct committee, see PARAS 456, 461 post.

6 Ibid s 41(1). The penalty is a fine not exceeding level 5 on the standard scale: see s 41(1). As to the standard scale see PARA 185 note 11 ante.

7 For the meaning of 'the practice of dentistry' see PARA 403 ante.

8 Dentists Act 1984 s 40(1). As to partnership see PARTNERSHIP.

9 Ibid s 40(2)(a). References to 'the provision of national health services' are references to the provision of services under the National Health Service Act 1977 ss 2, 3, 5(1)(a), 28C (as added), Sch 1 and services at

health centres provided under ss 2, 3, 36: Dentists Act 1984 s 53(3) (amended by the National Health Service (Primary Care) Act 1997 s 41(10), Sch 2 para 62). See further HEALTH SERVICES vol 54 (2008) PARA 277 et seq.

10 le under the National Health Service Act 1977 s 28C (as added) or under a contract under s 28K (as added) (see HEALTH SERVICES vol 54 (2008) PARA 277 et seq): Dentists Act 1984 s 40(2)(aa) (prospectively added by the Health and Social Care (Community Health and Standards) Act 2003 s 184, Sch 11 para 50). At the date at which this volume states the law no day had been appointed for the commencement of this provision.

11 le under the National Health Service Act 1977 s 28C (as added): Dentists Act 1984 s 40(2)(ab) (added by Dentists Act 1984 (Amendment) Order 1998, SI 1998/1546, art 2). As from a day to be appointed, this provision is repealed by the Health and Social Care (Community Health and Standards) Act 2003 s 196, Sch 14 Pt 4. At the date at which this volume states the law no such day had been appointed).

12 Dentists Act 1984 s 40(2)(b). As to what constitutes profit see *Gallard v Gallard* [1896] 1 QB 68, [1895-9] All ER Rep 1002, CA; *Performing Right Society Ltd v Bray UDC* [1930] AC 377, 99 LJPC 116.

13 Dentists Act 1984 s 40(2)(c). See also note 12 supra. As to the Secretary of State see PARA 5 ante.

14 Ibid s 40(2).

## UPDATE

### 405 The business of dentistry and restrictions on carrying on such business

TEXT AND NOTE 2--For 'a registered medical practitioner' read 'who does not fall within a class of registered dental care professionals prescribed in rules': Dentists Act 1984 s 41(1) (substituted by SI 2005/2011). Clinical dental technicians, dental hygienists, dental nurses, dental technicians, dental therapists and orthodontic therapists have been so prescribed: General Dental Council (Professions Complementary to Dentistry) (Business of Dentistry) Rules 2006, approved by the General Dental Council (Professions Complementary to Dentistry) (Business of Dentistry) Rules Order of Council 2006, SI 2006/1670. Rules made under the 1984 Act s 41(1) may not be amended or revoked in such a way that any class of registered dental care professionals prescribed in those rules ceases thereafter to be prescribed: s 41(7) (added by SI 2005/2011). As to the making of rules under the 1984 Act see PARA 390. For the meaning of 'registered dental care professional' see PARA 498A.2 NOTE 1.

NOTE 4--References to his widow are now to his surviving spouse or his surviving civil partner: 1984 Act s 41(4) (amended by the Civil Partnership Act 2004 Sch 27 para 89). In heads (1) and (3) for 'registered medical practitioner' read 'authorised dental care professional'; in head (2) words 'or a registered medical practitioner' omitted: 1984 Act s 41(4)-(6) (amended by SI 2005/2011). 'Authorised dental care professional' means an individual who falls within a class of registered dental care professionals prescribed in rules under the 1984 Act s 41: see 41(1A) (added by SI 2005/2011). As to head (4), see now the 1984 Act s 41(3) (substituted by SI 2005/2011).

TEXT AND NOTE 5--See now the 1984 Act s 41(2), (2A) (s 41(2) substituted, s 41(2A) added by SI 2005/2011; and amended by SI 2009/1182) (in force on the coming into force of the Safeguarding Vulnerable Groups Act 2006 s 44(1) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 704)).

TEXT AND NOTE 6--As regards the penalty, 1984 Act s 41(1) now s 41(1A) (added by SI 2005/2011).

NOTE 9--1984 Act s 53(3) further amended: National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 81, 82; SI 2009/1182. References are now to the provision, supervision or management of national health services: s 53(3).

NOTE 10--1984 Act s 40(2)(aa) amended: National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 81, 82.



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## ***B. BODIES CORPORATE***

### **406. Restriction on the practice of dentistry by corporations.**

A body corporate may only carry on the business of dentistry<sup>1</sup> if: (1) it was carrying it on on 21 July 1955<sup>2</sup>; and (2) it carries on no business other than dentistry or some business ancillary to the business of dentistry<sup>3</sup>; and (3) a majority of its directors are registered dentists<sup>4</sup>; and (4) all its operating staff are either registered dentists or dental auxiliaries<sup>5</sup>. If a body corporate which is exempted by satisfying these conditions ceases to carry on the business of dentistry, the exemption does not extend to that body on any subsequent occasion when it carries on the business of dentistry<sup>6</sup>.

It is unlawful for a body corporate which is not exempted by virtue of satisfying these conditions to carry on the business of dentistry<sup>7</sup>, and a body contravening this provision is liable on summary conviction to a fine<sup>8</sup>.

Where a body corporate is convicted of this offence, every director and manager of it is guilty of the like offence unless he proves that the offence was committed without his knowledge<sup>9</sup>.

1 For the meaning of 'the business of dentistry' see PARA 405 ante.

2 Dentists Act 1984 s 43(1)(a). This provision does not apply to a society registered under the Industrial and Provident Societies Act 1965 (see FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARAS 2394, 2410 et seq) (Dentists Act 1984 s 43(2)(a)), or to a body corporate coming into existence on the reconstruction of a body corporate carrying on business on 21 July 1955, or on the amalgamation of two or more such bodies (s 43(2)(b)). As to bodies corporate see COMPANIES; CORPORATIONS.

3 Ibid s 43(1)(b). This provision does not apply to a body corporate which was carrying on the business of dentistry before 28 July 1921 so as to prevent it from carrying on any business which it was at that date lawfully entitled to carry on: s 43(3). As to the meaning of 'business' for these purposes see COMPETITION vol 18 (2009) PARAS 370-372.

4 Ibid s 43(1)(c). For the meaning of 'registered dentist' see PARA 417 note 6 post.

5 Ibid s 43(1)(d). Nothing in s 43 prevents a body corporate from carrying on the business of dentistry on the death or bankruptcy of a registered dentist or a registered medical practitioner in the circumstances mentioned in s 41(4)-(6) (see PARA 405 note 4 ante): s 43(6). As to the withdrawal of exemption from bodies corporate see PARA 408 post. As to the requirement to file annual statements in relation to the business see PARA 407 post. As to dental auxiliaries see PARA 486 et seq post.

6 Ibid s 43(5).

7 Ibid s 42(1).

8 Ibid s 42(2). The penalty is a fine not exceeding level 3 on the standard scale: see s 42(2). As to the standard scale see PARA 185 note 11 ante. As to contravention by reason of failing to file annual statements relating to the business see PARA 407 post.

9 Ibid s 42(3).

## **UPDATE**

### **406 Restriction on the practice of dentistry by corporations**



TEXT AND NOTES--Replaced. Dentists Act 1984 s 42 repealed: SI 2005/2011. 1984 Act ss 43, 44 replaced by ss 43, 43A, 43B, 44, 44A, 44B (substituted by SI 2005/2011) (in force on a date to be notified in the London Gazette). A body corporate commits an offence if it carries on the business of dentistry at a time when a majority of its directors are not persons who are either registered dentists or registered dental care professionals: 1984 Act s 43(1). For the meaning of 'registered dental care professional' see PARA 498A.2 NOTE 1. Where a person is the subject of a decision erasing his name from, or suspending him from, a register kept by any of the regulatory bodies listed in the National Health Service Reform and Health Care Professions Act 2002 s 25(3), that person commits an offence if he is a director of a body corporate carrying on the business of dentistry at any time when such an erasure or suspension remains in effect: 1984 Act s 43(2). Any body corporate committing an offence under s 43(1), or any person committing an offence under s 43(2), is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 43(3).

The General Dental Council must maintain a list of bodies corporate which carry out the business of dentistry: see s 43A. A body corporate is liable to a financial penalty if it fails to comply with a specified requirement, and may appeal against such a penalty: see 1984 Act ss 43B, 44, 44A, 44B.

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#### **407. Duty to make returns to the registrar.**

Every body corporate carrying on the business of dentistry<sup>1</sup> must in every year transmit to the registrar<sup>2</sup> a statement in the prescribed form<sup>3</sup> containing the names and addresses of all persons who are its directors or managers or who perform dental operations in connection with its business<sup>4</sup>. If any such body fails to comply with this requirement, it is deemed to be carrying on the business of dentistry in contravention of the statutory provisions<sup>5</sup>.

1 For the meaning of 'the business of dentistry' see PARA 405 ante.

2 For the meaning of 'the registrar' see PARA 396 note 1 ante.

3 'Prescribed' means prescribed by regulations made by the General Dental Council: Dentists Act 1984 s 43(7). Regulations made under this power are not statutory instruments and are not recorded in this work. As to the General Dental Council see PARA 389 et seq ante.

4 Ibid s 43(4). As to dental operations see PARA 403 note 1 ante. The returns need not be made by a body corporate carrying on the business of dentistry by reason of the death or bankruptcy of a registered dentist or registered medical practitioner in the circumstances mentioned in s 41(4)-(6) (see PARA 405 note 4 ante): see s 43(6). As to bodies corporate see COMPANIES; CORPORATIONS.

5 Ie the provisions of ibid s 42 (see PARA 406 ante): s 43(4).

#### **UPDATE**

#### **407 Duty to make returns to the registrar**

TEXT AND NOTES--1984 Act s 43 substituted: see PARA 406.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(3) THE PRACTICE OF DENTISTRY/(ii) The Right to Practise; Prohibition of Unqualified Practitioners/B. BODIES CORPORATE/408. Withdrawal of the privilege of carrying on the business of dentistry.

#### **408. Withdrawal of the privilege of carrying on the business of dentistry.**

Where a body corporate has been convicted of the offence of unlawfully carrying on the business of dentistry<sup>1</sup>, or the name of a director of a body corporate is erased from the register<sup>2</sup> for crime or serious professional misconduct<sup>3</sup>, or a director is convicted for unlawfully practising dentistry<sup>4</sup> or for carrying on the business of dentistry<sup>5</sup>, the professional conduct committee<sup>6</sup> may direct that the exemption from the restriction on carrying on the business of dentistry<sup>7</sup> is to cease to extend to that body as from a date specified by the committee<sup>8</sup>. The committee may also direct the exemption to cease to extend to a body where the name of a member of the operating staff of a body corporate is erased from the register for crime or serious professional misconduct<sup>9</sup>, and in the opinion of the committee the act or omission constituting the offence or serious professional misconduct on account of which his name was erased was instigated or connived at by a director of the body corporate, or, if the act or omission was a continuing one, a director had, or reasonably ought to have had, knowledge of its continuance<sup>10</sup>. References to the erasure of the name, or to the conviction of a director of a body corporate, include references to the erasure of the name, or to the conviction, of any person who was a director of a body corporate at the time of the offence or misconduct leading to the erasure or conviction<sup>11</sup>.

Where the professional conduct committee determines that the exemption is to cease to extend to a body corporate, the committee must notify the body corporate of its determination; and that body may, within 28 days from service of the notification, appeal to the relevant court<sup>12</sup>.

1    Ie an offence under the Dentists Act 1984 s 42 (see PARA 406 ante): s 44(1)(a). This does not apply where the conviction took place before 4 July 1956: s 55(4), Sch 7 para 9(2). For the meaning of 'the business of dentistry' see PARA 405 ante. As to bodies corporate see COMPANIES; CORPORATIONS.

2    Ie under *ibid* s 27: see PARA 456 post.

3    Ibid s 44(1)(b). This does not apply where the erasure took place before 4 July 1956: Sch 7 para 9(2).

4    Ie under *ibid* s 38: see PARA 404 ante. For the meaning of 'the practice of dentistry' see PARA 403 ante.

5    Ie under *ibid* s 41 (see PARA 405 ante): s 44(1)(c). This does not apply where the conviction took place before 4 July 1956: Sch 7 para 9(2).

6    As to the professional conduct committee see PARA 460 post.

7    Ie the exemption under the Dentists Act 1984 s 43: see PARA 406 ante.

8    Ibid s 44(1). The committee must not take a case into consideration while proceedings by way of appeal are pending nor during the period in which any such proceedings may be brought: see s 44(3). As to the procedure before the professional conduct committee see PARA 474 post.

9    Ie under *ibid* s 27 (see PARA 456 post): see s 44(2)(a).

10   Ibid s 44(2)(b). This does not apply where the erasure took place before 4 July 1956: Sch 7 para 9(2). The committee may not consider a case whilst an appeal is pending or during the period in which an appeal may be made: see s 44(3).

11   Ibid s 44(6).

12 Ibid s 44(4) (amended by the National Health Service Reform and Health Care Professions Act 2002 s 31(1), (3)(a)(i), (ii)). The grounds of appeal are: (1) in the case of a determination under the Dentists Act 1984 s 44(1) (see the text to notes 1-8 supra), that, notwithstanding the conviction or (as the case may be) the erasure of the name, the committee's decision was unjustified (s 44(4)(a)); and (2) in the case of a determination under s 44(2) (see the text to notes 9-10 supra), that the opinion of the committee as to the matters referred to in s 44(2)(b) (see the text to note 10 supra) was incorrect or that, although that opinion was correct, the committee's decision was unjustified (s 44(4)(b)). 'The relevant court', where the registered office of the body corporate is in Northern Ireland, means the High Court of Justice in Northern Ireland; where the registered office of the body corporate is in Scotland, means the Court of Session; and where the registered office of the body corporate is in any other place, means the High Court of Justice in England and Wales: s 44(4A) (added by the National Health Service Reform and Health Care Professions Act 2002 s 31(1), (3)(b)). The provisions of the Dentists Act 1984 ss 29, 30(1), (2) (see PARAS 478-479 post) apply, with the necessary modifications, for the purposes of such an appeal as they apply in relation to an appeal under s 29 against a determination of the professional conduct committee: s 44(5). As to appeals generally see CPR Pt 52. An appeal is by way of re-hearing: Practice Direction--Appeals PD52 para 22.3(1)(e), (2).

## **UPDATE**

### **408 Withdrawal of the privilege of carrying on the business of dentistry**

TEXT AND NOTES--1984 Act s 44 substituted: see PARA 406.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(3) THE PRACTICE OF DENTISTRY/(iii) Use of Titles and Descriptions/409. Use of practitioners' titles by laymen.

### **(iii) Use of Titles and Descriptions**

#### **409. Use of practitioners' titles by laymen.**

A person who is not a registered dentist<sup>1</sup> or a visiting EEA practitioner entered in the list of such practitioners<sup>2</sup> or a registered medical practitioner<sup>3</sup> must not take or use<sup>4</sup> the title 'dentist', 'dental surgeon' or 'dental practitioner', either alone or in combination with any other word<sup>5</sup>; and no person may take or use any title or description implying that he is a registered dentist<sup>6</sup> unless he is a registered dentist<sup>7</sup>. A person who acts in contravention of these provisions is liable on summary conviction to a fine<sup>8</sup>.

1 For the meaning of 'registered dentist' see PARA 417 note 6 post.

2 For the meaning of 'visiting EEA practitioner entered in the list of such practitioners' see PARA 431 post.

3 For the meaning of 'registered medical practitioner' see PARA 4 ante.

4 As to what amounts to taking or using see *Brown v Whitlock* (1903) 67 JP 451, DC; *Robertson v Hawkins* [1913] 1 KB 57, DC; *Blain v King* [1918] 2 KB 30, DC.

5 Dentists Act 1984 s 39(1) (amended by the Dental Qualifications (Recognition) Regulations 1996, SI 1996/1496, reg 6(3)).

6 As to the meaning of 'title or description implying that he is a registered dentist' see the cases cited in note 4 supra, and see also PARA 191 ante. The Trade Descriptions Act 1968 s 14(1), which prohibits the making of false or misleading statements as to services, may apply to professional men: see *R v Breeze* [1973] 2 All ER 1141, [1973] 1 WLR 994, CA; and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 495.

7 Dentists Act 1984 s 39(2).

8 Ibid s 39(3). The penalty is a fine not exceeding level 5 on the standard scale: see s 39(3). As to the standard scale see PARA 185 note 11 ante.

### **UPDATE**

#### **409 Use of practitioners' titles by laymen**

TEXT AND NOTES 2, 3--Words 'or a visiting EEA practitioner entered in the list of such practitioners or a registered medical practitioner' omitted: 1984 Act s 39(1) (substituted by SI 2005/2011; amended by SI 2007/3101). A person who is not a registered dental care professional must not take or use any title specified in regulations under the 1984 Act s 36A(2), either alone or in combination with any other word; and no person may take or use any title or description implying that he is a registered dental care professional unless he is a registered dental care professional: s 39(2A), (2B) (added by SI 2005/2011). For the meaning of 'registered dental care professional' see PARA 498A.2 NOTE 1.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(3) THE PRACTICE OF DENTISTRY/(iii) Use of Titles and Descriptions/410. Use of titles and descriptions by registered dentists.

#### **410. Use of titles and descriptions by registered dentists.**

A registered dentist<sup>1</sup> by virtue of being registered is entitled to take and use the description 'dentist', 'dental surgeon' or 'dental practitioner'<sup>2</sup>. He must not take or use<sup>3</sup>, or affix to or use in connection with his premises, any title or description reasonably calculated<sup>4</sup> to suggest that he possesses any professional status or qualification other than a professional status or qualification which he in fact possesses and which is indicated by the particulars entered in the register in respect of him<sup>5</sup>.

If an abbreviated form of a diploma granted in a country overseas is entered against a person's name in the dentists register<sup>6</sup>, that person may not take or use, or affix to or use in connection with his premises, any other abbreviation of that diploma<sup>7</sup>.

A person contravening either of the above provisions is liable on summary conviction to a fine<sup>8</sup>.

1 For the meaning of 'registered dentist' see PARA 417 note 6 post.

2 Dentists Act 1984 s 26(1).

3 As to what amounts to 'taking or using' see the cases cited in PARA 409 note 4 ante.

4 'Reasonably calculated' must mean reasonably calculated to persons who are qualified to exercise reason upon the subject, and that does not exclude, but rather includes and lays emphasis on, those who are instructed and educated persons in touch with and having some knowledge of the profession: *A-G v Weeks* [1932] 1 Ch 211 at 221, CA, per Lord Hanworth MR (the actual decision in the case was nullified by the Dentists Act 1957 s 15(1) (repealed): see now the Dentists Act 1984 s 26(1)).

5 Dentists Act 1984 s 26(2).

6 *Ie* under *ibid* s 20: see PARA 439 post. For the meaning of 'diploma' see PARA 424 note 3 post.

7 *Ibid* s 26(5).

8 *Ibid* s 26(6). The penalty is a fine not exceeding level 3 on the standard scale: see s 26(6). As to the standard scale see PARA 185 note 11 ante.

#### **UPDATE**

#### **410 Use of titles and descriptions by registered dentists**

TEXT AND NOTES 6, 7--1984 Act s 26(5) repealed: Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(3) THE PRACTICE OF DENTISTRY/(iii) Use of Titles and Descriptions/411. Special branches of dentistry.

#### **411. Special branches of dentistry.**

If the General Dental Council<sup>1</sup> is of the opinion that any branch of dentistry has become so distinctive that it would be for the convenience of the public or of the dental profession that registered dentists<sup>2</sup> qualified to practise, or practising, in that branch of dentistry should use a distinctive title, it may by regulations<sup>3</sup> prescribe appropriate titles and the conditions under which they may be used; and the use of the prescribed title under the prescribed conditions does not constitute a contravention of the provisions<sup>4</sup> as to the wrongful use of titles<sup>5</sup>. In the case of any prescribed title, such regulations may provide for a list to be kept by the Council of the names of registered dentists who are qualified under such regulations to use that title, and for any registered dentist who is so qualified to be entitled to have his name entered in the list, in which case that title may not be used by any such dentist unless his name has been entered in the list<sup>6</sup>.

A correct copy of any list must be attached to any copy of the dentists register printed, published and sold<sup>7</sup>.

1 As to the General Dental Council see PARA 389 et seq ante.

2 For the meaning of 'registered dentist' see PARA 417 note 6 post.

3 Such regulations are not statutory instruments and are not recorded in this work. As to proof of documents issued by the Council see PARA 400 ante.

4 I.e the provisions of the Dentists Act 1984 s 26(2): see PARA 410 ante.

5 Ibid s 26(3).

6 Ibid s 26(4).

7 See ibid s 26(7). As to publication of the register see PARA 417 post.

#### **UPDATE**

#### **411 Special branches of dentistry**

NOTE 6--The Council may make regulations prescribing a fee to be charged on the entry, restoration or retention of a name in a list for the time being kept by it under the 1984 Act s 26(4), and authorising the registrar to refuse to make in or restore to, or to erase a name from, such a list any entry until the prescribed fee has been paid: s 26(4A), (4B) (added by the Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011).

TEXT AND NOTE 7--The Council must from time to time publish any list for the time being kept by it under the 1984 Act s 26(4): s 26(7) (substituted by SI 2005/2011).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(3) THE PRACTICE OF DENTISTRY/(iii) Use of Titles and Descriptions/412. Specialist titles in orthodontics or oral surgery.

#### **412. Specialist titles in orthodontics or oral surgery.**

Where the General Dental Council<sup>1</sup> is of the opinion that orthodontics or, as the case may be, oral surgery has become so distinctive that it would be for the convenience of the public or of the dental profession that registered dentists<sup>2</sup> qualified to practise, or practising, in that branch of dentistry should use a distinctive title, and it decides to make regulations<sup>3</sup> so as to prescribe a title for that specialty<sup>4</sup>, or to prescribe such a title and also to provide for matters<sup>5</sup> relating to the keeping of a list of those qualified to use such a title<sup>6</sup>, the Council must secure that the regulations provide that a registered dentist is entitled to use the title prescribed for a specialty and, if appropriate, to have his name entered in the list for that specialty only if he meets certain criteria<sup>7</sup> and pays any fee determined by the Council on application for entry in the appropriate list<sup>8</sup>.

Where the Council exercises its powers<sup>9</sup> so as to provide for a specialist list in orthodontics or oral surgery, it must tell anyone who asks it, and pays any fee determined by it, whether or not a particular person's name is entered in the list in question, and must do so in writing if required, stating the date on which that person's name was entered in the list and his registration number<sup>10</sup>.

A person may not take up appointment as a consultant in the national health service<sup>11</sup> in oral surgery or orthodontics unless his name is included in any list for the specialty in question kept pursuant to regulations made by the Council<sup>12</sup>.

1 As to the General Dental Council see PARA 389 et seq ante.

2 For the meaning of 'registered dentist' see PARA 433 note 7 post.

3 I.e. under the Dentists Act 1984 s 26(3): see PARA 411 ante.

4 European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 8(1)(a).

5 I.e. the matters specified in the Dentists Act 1984 s 26(4): see PARA 411 ante.

6 European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 8(1)(b).

7 I.e. he either holds a certificate of completion of specialist training awarded by the Council under ibid reg 6 (see PARA 433 post) in the specialty in question, or is an eligible specialist as specified in reg 9 (see PARA 413 post) or an existing specialist as specified in reg 12 (see PARA 414 post): reg 8(2)(a).

8 Ibid reg 8(2)(b). Such regulations are not statutory instruments and are not recorded in this work. As to proof of documents issued by the Council see PARA 400 ante. As to fees see PARA 435 post.

9 I.e. under the Dentists Act 1984 s 26(4): see PARA 411 ante.

10 European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 8(3). For the meaning of 'writing' see PARA 20 note 22 ante. For these purposes, the Council is deemed to have satisfied a requirement that it gives information in writing if it transmits the information to the person requiring it by facsimile or other electronic means: reg 8(4). For the meaning of 'registration number' see PARA 433 note 12 post. As to the registration of dentists see PARA 417 et seq post.

11 'Consultant in the national health service' means a consultant other than a locum consultant (but including an honorary consultant) employed for the purposes of providing any service as part of the health service continued under the National Health Service Act 1977 s 1(1) (see HEALTH SERVICES vol 54 (2008) PARAS 10, 87): European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 2(2).



12 le under the Dentists Act 1984 s 26(4) (see PARA 411 ante): European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 11(2). This provision does not apply until the expiry of the period of two years beginning with the date on which such regulations come into force in relation to the specialty in question: reg 11(1).

## **UPDATE**

### **412 Specialist titles in orthodontics or oral surgery**

TEXT AND NOTES 7, 8--SI 1998/811 reg 8(2) substituted, reg 8(2A), (2B) added: SI 2007/3101.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(3) THE PRACTICE OF DENTISTRY/(iii) Use of Titles and Descriptions/413. Eligible specialists.

#### **413. Eligible specialists.**

A person is an eligible specialist for the purposes of the entry of his name in a specialist list<sup>1</sup> if he holds a recognised specialist dental qualification<sup>2</sup> and is a national<sup>3</sup> of an EEA state<sup>4</sup>, or is not a national of an EEA state, but is entitled<sup>5</sup> to be treated, for the purposes of access to the profession of dentistry, no less favourably than a national of such a state<sup>6</sup>. A person is also an eligible specialist if he does not fall within the previous category, but: (1) he has specialist dental qualifications awarded outside the United Kingdom<sup>7</sup> in orthodontics or, as the case may be, oral surgery, and satisfies the General Dental Council<sup>8</sup> that those qualifications are equivalent to a certificate of completion of specialist training<sup>9</sup> in the specialty in question<sup>10</sup>; or (2) he has knowledge of, and experience in, orthodontics or, as the case may be, oral surgery derived from academic or research work, and satisfies the General Dental Council that that knowledge and experience is equivalent to the knowledge and experience which he might reasonably be expected to have acquired if he had undertaken the training required for the award of a certificate of completion of specialist training<sup>11</sup>. A person is also an eligible specialist in oral surgery if he is an oral and maxillo-facial surgeon and his name is entered in the specialist register kept by the General Medical Council<sup>12</sup> in respect of that specialty and: (a) if his specialist qualification in oral and maxillo-facial surgery was awarded in an EEA state other than the United Kingdom, he satisfies the General Dental Council that his training in oral and maxillo-facial surgery included elements which taken together satisfy the requirements<sup>13</sup> for training in oral surgery<sup>14</sup>; and (b) in any other case, he satisfies the General Dental Council that his training in oral and maxillo-facial surgery included elements which taken together are equivalent to the training required for the award of a certificate of completion of specialist training in oral surgery<sup>15</sup>.

In the case of an exempt person<sup>16</sup>, the General Dental Council must, within the specified period<sup>17</sup>, give the applicant notice of its decision as to whether it is satisfied that he is an eligible specialist<sup>18</sup>, and where it is not so satisfied, of the reasons for its decision and of the applicant's right to appeal<sup>19</sup>. Failure to notify an applicant who is an exempt person of a decision within the specified period is treated as a decision from which an applicant may appeal<sup>20</sup>.

1     le for the purposes of the European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 8(2): see PARA 412 ante.

2     The following are recognised specialist dental qualifications:

126     (1)     a qualification in orthodontics or, as the case may be, oral surgery granted in an EEA state (see note 4 infra) other than the United Kingdom (see note 7 infra) and as listed in the European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, Sch 1 (see reg 10(1)(a) (reg 10(1)(a), (c) amended by SI 2003/3148));

127     (2)     a qualification in orthodontics or, as the case may be, oral surgery granted in an EEA state other than the United Kingdom which does not satisfy all the minimum training requirements laid down by the Dental Training Directive arts 2, 3 and was awarded following training begun before the relevant date, accompanied by a certificate from the competent authority in the EEA state in which the qualification was awarded or in which its holder has subsequently become established, stating that the holder has been engaged in the practice of his specialty for at least the period required by the Recognition Directive art 7(2) (see the European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 10(1)(b));

- 128 (3) a qualification in orthodontics or, as the case may be, oral surgery which has been obtained at any time in an EEA state other than the United Kingdom, which does not conform with the designations set out in the European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, Sch 1, and evidence of which is accompanied by a certificate of the competent authorities of that state to the effect that the qualification was awarded following training in accordance with the provisions of the Dental Training Directive arts 2, 3 and is treated by that state as if it were a qualification set out under the heading relating to that state in the European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, Sch 1 (see reg 10(1)(c) (as so amended)).
- 129 (4) certain qualifications granted in the former German Democratic Republic, the former Soviet Union, the former Yugoslavia (see reg 10(1)(d), (e) (added by SI 2004/1947)).

'The Dental Training Directive' means EC Council Directive 78/687 (OJ L233, 24.8.1978, p 1) concerning the co-ordination of provisions in respect of the activities of dental practitioners, as amended by the Accession of Austria, Finland and Sweden Act, EC Directive 2001/19 (OJ L206, 13.7.2001, p 1) and the Act of Accession 2003; and 'the Recognition Directive' means EC Council Directive 78/686 (OJ L233, 19.10.1978, p 1) concerning the mutual recognition of diplomas, certificates and other evidence of the formal qualifications of practitioners of dentistry, as adapted, amended or extended by the Accession of Greece Act, EC Council Directive 81/1057 (OJ L385, 31.12.81, p 25), the Accession of Spain and Portugal Act, EC Council Directive 89/594 (OJ L341, 23.11.89, p 19), EC Council Directive 90/658 (OJ L353, 17.12.90, p 73), the EEA Agreement (see note 4 infra), the Accession of Austria, Finland and Sweden Act, EC Directive 2001/19 (OJ L206, 13.7.2001, p 1), the Swiss Agreement and the Act of Accession 2003: European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 2(1) (amended by SI 2003/3148; SI 2004/1947). 'The Accession of Greece Act' means the Act annexed to the Treaty relating to the accession of the Hellenic Republic to the European Community signed at Athens on 28 May 1979; 'the Accession of Spain and Portugal Act' means the Act annexed to the Treaty relating to the accession of the Kingdom of Spain and the Portuguese Republic to the European Community signed at Madrid and Lisbon on 12 June 1985; 'the Accession of Austria, Finland and Sweden Act' means the Act annexed to the Treaty relating to the accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the European Union, signed at Corfu on 24 June 1994, as adjusted by the Decision of the Council of the European Union of 1 January 1995 adjusting the instruments concerning the accession of new member states to the European Union; 'the Swiss Agreement' means the Agreement between the European Community and its member states, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, signed at Luxembourg on 21 June 1999; 'the Act of Accession 2003' means the Act annexed to the Treaty relating to the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the Adjustments to the Treaties on which the European Union is founded signed at Athens on 16 April 2003: European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 2(3) (amended by SI 2003/3148; SI 2004/1947). 'The relevant date' means 28 January 1980 in the case of a qualification granted in Denmark, France, Germany, Ireland or the Netherlands; 1 January 1981 in the case of a qualification granted in Greece; 1 January 1994 in the case of a qualification granted in Finland, Norway or Sweden; 1 June 2002 in the case of Switzerland; 1 May 2004 in the case of a qualification granted in the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia or Slovakia; or, in the case of any other EEA state, the date notified by that state to the European Commission as that on which it implemented the Dental Training Directive: European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 10(3) (amended by SI 2003/3148; SI 2004/1947).

3 'National', in relation to an EEA state (see note 4 infra), means the same as it does for the purposes of the Community Treaties, but does not include a person who by virtue of the Treaty of Accession Protocol No 3 (Channel Islands and Isle of Man) art 2 is not to benefit from Community provisions relating to the free movement of persons and services: European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 2(1) (definition added by SI 2004/1947). For the meaning of 'the Community Treaties' see the European Communities Act 1972 s 1(2) (as applied by the Interpretation Act 1978 s 5, Sch 1).

4 European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 9(1)(a). For these purposes, 'EEA state' means a state which is a contracting party to the EEA Agreement or Switzerland: reg 2(1) (definition amended by SI 2003/3148). 'EEA Agreement' means the Agreement on the European Economic Area signed at Oporto on 2 May 1992 as adjusted by the Protocol signed at Brussels on 17 March 1993 and as amended by decision of the EEA joint committee No 84/2002 of 25 June 2002 and by the Agreement on the participation of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic signed at Luxembourg on 14 October 2003: European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 2(1) (definition amended by SI 2003/3148; SI 2004/1947).

5 le by virtue of a right conferred by EC Council Regulation 1612/68 (OJ L257, 19.10.1968, p 2) art 11 or any other enforceable Community right. As to the meaning of 'enforceable Community right' see the European Communities Act 1972 s 2(1); and the Interpretation Act 1978 s 5, Sch 1.

- 6 European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 9(1)(b).
- 7 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.
- 8 As to the General Dental Council see PARA 389 et seq ante.
- 9 As to certificates of completion of specialist training see PARA 433 post.
- 10 European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 9(2)(a). In the case of a person falling within reg 9(2) who is an exempt person (see note 16 infra), the General Dental Council must, when considering whether it is satisfied as mentioned in reg 9(2)(a), (b), take into account all his dental qualifications, knowledge or experience, wherever acquired, which are relevant to its determination; and where the person has specialist qualifications in orthodontics or, as the case may be, oral surgery awarded outside the EEA which have been accepted by another EEA state as qualifying him to practise as a specialist in that state, that acceptance: reg 9(3) (substituted by SI 2003/3148). For these purposes, 'EEA' means the European Economic Area and Switzerland: European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 2(1) (definition amended by SI 2003/3148). As to appeals by a person who fails to satisfy the Council that he is an eligible specialist pursuant to the European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 9(2)-(4) see PARA 436 post.
- 11 Ibid reg 9(2)(b). See also note 10 supra.
- 12 As to the register see PARA 39 et seq ante. As to the General Medical Council see PARA 13 et seq ante.
- 13 Ie the requirements of the Dental Training Directive: see note 2 supra.
- 14 European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 9(4)(a).
- 15 Ibid reg 9(4)(b).
- 16 'Exempt person' means a person: (1) who is a national of an EEA state who is exercising an enforceable Community right; or (2) who is not a national of an EEA state but is, by virtue of a right conferred by EC Council Regulation 1612/68 (OJ L257, 19.10.1968, p 2) art 11 or any other enforceable Community right, entitled to be treated, for the purposes of access to the profession of dentistry, no less favourably than a national of such a state: European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 2(1) (definition added by SI 2003/3148).
- 17 'The specified period' means the period of three months beginning with the date on which the Council receives the application together with full supporting documentation, or such longer period as is permitted by the Recognition Directive art 13: European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 9(7) (reg 9(5)-(7) added by SI 2003/3148).
- 18 Ie in accordance with the European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 9(2)-(4) (see the text to notes 7-15 supra): reg 9(5)(a) (as added: see note 17 supra).
- 19 Ie under ibid reg 14(1)(b) (see PARA 436 post): reg 9(5)(b) (as added: see note 17 supra).
- 20 Ie under ibid reg 14(1)(b) (see PARA 436 post): reg 9(6) (as added: see note 17 supra).

## UPDATE

### 413 Eligible specialists

TEXT AND NOTES--SI 1998/811 regs 9, 10 amended, reg 9A added, Sch 1 revoked: SI 2007/3101.

NOTE 3--As to the meaning of 'the Community Treaties' see EUROPEAN COMMUNITIES vol 51 PARA 1•22.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(3) THE PRACTICE OF DENTISTRY/(iii) Use of Titles and Descriptions/414. Existing specialists.

#### **414. Existing specialists.**

A registered dentist<sup>1</sup> is an existing specialist for the purposes of the entry of his name in a specialist list<sup>2</sup> if he applies to the registrar<sup>3</sup>, within the specified period<sup>4</sup>, for his name to be entered in any list of orthodontists or, as the case may be, oral surgeons kept by the General Dental Council<sup>5</sup>, paying any fee determined by the Council, and satisfies him that he falls within the specified criteria<sup>6</sup>. A person falls within the specified criteria if: (1) he is, or has been, a consultant in the national health service<sup>7</sup> in the specialty in question<sup>8</sup>; or (2) he has been accredited in the specialty in question before the specified date in so far as it applies to that specialty<sup>9</sup>; or (3) he has satisfied the Council that he has been trained in the United Kingdom<sup>10</sup> in the appropriate specialty and that training complied with the requirements relating to training in that specialty current in the United Kingdom at the time he undertook it<sup>11</sup>, or he has qualifications awarded in the United Kingdom in such a specialty that are equivalent to a certificate of completion of specialist training<sup>12</sup> in that specialty<sup>13</sup>, or he has acquired experience in that specialty which has given him a level of expertise equivalent to the level of expertise he might reasonably be expected to have attained if he had a certificate of completion of specialist training in that specialty<sup>14</sup>.

1 For the meaning of 'registered dentist' see PARA 433 note 7 post.

2 I.e. for the purposes of the European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 8(2): see PARA 412 ante.

3 For the meaning of 'the registrar' see PARA 396 note 1 ante.

4 An application must be made before the expiry of the period of two years beginning with the date on which regulations made under the Dentists Act 1984 s 26(4) (see PARA 411 ante) come into force in relation to the specialty in question, unless the applicant satisfies the registrar that there was good reason for not applying by then: European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 12(2). Such regulations are not statutory instruments and are not recorded in this work.

5 I.e. pursuant to regulations made under the Dentists Act 1984 s 26(4): see note 4 supra. As to the General Dental Council see PARA 389 et seq ante.

6 European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 12(1). As to fees see PARA 435 post.

7 For the meaning of 'consultant in the national health service' see PARA 412 note 11 ante.

8 European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 12(3)(a). As to appeals by persons who fail to satisfy the Council as to the matters set out in reg 12(3) see PARA 436 post.

9 Ibid reg 12(3)(b). See also note 8 supra. 'Accredited' refers to the former practice whereby certain Royal Colleges and Faculties acknowledged the satisfactory completion of a period of specialist training in dentistry, to a level previously determined by that body, by granting an application for accreditation made by the person who had completed the training: reg 12(4). As to the medical Royal Colleges see PARA 64 ante.

10 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

11 European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 12(3)(c)(i). See also note 8 supra.

12 As to certificates of completion of specialist training see PARA 433 post.

13 European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 12(3)(c)(ii). See also note 8 *supra*.

14 *Ibid* reg 12(3)(c)(iii). See also note 8 *supra*.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(3) THE PRACTICE OF DENTISTRY/(iii) Use of Titles and Descriptions/415. Other specialist titles.

#### **415. Other specialist titles.**

If the General Dental Council<sup>1</sup> exercises its powers<sup>2</sup> so as to prescribe specialist titles or provide for specialist lists in any branch of dentistry other than orthodontics or oral surgery<sup>3</sup>, it must secure that:

- 655 (1) in assessing the entitlement of an exempt person<sup>4</sup> to use the specialist title in question<sup>5</sup>, or to have his name entered in any specialist list relating to that branch of dentistry<sup>6</sup>; or
- 656 (2) in assessing what, if any, further training he must undergo for the purpose of obtaining a qualification in that branch of dentistry<sup>7</sup>,

it takes into account the following matters<sup>8</sup>. The matters to be taken into account are: (a) if a specialist qualification in the branch of dentistry in question awarded to that person outside the EEA<sup>9</sup> has been accepted by another EEA state<sup>10</sup> as qualifying him to practise as a specialist in that state, that acceptance<sup>11</sup>; and (b) all his dental qualifications, knowledge or experience, wherever acquired, which are relevant to its determination<sup>12</sup>.

1 As to the General Dental Council see PARA 389 et seq ante.

2 Ie under the Dentists Act 1984 s 26(3), (4): see PARA 411 ante.

3 As to specialist lists in orthodontics or oral surgery see PARA 412 ante.

4 For the meaning of 'exempt person' see PARA 413 note 16 ante.

5 European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 13(1)(a)(i) (reg 13 substituted by SI 2003/3148).

6 Ibid reg 13(1)(a)(ii) (as substituted: see note 5 supra).

7 Ibid reg 13(1)(b) (as substituted: see note 5 supra).

8 Ibid reg 13(1) (as substituted: see note 5 supra).

9 For the meaning of 'EEA' see PARA 413 note 10 ante.

10 For the meaning of 'EEA state' see PARA 413 note 4 ante.

11 European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 13(2)(a) (as substituted: see note 5 supra).

12 Ibid reg 13(2)(b) (as substituted: see note 5 supra).

#### **UPDATE**

#### **415 Other specialist titles**

TEXT AND NOTES 9, 10--Now refers to EEA state or Switzerland: SI 1998/811 reg 13(2)(a) (amended by SI 2007/3101).





Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(3) THE PRACTICE OF DENTISTRY/(iv) Liabilities/416. Negligence and duties owed to patients.

#### **(iv) Liabilities**

##### **416. Negligence and duties owed to patients.**

The principles governing the liability of dental practitioners towards their patients are precisely the same as those which govern the liability of medical practitioners towards their patients<sup>1</sup>. It has been held that where a dentist treated patients whilst suspended, the failure to inform them of that fact did not vitiate their consent to the treatment and accordingly no offence of assault had been committed<sup>2</sup>.

1 For the principles governing the liability of medical practitioners see PARA 196 et seq ante. For cases in which allegations of negligence were made against dentists see: *Warren v Greig and White* (1935) 1 The Lancet 330 (failure to carry out blood test as a safeguard against possibility of patient suffering from leukaemia in advance of surgery not negligent because of rarity of condition); *Fish v Kapur* [1948] 2 All ER 176 (fracture of jaw during extraction of tooth; not *res ipsa loquitur*); *Fletcher v Bench* (1973) 4 British Medical Journal 117, CA (fracture of bone-burr during extraction causing infection and ultimately fracture of jaw not negligent). Cf *Lock v Scantlebury* (1963) Times, 25 July (where the dentist was found negligent for failing to discover that he had dislocated the patient's jaw); *Garner v Morrell* (1953) Times, 31 October, CA (asphyxiation by throat pack during extraction; *res ipsa loquitur*; also negligence positively established). See generally NEGLIGENCE. As to professional indemnity insurance see INSURANCE vol 25 (2003 Reissue) PARA 363 et seq. As to criminal negligence see PARA 206 ante.

2 *R v Richardson* [1999] QB 444, [1998] 2 Crim App Rep 200, CA. The court did, however, express the view that the failure to give the information may found the basis of a civil claim in damages.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(4) REGISTRATION AND QUALIFICATIONS/(i) The Register/417. Contents of the register; publication.

## **(4) REGISTRATION AND QUALIFICATIONS**

### **(i) The Register**

#### **417. Contents of the register; publication.**

The dentists register<sup>1</sup> is kept by the registrar<sup>2</sup>. The register is deemed to be in proper custody when in the custody of the registrar<sup>3</sup>. The General Dental Council<sup>4</sup> must cause a correct copy of the register to be printed at least once a year under its direction, published and sold<sup>5</sup>.

The following persons are entitled to be registered<sup>6</sup>: (1) any person who is a graduate or licentiate in dentistry of a dental authority<sup>7</sup>; (2) any person who is a national of an EEA state<sup>8</sup> and holds an appropriate European diploma<sup>9</sup>; and (3) any person who holds a recognised overseas diploma<sup>10</sup>.

1 'The register' means the dentists register: Dentists Act 1984 s 53(1).

2 Ibid s 14(1), (2). For the meaning of 'the registrar' see PARA 396 note 1 ante. As to regulations with respect to the register see PARA 438 post.

3 Ibid s 14(5). See further PARA 418 post.

4 As to the General Dental Council see PARA 389 et seq ante.

5 Dentists Act 1984 s 22(1). Regulations under s 19 (see PARA 438 post) may provide for the inclusion in such copy of honours or distinctions accorded to a person in the register; the copy is not, however, admissible as evidence of those honours or distinctions, and the regulations must require an indication in the copy that the honours or distinctions do not form part of the register itself: s 22(2). These regulations are not required to be made by statutory instrument and are not recorded in this work. As to evidence and proof see PARA 400 ante.

6 'Registered dentist' means, subject to ibid s 17(4) (see PARA 432 post), a person for the time being registered in the register: s 53(1).

7 Ibid s 15(1)(a). For the meaning of 'dental authority' see PARA 421 note 3 post. As to qualifications see PARA 420 et seq post.

8 For the meanings of 'national' and 'EEA state' for these purposes see PARA 427 notes 1, 2 post.

9 Dentists Act 1984 s 15(1)(b) (amended by the Dental Qualifications (Recognition) Regulations 1996, SI 1996/1496, reg 2(1)). As to appropriate European diplomas see PARA 428 post. For the meaning of 'diploma' see PARA 424 note 3 post.

10 Ibid s 15(1)(c). 'Recognised overseas diploma' means a diploma granted in a country overseas and recognised for the time being by the General Dental Council; it does not include an appropriate European diploma: ss 15(2), 53(1). The Council may direct that a person who has passed the examinations required to obtain a recognised overseas diploma is to be treated as holding a recognised overseas diploma: s 15(6).

### **UPDATE**

#### **417 Contents of the register; publication**

TEXT AND NOTES 1-5--Replaced. The dentists register is kept by the registrar: see the 1984 Act s 14(1), (1A), (2) (s 14 substituted by SI 2005/2011; Dentists Act 1984 s

14(1A) added by SI 2007/3101). The registrar must make available to members of the public in such form as he considers appropriate the names of persons appearing in the register, the qualifications of persons appearing in the register, and such other details as the General Dental Council may direct: Dentists Act 1984 s 22(1) (s 22 substituted by SI 2005/2011). For these purposes, the registrar may provide a member of the public with a copy of, or extract from, the register, and any such copy or extract is evidence of the matters mentioned in it: Dentists Act 1984 s 22(2).

TEXT AND NOTE 9--Dentists Act 1984 s 15(1)(b) substituted, s 15(1)(ba) added: SI 2007/3101.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(4) REGISTRATION AND QUALIFICATIONS/(i) The Register/418. Evidence of contents of the register.

#### **418. Evidence of contents of the register.**

The register<sup>1</sup> is of such a public nature as to be admissible as evidence of all matters in it on its mere production from the custody of the registrar<sup>2</sup>. The annual printed copy of the register<sup>3</sup> is also admissible in evidence<sup>4</sup>. A certificate purporting to be a certificate under the hand of the registrar stating that any person is or is not, or was or was not at any date, duly registered in the register, or stating that any particulars are or are not, or were or were not at any date, contained in the register with respect to any person, is prima facie evidence in all courts of law of the facts stated in the certificate<sup>5</sup>.

1 For the meaning of 'the register' see PARA 417 note 1 ante.

2 Dentists Act 1984 s 14(5). For the meaning of 'the registrar' see PARA 396 note 1 ante. As to custody of the register see PARA 417 ante. As to evidence generally see CIVIL PROCEDURE vol 11 (2009) PARA 749 et seq.

3 See PARA 417 ante.

4 Dentists Act 1984 s 22(1). However, it is not evidence of honours or distinctions: see s 22(2); and PARA 417 note 5 ante.

5 Ibid s 14(6). As to the evidential effect of certificates admissible by statute see CIVIL PROCEDURE vol 11 (2009) PARA 897.

#### **UPDATE**

#### **418 Evidence of contents of the register**

TEXT AND NOTES--Replaced. A certificate purporting to be signed by the registrar, certifying that a person (1) is registered in the register; (2) is not registered in the register; (3) was registered in the register at a specified date or during a specified period; (4) was not registered in the register at a specified date or during a specified period; or (5) has never been registered in the register, is evidence of the matters certified: 1984 Act s 14(6) (s 14 substituted by SI 2005/2011). The registrar may provide a member of the public with a copy of, or extract from, the register, and any such copy or extract is evidence of the matters mentioned in it: 1984 Act s 22(2) (s 22 substituted by SI 2005/2011).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(4) REGISTRATION AND QUALIFICATIONS/(i) The Register/419. The competent authorities.

#### **419. The competent authorities.**

For the purposes of the European Union requirements relating to the mutual recognition of diplomas, certificates and other evidence of the formal qualifications of practitioners of dentistry<sup>1</sup>, the dental authorities<sup>2</sup> are designated as the competent authorities for the United Kingdom<sup>3</sup> for the award of the diplomas of Bachelor of Dental Surgery (BDS or B Ch D) and Licentiate in Dental Surgery (LDS)<sup>4</sup>.

Subject to this, in relation to primary qualifications<sup>5</sup> awarded in the United Kingdom, appropriate European diplomas<sup>6</sup>, and registration under the Dentists Act 1984 by virtue of such qualifications or diplomas<sup>7</sup>, the General Dental Council<sup>8</sup> is the competent authority in the United Kingdom<sup>9</sup>.

The Council may charge such reasonable fees as it determines to cover the cost of providing certificates in the course of the performance of these functions, but the fees must not include any element of profit<sup>10</sup>.

<sup>1</sup> See for the purposes of the Recognition Directive. For the meaning of 'the Recognition Directive' see PARA 413 note 2 ante.

<sup>2</sup> For the meaning of 'dental authority' see PARA 421 note 3 post; definition applied by the European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 2(1).

<sup>3</sup> For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

<sup>4</sup> European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 16(5).

<sup>5</sup> 'Primary qualification' means a qualification held by the persons referred to in the Dentists Act 1984 s 15(1) (see PARA 417 ante): European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 2(1).

<sup>6</sup> As to appropriate European diplomas see PARA 428 post.

<sup>7</sup> See PARA 417 ante.

<sup>8</sup> As to the General Dental Council see PARA 389 et seq ante.

<sup>9</sup> European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 16(1). Accordingly, in relation to such qualifications or diplomas and in relation to persons registered or seeking registration by virtue of them, the Council performs as respects the United Kingdom the functions under the Recognition Directive art 7(1) (issuing in respect of practice in the United Kingdom of certificates of effective and lawful practice), arts 9(3), 10(2) (the provision, where the United Kingdom is the host state and where the Council thinks fit, of certain information), art 10(1) (receiving or, as the case may be, forwarding certain information), arts 9(4), 10(3) (ensuring the confidentiality of information forwarded under arts 9, 10), art 15(3), (5) (supplying and withdrawing certain certificates), art 21 (requiring, in the event of justified doubts, confirmation of authenticity of diplomas, certificates and other evidence of formal qualifications granted by another EEA state and confirmation that a national of an EEA state seeking registration by virtue of an appropriate European diploma has fulfilled the training requirements): see European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 16(2)(a)-(g) (amended by SI 2003/3148). For the meaning of 'national' for these purposes see PARA 413 note 3 ante; and for the meaning of 'EEA state' see PARA 413 note 4 ante.

In addition, in relation to primary qualifications awarded in the United Kingdom and registration under the Dentists Act 1984, the Council has, as respects the United Kingdom, the functions of a competent authority referred to in the Recognition Directive art 7(3) (issue of certificates of fulfilment of the training requirements in respect of qualifications which do not conform with the designations set out in the directive), art 9(1) (issue of certificates of good character), art 21 (confirming authenticity of qualifications and confirming that a person has

fulfilled the training requirements): see European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 16(3)(a)-(c). The Council is also designated, as respects the United Kingdom, for the purposes set out in the European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 16, in accordance with the Recognition Directive art 22 (which requires member states to designate the authorities competent to issue or receive the diplomas, documents and other information): European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 16(4).

10 Ibid reg 17. The certificates mentioned in the text are those referred to in the Recognition Directive arts 7(1), (3), 9(1), 15(5): see note 9 *supra*.

## **UPDATE**

### **419 The competent authorities**

TEXT AND NOTES--Revoked: SI 2007/3101.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(4) REGISTRATION AND QUALIFICATIONS/(ii) Entitlement to Registration/A. UNITED KINGDOM DENTISTS/420. Qualification for registration.

## **(ii) Entitlement to Registration**

### **A. UNITED KINGDOM DENTISTS**

#### **420. Qualification for registration.**

As regards dentists qualified in the United Kingdom<sup>1</sup>, a person who is a graduate or licentiate in dentistry of one of the dental authorities<sup>2</sup> is entitled to be registered in the register<sup>3</sup>, subject to his satisfying the registrar<sup>4</sup> as to his identity<sup>5</sup>, that he is of good character<sup>6</sup> and that he is in good health, both physically and mentally<sup>7</sup>. Where an application for registration is refused, the registrar must notify the applicant in writing<sup>8</sup> of his reasons for refusing the application, and any such notification may be sent by post<sup>9</sup>.

1 As to registration of dentists qualified in EEA states or overseas see PARA 427 post. For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

2 For the meaning of 'dental authority' see PARA 421 note 3 post.

3 Dentists Act 1984 s 15(1)(a). For the meaning of 'the register' see PARA 417 note 1 ante. The continued registration of persons who were duly registered in the dentists register before 1 October 1984 (ie the date of the commencement of the relevant provisions of the Act) is unaffected and where any such person was so registered under or in pursuance of a direction under any provision of the Dentists Act 1957, his registration takes effect under the corresponding provision of the Dentists Act 1984: s 55(4), Sch 7 para 3(1). As to the preservation of the right to registration of dentists qualifying in the Republic of Ireland before 1 January 1994 see the Irish Republic (Termination of 1927 Agreement) Order 1987, SI 1987/2047.

4 For the meaning of 'the registrar' see PARA 396 note 1 ante.

5 Dentists Act 1984 s 15(3)(a).

6 Ibid s 15(3)(b).

7 Ibid s 15(3)(c).

8 For the meaning of 'writing' see PARA 20 note 22 ante.

9 Dentists Act 1984 s 21(a). As to references to service by post see PARA 20 note 22 ante.

## **UPDATE**

### **420-426 United Kingdom dentists**

Registered dentists are required to be covered by insurance: see the Dentists Act 1984 s 26A (added by SI 2005/2011); and PARA 426A. As to the power of the Welsh Ministers to register dentists who provide dental services in Wales otherwise than pursuant to the National Health Service (Wales) Act 2006 see the Private Dentistry (Wales) Regulations 2008, SI 2008/1976 (amended by SI 2009/2541), which apply, with modifications, the Care Standards Act 2000 Pt II (ss 11-42)).

#### **420 Qualification for registration**

NOTES 5-7--Dentists Act 1984 s 15(3) amended: SI 2007/3101.

TEXT AND NOTES 8, 9--1984 Act s 21 repealed: SI 2005/2011.



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#### **421. Power to hold examinations and grant licences.**

Any medical authority<sup>1</sup> which has power for the time being to grant surgical degrees may, notwithstanding anything in any enactment, charter or other document, hold examinations in dentistry and grant licences certifying the fitness of the holders to practise dentistry, and the holders' names must be entered on a list of licentiates in dentistry to be kept by the medical authority<sup>2</sup>.

A dental authority<sup>3</sup> must admit to the examinations held by it to qualify for a degree or licence in dentistry any person desirous of being examined who has complied with its regulations, if any, as to education<sup>4</sup>. However, a dental authority may not grant a degree or licence in dentistry to a person who has not attained the age of 21 years<sup>5</sup>.

The Royal College of Surgeons of England<sup>6</sup> may hold examinations and appoint a board of examiners in dentistry, and may grant licences certifying the fitness of the holders to practise dentistry<sup>7</sup>. The name of the holder of any licence so granted must be entered on a list of licentiates in dentistry kept by the College<sup>8</sup>.

1 'Medical authority' means any of the universities or other bodies who choose appointed members of the General Medical Council: Dentists Act 1984 s 3(3) (amended by the Irish Republic (Termination of 1927 Agreement) Order 1987, SI 1987/2047, art 2(a), Schedule). As to such universities and bodies see PARA 15 ante. As to the General Medical Council generally see PARA 13 et seq ante.

2 Dentists Act 1984 s 3(1). This is without prejudice to any power to grant a degree or licence in dentistry which a medical authority may possess apart from the provisions of the Act: s 3(2). No dental authority may grant a degree or licence or other diploma in dentistry unless it meets at least the following minimum dental training requirements: (1) adequate knowledge of the sciences on which dentistry is based and a good understanding of scientific methods, including the principles of measuring biological functions, the evaluation of scientifically established facts and the analysis of data; (2) adequate knowledge of the constitution, physiology and behaviour of healthy and sick persons as well as the influence of the natural and social environment on the state of health of the human being, in so far as these factors affect dentistry; (3) adequate knowledge of the structure and function of the teeth, mouth, jaws and associated tissues, both healthy and diseased, and their relationship to the general state of health and to the physical and social well-being of the patient; (4) adequate knowledge of clinical disciplines and methods, providing the dentist with a coherent picture of anomalies, lesions and diseases of the teeth, mouth, jaws and associated tissues and of preventive, diagnostic and therapeutic dentistry; (5) suitable clinical experience under appropriate supervision: European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 18, Sch 2. This training must provide him with the skills necessary for carrying out all activities involving the prevention, diagnosis and treatment of anomalies and diseases of the teeth, mouth, jaws and associated tissues: Sch 2. A complete period of dental training of this kind must comprise at least a five year full-time course of theoretical and practical instruction given in a university, in a higher education institution recognised as having equivalent status or under the supervision of a university and must include the specified subjects: Sch 2. In order to be accepted for such training, the candidate must have a diploma or a certificate which entitles him to be admitted for the course of study concerned: Sch 2. For the specified subjects see Sch 2 Annex (amended by SI 2003/3148). As to the power of the General Dental Council to appoint visitors to places where students and post graduate students are given instruction in dentistry see PARA 401 ante.

3 'Dental authority' means a medical authority which grant degrees, licences or other diplomas in dentistry: Dentists Act 1984 ss 3(4), 53(1).

4 Ibid s 6(1). As to the designation of the dental authorities as competent authorities for the purposes of the mutual recognition of dentistry qualifications in the European Union see PARA 419 ante.

5 Ibid s 6(2).

6 As to the Royal College of Surgeons of England see PARA 64 ante.

7 Dentists Act 1984 s 5. The College's powers are subject to and must be exercised in accordance with its charter of 8 September 1859, and the byelaws made under it: Dentists Act 1984 s 5. As to boards of examiners see PARA 422 post.

8 Ibid s 5.

## **UPDATE**

### **420-426 United Kingdom dentists**

Registered dentists are required to be covered by insurance: see the Dentists Act 1984 s 26A (added by SI 2005/2011); and PARA 426A. As to the power of the Welsh Ministers to register dentists who provide dental services in Wales otherwise than pursuant to the National Health Service (Wales) Act 2006 see the Private Dentistry (Wales) Regulations 2008, SI 2008/1976 (amended by SI 2009/2541), which apply, with modifications, the Care Standards Act 2000 Pt II (ss 11-42)).

### **421 Power to hold examinations and grant licences**

NOTE 2--A dental authority may grant a degree or licence in dentistry to a person only if it is satisfied that the person has successfully completed basic dental training: Dentists Act 1984 s 12A (added by SI 2007/3101). SI 1998/811 reg 18, Sch 2 revoked: SI 2007/3101.

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#### **422. Boards of examiners in dental surgery or dentistry.**

For the purpose of any examinations to qualify for a degree or licence in dentistry held by any university in England, Wales, Scotland or Northern Ireland<sup>1</sup>, by the Royal College of Surgeons of Edinburgh<sup>2</sup> or by the Royal College of Physicians and Surgeons of Glasgow<sup>3</sup>, the council or other governing body of the university or college may appoint a board of examiners<sup>4</sup>.

Each such board is called the Board of Examiners in Dental Surgery or Dentistry, and must consist of not less than six members of whom at least half must be registered dentists<sup>5</sup>. Members continue in office for such period as the governing body appointing them may by byelaws or regulations direct<sup>6</sup>. A casual vacancy on any board may be filled by the appropriate governing body which appointed the board and the person so appointed must be a registered dentist if the person in whose place he is appointed was a registered dentist<sup>7</sup>; and he holds office for such time only that the other person would have held office<sup>8</sup>.

1 Dentists Act 1984 s 4(1)(a) (amended by the Irish Republic (Termination of 1927 Agreement) Order 1987, SI 1987/2047, art 2, Schedule).

2 Dentists Act 1984 s 4(1)(b).

3 Ibid s 4(1)(c).

4 Ibid s 4(1). The Royal College of Surgeons may also appoint a board of examiners: see PARA 421 ante. As to the power to hold examinations and grant licences see PARA 421 ante.

5 Ibid s 4(2). Nothing in any enactment, charter or other document makes it necessary for them to possess any other qualification: s 4(2). For the meaning of 'registered dentist' see PARA 417 note 6 ante.

6 Ibid s 4(3). As to these byelaws and regulations see PARA 423 post.

7 Ibid s 4(4)(a).

8 Ibid s 4(4)(b).

#### **UPDATE**

#### **420-426 United Kingdom dentists**

Registered dentists are required to be covered by insurance: see the Dentists Act 1984 s 26A (added by SI 2005/2011); and PARA 426A. As to the power of the Welsh Ministers to register dentists who provide dental services in Wales otherwise than pursuant to the National Health Service (Wales) Act 2006 see the Private Dentistry (Wales) Regulations 2008, SI 2008/1976 (amended by SI 2009/2541), which apply, with modifications, the Care Standards Act 2000 Pt II (ss 11-42)).

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#### **423. Conduct of examinations; fees.**

Members of a board of examiners in dental surgery or dentistry<sup>1</sup> must conduct examinations to qualify for a degree or licence in dentistry in such manner as the governing body appointing them may by byelaws or regulations direct<sup>2</sup>. Such reasonable fees must be paid for a degree or licence awarded after examination by a board of examiners, and the degrees or licences awarded after examination must be in such form, as the governing body may so direct<sup>3</sup>. All such byelaws and regulations made by a dental authority<sup>4</sup>, and any further byelaws or regulations altering or revoking them, must be made in such manner, and subject to such approval or confirmation, if any, as in the case of other byelaws or regulations made by that authority<sup>5</sup>.

1 As to such boards see PARA 422 ante.

2 See the Dentists Act 1984 s 4(3).

3 Ibid s 4(5).

4 For the meaning of 'dental authority' see PARA 421 note 3 ante.

5 Dentists Act 1984 s 4(6).

#### **UPDATE**

#### **420-426 United Kingdom dentists**

Registered dentists are required to be covered by insurance: see the Dentists Act 1984 s 26A (added by SI 2005/2011); and PARA 426A. As to the power of the Welsh Ministers to register dentists who provide dental services in Wales otherwise than pursuant to the National Health Service (Wales) Act 2006 see the Private Dentistry (Wales) Regulations 2008, SI 2008/1976 (amended by SI 2009/2541), which apply, with modifications, the Care Standards Act 2000 Pt II (ss 11-42)).

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#### **424. Supervision of examinations.**

Every dental authority<sup>1</sup> must, from time to time, when required by the General Dental Council<sup>2</sup>, furnish it with such information as it may require as to the course of study and examinations to be gone through in order to obtain a degree or licence in dentistry or any additional diploma in dentistry<sup>3</sup>, and generally as to the conditions laid down for obtaining such a degree, licence or diploma<sup>4</sup>. Any member of the Council or other person, being a member or person appointed for the purpose by the Council, may be present at any such examinations<sup>5</sup>. The Council has power to remunerate persons so appointed who are not members of the Council for being present at the examinations<sup>6</sup>.

1 For the meaning of 'dental authority' see PARA 421 note 3 ante.

2 As to the General Dental Council see PARA 389 et seq ante.

3 Dentists Act 1984 s 8(a). 'Diploma' means any diploma, degree, fellowship, membership, licence, authority to practise, letters testimonial, certificate or other status or document granted by any university, corporation, college or other body or by any department of, or persons acting under the authority of, the government of any country or place (whether within or without Her Majesty's dominions): s 53(1).

4 Ibid s 8(b). As to the powers of the Council in relation to inadequate courses of study or examinations see PARA 425 post.

5 Ibid s 10(1). As to the membership of the Council see PARAS 389, 392 ante.

6 Ibid s 10(2). As to remuneration of members of the Council see PARA 393 ante.

#### **UPDATE**

#### **420-426 United Kingdom dentists**

Registered dentists are required to be covered by insurance: see the Dentists Act 1984 s 26A (added by SI 2005/2011); and PARA 426A. As to the power of the Welsh Ministers to register dentists who provide dental services in Wales otherwise than pursuant to the National Health Service (Wales) Act 2006 see the Private Dentistry (Wales) Regulations 2008, SI 2008/1976 (amended by SI 2009/2541), which apply, with modifications, the Care Standards Act 2000 Pt II (ss 11-42)).

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#### **425. Inadequate qualifying courses of study or examinations.**

Where it appears to the General Dental Council<sup>1</sup> that the course of study or examinations to qualify for a degree or licence in dentistry granted by a dental authority<sup>2</sup> is not such as to secure the possession by graduates or licentiates of the requisite knowledge and skill for the efficient practice of dentistry, it may make a representation to that effect to the Privy Council<sup>3</sup>, which may, if it thinks fit, order that any degree or licence granted by that authority after a specified time is not to confer a right to be registered<sup>4</sup>. The powers of the General Dental Council to make such representations and of the Privy Council to make such orders may be exercised in respect of a specifically described degree or licence in dentistry granted by a dental authority<sup>5</sup>. If such an order is made in respect of any degree or licence granted by a dental authority, no person is entitled to be registered in respect of such degree or licence granted after the time mentioned in the order<sup>6</sup>. If it appears to the Privy Council, on a further representation from the General Dental Council or otherwise, that the dental authority in question has made effectual provision to the satisfaction of the General Dental Council for the improvement of the course of study or examinations, the Privy Council may revoke the order, but the revocation does not entitle a person to be registered in respect of a degree or licence granted before the revocation<sup>7</sup>.

1 As to the General Dental Council see PARA 389 et seq ante.

2 For the meaning of 'dental authority' see PARA 421 note 3 ante.

3 As to the exercise by the Privy Council of its powers under the Dentists Act 1984 see PARA 388 ante. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

4 Ibid s 11(1). An order of the Privy Council may be made conditionally or unconditionally, and may contain such terms and directions as appear to it to be just: s 11(5).

5 Ibid s 11(2). As to qualification for registration see PARA 417 ante.

6 Ibid s 11(3).

7 Ibid s 11(4).

#### **UPDATE**

#### **420-426 United Kingdom dentists**

Registered dentists are required to be covered by insurance: see the Dentists Act 1984 s 26A (added by SI 2005/2011); and PARA 426A. As to the power of the Welsh Ministers to register dentists who provide dental services in Wales otherwise than pursuant to the National Health Service (Wales) Act 2006 see the Private Dentistry (Wales) Regulations 2008, SI 2008/1976 (amended by SI 2009/2541), which apply, with modifications, the Care Standards Act 2000 Pt II (ss 11-42)).

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#### **426. Restrictions as to a particular theory of dentistry.**

If it appears to the General Dental Council<sup>1</sup> that a dental authority<sup>2</sup> has attempted to impose on any candidate offering himself for examination an obligation to adopt, or to refrain from adopting, the practice of any particular theory of dentistry as a test or condition of admitting him to examination or of granting a degree or licence, the Council may make a representation to that effect to the Privy Council<sup>3</sup>. On any such representation, the Privy Council may direct the authority to desist from attempting to impose any such obligation and, if it fails to comply, the Privy Council may order that the authority is to cease to have power to grant degrees or licences so long as it continues to attempt to impose any such obligation<sup>4</sup>.

1 As to the General Dental Council see PARA 389 et seq ante.

2 For the meaning of 'dental authority' see PARA 421 note 3 ante.

3 Dentists Act 1984 s 12(1). As to the exercise by the Privy Council of its powers under the Dentists Act 1984 see PARA 388 ante. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

4 Ibid s 12(2). Any such order may be made conditionally or unconditionally and may contain such terms and directions as appear to the Privy Council to be just: s 12(3).

#### **UPDATE**

#### **420-426 United Kingdom dentists**

Registered dentists are required to be covered by insurance: see the Dentists Act 1984 s 26A (added by SI 2005/2011); and PARA 426A. As to the power of the Welsh Ministers to register dentists who provide dental services in Wales otherwise than pursuant to the National Health Service (Wales) Act 2006 see the Private Dentistry (Wales) Regulations 2008, SI 2008/1976 (amended by SI 2009/2541), which apply, with modifications, the Care Standards Act 2000 Pt II (ss 11-42)).

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#### **426A. Insurance.**

The following provisions are not yet in force.

A registered dentist<sup>1</sup> must be covered by adequate and appropriate insurance<sup>2</sup> throughout the period during which he is registered in the register<sup>3</sup>. A registered dentist seeking the retention of his name in the register must, before the commencement of the period for which he is seeking the retention of his name in the register, supply the registrar with evidence that he is covered by adequate and appropriate insurance<sup>4</sup>. A person seeking the restoration of his name to the register must supply the registrar with evidence that, if his name were to be restored to the register, he would be covered by adequate and appropriate insurance commencing, at the latest, on the date on which his name was so restored<sup>5</sup>.

If a person fails to comply with the insurance requirements<sup>6</sup>, the registrar may (1) refuse to register his name in the register<sup>7</sup>; (2) refuse to restore his name to the register<sup>8</sup>; (3) erase his name from the register<sup>9</sup>; or (4) refer the matter to the investigating committee<sup>10</sup>.

1 For the meaning of 'registered dentist' see PARA 417 NOTE 6.

2 'Adequate and appropriate insurance' means insurance of a type and amount which rules under the Dentists Act 1984 s 26A specify as adequate and appropriate: s 26A(2) (s 26A added by SI 2005/2011). As to the making of rules under the 1984 Act see PARA 390. 'Insurance' means (1) a contract of insurance providing cover for liabilities which may be incurred in carrying out work as a dentist; or (2) an arrangement made for the purpose of indemnifying a person against such liabilities: s 26A(10).

3 Ibid s 26A(1). A person seeking registration in the register must supply the registrar with evidence that, if his name were to be entered in the register, he would be covered by adequate and appropriate insurance commencing, at the latest, on the date on which his name was so entered: s 26A(3). The registrar may at any other time require a registered dentist to supply him with evidence that he is covered by adequate and appropriate insurance, and a registered dentist must comply with such a requirement as soon as reasonably practicable: s 26A(6). For the meaning of 'the registrar' see PARA 396 NOTE 1.

4 Ibid s 26A(4). A registered dentist or, as the case may be, a person seeking registration in, or restoration of his name to, the register must inform the registrar forthwith if he is no longer covered by adequate and appropriate insurance or, as the case may be, arrangements under which he would be covered by such insurance are no longer in place: s 26A(7).

5 Ibid s 26A(5).

6 Ie under ibid s 26A.

7 Ibid s 26A(8)(a).

8 Ibid s 26A(8)(b).

9 Ibid s 26A(8)(c). Where a person's name has been erased from the register under s 26A(8)(c), that name must be restored to the register on that person's application if he satisfies the registrar that he meets the requirements of s 15(3)(a) to (c), s 26A and any rules made under s 34B which apply to his case: s 26A(9).

10 See ibid s 26A(8)(d). The reference is made under s 27(5)(a). As to the committees of the General Dental Council see PARA 395.

#### **UPDATE**



#### **420-426 United Kingdom dentists**

Registered dentists are required to be covered by insurance: see the Dentists Act 1984 s 26A (added by the Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011); and PARA 426A. As to the power of the Welsh Ministers to register dentists who provide dental services in Wales otherwise than pursuant to the National Health Service (Wales) Act 2006 see the Private Dentistry (Wales) Regulations 2008, SI 2008/1976 (amended by SI 2009/2541), which apply, with modifications, the Care Standards Act 2000 Pt II (ss 11-42)).

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## ***B. EUROPEAN UNION AND OVERSEAS DENTISTS***

### **427. Qualifications for registration.**

Any person who is a national<sup>1</sup> of an EEA state<sup>2</sup> and holds an appropriate European diploma<sup>3</sup> and any person who holds a recognised overseas diploma<sup>4</sup> is entitled to be registered in the dentists register<sup>5</sup>.

However, a national of an EEA state holding an appropriate European diploma is not entitled to be registered unless he satisfies the registrar: (1) as to his identity<sup>7</sup>; (2) that he is of good character<sup>8</sup>; and (3) that he is in good physical and mental health<sup>9</sup>.

Similarly, a person holding a recognised overseas diploma is not entitled to be registered unless he satisfies the registrar: (a) as to his identity<sup>10</sup>; (b) that he is of good character<sup>11</sup>; (c) that he has satisfied the General Dental Council that he has the requisite knowledge and skill<sup>12</sup>; (d) that he is a national of an EEA state or is treated as such<sup>13</sup>, or has the necessary knowledge of English<sup>14</sup>; and (e) that he is in good health both physically and mentally<sup>15</sup>.

The registrar must notify a person who is a national of an EEA state, or who is treated as such<sup>16</sup>, and who applies for registration under these provisions<sup>17</sup>, of the result of his application within three months of the date when the registrar received all documents, or any remaining documents, that he needed to determine the application<sup>18</sup>, or such longer period as is allowed<sup>19</sup>. Where an application for registration is refused, the registrar must notify the applicant in writing of his reasons for refusing the application<sup>20</sup>. Such notifications may be sent by post<sup>21</sup>.

1 For these purposes, 'national', in relation to an EEA state, means the same as in the Community Treaties but does not include a person who by virtue of the Act of Accession (1972) Protocol No 3 (Channel Islands and Isle of Man) art 2 is not to benefit from Community provisions relating to the free movement of persons and services: Dentists Act 1984 s 15(2). For the meaning of 'the Community Treaties' see the European Communities Act 1972 s 1(2) (as applied by the Interpretation Act 1978 s 5, Sch 1).

2 For these purposes, 'EEA state' means a state which is a contracting party to the EEA Agreement or Switzerland; and 'EEA Agreement' means the agreement on the European Economic Area signed at Oporto on 2 May 1992 as adjusted by the Protocol signed at Brussels on 17 March 1993 and as amended, so far as relevant to the Dentists Act 1984, by decision of the EEA joint committee No 84/2002 of 25 June 2002 and by the agreement on the participation of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic signed at Luxembourg on 14 October 2003: Dentists Act 1984 s 15(7) (added by the Dental Qualifications (Recognition) Regulations 1996, SI 1996/1496, reg 2(3); and amended by the European Qualifications (Health Care Professions) Regulations 2003, SI 2003/3148, reg 6(1), (2)(b)(i), (ii); and the European Qualifications (Health and Social Care Professions and Accession of New Member States) Regulations 2004, SI 2004/1947, reg 11(1), (2)); Dentists Act 1984 s 53(1) (definition added by the Dental Qualifications (Recognition) Regulations 1996, SI 1996/1496, reg 6(4)).

3 Dentists Act 1984 s 15(1)(b) (amended by the Dental Qualifications (Recognition) Regulations 1996, SI 1996/1496, reg 2(1)). As to appropriate European diplomas see PARA 428 post. Any person who is not a national of an EEA state, but is, by virtue of a right conferred by EC Council Regulation 1612/68 (OJ L257, 19.10.1968, p 2) art 11 or any other enforceable Community right, entitled to be treated for the purposes of access to the profession of dentistry no less favourably than a national of such a state, is treated for these purposes as if he were such a national: Dentists Act 1984 s 15(2A) (added by the Dental Qualifications (Recognition) Regulations 1996, SI 1996/1496, reg 2(2)). As to the meaning of 'enforceable Community right' see the European Communities Act 1972 s 2(1); and the Interpretation Act 1978 s 5, Sch 1.

4 Dentists Act 1984 s 15(1)(c). The General Dental Council may direct that for these purposes a particular person who has passed the examinations required to obtain a recognised overseas diploma must be treated as a person holding a recognised overseas diploma: s 15(6). For the meaning of 'recognised overseas diploma' see PARA 417 note 10 ante. As to the General Dental Council see PARA 389 et seq ante.

5 Ibid s 15(1). As to the dentists register see PARA 417 ante.

6 For the meaning of 'the registrar' see PARA 396 note 1 ante.

7 Dentists Act 1984 s 15(3)(a).

8 Ibid s 15(3)(b). The registrar must accept as sufficient evidence of good character for these purposes: (1) a certificate issued by a competent authority in the EEA state which awarded the appropriate European diploma, or in which the person has subsequently become established, attesting that the requirements of that state in relation to good character for taking up the profession of dentistry have been met; or (2) where the state does not require proof of good character for taking up of the profession of dentistry, an extract from the judicial record or an equivalent document issued by a competent authority in the state showing that the person is of good character: s 15(4A)(a), (b) (s 15(4A)-(4C) added by the European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 19). The registrar must not accept any certificate if it is presented more than three months after the date on which it was issued: Dentists Act 1984 s 15(4C) (as so added).

9 Ibid s 15(3)(c). The registrar must accept as sufficient evidence of good health for these purposes: (1) the document required in the EEA state which awarded the appropriate European diploma, or in which the person has subsequently become established, as proof of good health; or (2) where the state does not require proof of good health for the taking up of the profession of dentistry, a certificate issued by a competent authority in the state corresponding to the certificates of good health issued by the General Dental Council: s 15(4B)(a), (b) (as added: see note 8 supra). The registrar must not accept any certificate if it is presented more than three months after the date on which it was issued: s 15(4C) (as so added). As to the imposition of a language test for a national of another member state without appropriate qualifications see Case C-424/97 *Haim v Kassenzahnärztliche Vereinigung Nordrhein* [2002] 1 CMLR 247, ECJ.

10 Dentists Act 1984 s 15(4)(a).

11 Ibid s 15(4)(b).

12 Ibid s 15(4)(c). As to the requisite knowledge and skill see PARA 429 post.

13 Ie for the purposes of ibid s 15(1)(b) (see note 3 supra): s 15(4)(d)(i) (substituted by the European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 20(1)).

14 Dentists Act 1984 s 15(4)(d)(ii). An applicant for registration has the necessary knowledge of English if he has the knowledge which, in the interests of himself and his patients, is necessary for the practice of dentistry in the United Kingdom: s 15(5). For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

15 Ibid s 15(4)(e).

16 See note 3 supra.

17 Ie under the Dentists Act 1984 s 15(1)(b), (c): see the text to notes 1-4 supra.

18 Ibid s 21A(1)(a) (s 21A added by the European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 21(1); and amended by the European Qualifications (Health Care Professions) Regulations 2003, SI 2003/3148, reg 6(1), (5)).

19 Ie by EC Council Directive 78/686 (OJ L233, 24.8.1978, p 1) art 13: Dentists Act 1984 s 21A(1)(b) (as added: see note 18 supra). For the meaning of 'EC Council Directive 78/686' see PARA 428 note 7; definition applied by the Dentists Act 1984 s 21A(3) (as so added).

20 Ibid s 21(a).

21 Ibid ss 21, 21A(2) (as added: see note 18 supra). As to references to service by post see PARA 20 note 22 ante.

## UPDATE

### 427 Qualifications for registration

TEXT AND NOTES--Dentists Act 1984 s 15 amended: SI 2007/3101.

NOTE 1--As to the meaning of 'the Community Treaties' see EUROPEAN COMMUNITIES vol 51  
PARA 1•22.

TEXT AND NOTES 20, 21--Dentists Act 1984 s 21 repealed: SI 2005/2011. Dentists Act  
1984 s 21A added: SI 2007/3101.

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#### **428. Appropriate European diploma.**

Any diploma<sup>1</sup> in dentistry granted in an EEA state<sup>2</sup> is an appropriate European diploma for the purposes of entitlement to registration in the dentists register<sup>3</sup>, except the following:

- 657 (1) a scheduled European diploma<sup>4</sup> granted in an EEA state before the implementation date<sup>5</sup>, or on or after that date where training of which the diploma is evidence was commenced by the holder before that date, unless the holder either satisfies the registrar<sup>6</sup>, by means of a certificate of the competent authority<sup>7</sup> of that state or otherwise, that the diploma guarantees that his training satisfies the requirements laid down by the Dental Training Directive<sup>8</sup>, or produces to the registrar a certificate of the competent authority of any EEA state that he has lawfully practised dentistry for at least three consecutive years during the five years preceding the date of the certificate<sup>9</sup>;
- 658 (2) a diploma granted in an EEA state on or after the implementation date which is not evidence of training commenced by the holder before that date, not being a scheduled European diploma, unless the holder produces to the registrar a certificate issued by the competent authority of the EEA state certifying that the diploma was awarded following training which satisfies the requirements laid down by the Dental Training Directive<sup>10</sup> and is treated by that EEA state as if it were a scheduled European diploma<sup>11</sup>;
- 659 (3) a diploma granted in an EEA state before the implementation date, or on or after that date where training of which that diploma is evidence was commenced by the holder before that date, and not being in either case a scheduled European diploma, unless the holder produces to the registrar such a certificate as is mentioned in head (2) above<sup>12</sup>.

1 For the meaning of 'diploma' see PARA 424 note 3 ante.

2 For the meaning of 'EEA state' see PARA 427 note 2 ante.

3 For the purposes of the Dentists Act 1984 s 15(1)(b) (see PARAS 417, 427 ante): s 15(2), Sch 2 para 2 (substituted by the Dental Qualifications (Recognition) Regulations 1996, SI 1996/1496, reg 3(1), (3)). Specific provision is made in respect of certain qualifications awarded in Italy, Spain, Austria, the former German Democratic Republic, the former Soviet Union, the former Yugoslavia, the Czech Republic, Slovakia or the former Czechoslovakia: see the Dentists Act 1984 Sch 2 paras 5-10 (Sch 2 paras 5, 6 added by the Medical and Dental Qualifications (EEC Recognition: Spain and Portugal) Order 1986, SI 1986/23, art 3(b); the Dentists Act 1984 Sch 2 paras 5-7 substituted by the Dental Qualifications (Recognition) Regulations 1996, SI 1996/1496, reg 3(7); the Dentists Act 1984 Sch 2 para 6A added by the European Qualifications (Health Care Professions) Regulations 2003, SI 2003/3148, reg 6(1), (6)(c); and the Dentists Act 1984 Sch 2 paras 8-10 added by the European Qualifications (Health and Social Care Professions and Accession of New Member States) Regulations 2004, SI 2004/1947, reg 11(1), (3)(c))

4 'Scheduled European diploma' means a diploma specified in the Dentists Act 1984 Sch 2 Pt II (as substituted and amended): Sch 2 para 1(1) (Sch 2 para 1 substituted by the Dental Qualifications (Recognition) Regulations 1996, SI 1996/1496, reg 3(1), (2)). The Dentists Act 1984 sets out by reference to: (1) the title of qualification; (2) the awarding body; and (3) where applicable, the certificate accompanying qualification, the scheduled European diplomas for each of the following countries: Austria; Belgium; Cyprus; Czech Republic; Denmark; Estonia; Finland; France; Germany; Greece; Hungary; Iceland; Ireland; Italy; Latvia; Liechtenstein; Lithuania; Luxembourg; Malta; Netherlands; Norway; Poland; Portugal; Slovakia; Slovenia; Spain; Sweden; Switzerland: see Sch 2 Pt II (substituted by the European Qualifications (Health Care Professions) Regulations

2003, SI 2003/3148, reg 6(1), (7), Sch 2 Pt I; and amended by the European Qualifications (Health and Social Care Professions and Accession of New Member States) Regulations 2004, SI 2004/1947, reg 11(1), (3)(d)).

5 'The implementation date' means: (1) in the case of Greece, 1 January 1981; (2) in the case of Portugal, 1 January 1986; (3) in the case of Finland, Iceland, Norway and Sweden, 1 January 1994; (4) in the case of Liechtenstein, 1 May 1995; (5) in the case of Switzerland, 1 June 2002; (6) in the case of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, 1 May 2004; (7) in the case of any other EEA state, the date notified by the state to the European Commission as that on which it implemented the Dental Training Directive (see note 8 *infra*): Dentists Act 1984 Sch 2 para 1(1) (as substituted (see note 4 *supra*); definition amended by the European Qualifications (Health Care Professions) Regulations 2003, SI 2003/3148, reg 6(1), (6)(a)(iii); and the European Qualifications (Health and Social Care Professions and Accession of New Member States) Regulations 2004, SI 2004/1947).

6 For the meaning of 'the registrar' see PARA 396 note 1 *ante*.

7 'Competent authority' means an authority or body designated by an EEA state in accordance with EC Council Directive 78/686; and 'EC Council Directive 78/686' means EC Council Directive 78/686 (OJ L233, 24.8.1978, p 1) concerning the mutual recognition of diplomas, certificates and other evidence of the formal qualifications of practitioners in dentistry, as adapted, amended or extended by the Accession of Greece Act, EC Council Directive 81/1057 (OJ L385, 31.12.81, p 25), the Accession of Spain and Portugal Act, EC Council Directive 89/594 (OJ L341, 23.11.89, p 19), EC Council Directive 90/658 (OJ L353, 17.12.90, p 73), the EEA Agreement, the Accession of Austria, Finland and Sweden Act, EC Council Directive 2001/19 (OJ L206, 13.7.2001, p 1), the Swiss Agreement and the Act of Accession 2003: Dentists Act 1984 Sch 2 para 1(1) (as substituted (see note 4 *supra*); and amended by the European Qualifications (Health Care Professions) Regulations 2003, SI 2003/3148, reg 6(1), (6)(a)(i); and the European Qualifications (Health and Social Care Professions and Accession of New Member States) Regulations 2004, SI 2004/1947, reg 11(1), (3)(a)(i)). For the meaning of 'EEA Agreement' see PARA 427 note 2 *ante*.

'The Accession of Greece Act' means the Act annexed to the Treaty relating to the accession of the Hellenic Republic to the European Community signed at Athens on 28 May 1979; 'the Accession of Spain and Portugal Act' means the Act annexed to the Treaty relating to the accession of the Kingdom of Spain and the Portuguese Republic to the European Community signed at Madrid and Lisbon on 12 June 1985; 'the Accession of Austria, Finland and Sweden Act' means the Act annexed to the Treaty relating to the accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the European Union, signed at Corfu on 24 June 1994, as adjusted by the Decision of the Council of the European Union of 1 January 1995 adjusting the instruments concerning the accession of new member states to the European Union; 'the Swiss Agreement' means the Agreement between the European Community and its member states, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, signed at Luxembourg on 21 June 1999; and 'the Act of Accession 2003' means the Act annexed to the Treaty relating to the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the Adjustments to the Treaties on which the European Union is founded signed at Athens on 16 April 2003: Dentists Act 1984 Sch 2 para 1(2) (as so substituted; and amended by the European Qualifications (Health Care Professions) Regulations 2003, SI 2003/3148, reg 6(1), (6)(b); and the European Qualifications (Health and Social Care Professions and Accession of New Member States) Regulations 2004, SI 2004/1947, reg 11(1), (3)(b)).

8 Dentists Act 1984 Sch 2 para 3(a). 'The Dental Training Directive' means EC Council Directive 78/687 (OJ L233, 24.8.1978, p 1) concerning the co-ordination of provisions in respect of activities of dental practitioners as amended by the Accession of Austria, Finland and Sweden Act, EC Council Directive 2001/19 (OJ L206, 13.7.2001, p 1) and the Act of Accession 2003: Dentists Act 1984 Sch 2 para 1(1) (as substituted (see note 4 *supra*); definition amended by the European Qualifications (Health and Social Care Professions and Accession of New Member States) Regulations 2004, SI 2004/1947, reg 11(1), (3)(a)(ii)).

9 Dentists Act 1984 Sch 2 para 3(b) (Sch 2 paras 3, 4 amended, and Sch 2 para 3A added, by the Dental Qualifications (Recognition) Regulations 1996, SI 1996/1496, reg 3(4)-(6)).

10 Dentists Act 1984 Sch 2 para 3A(a) (as added: see note 9 *supra*).

11 *Ibid* Sch 2 para 3A(b) (as added: see note 9 *supra*).

12 *le* such a certificate as is mentioned in *ibid* Sch 2 para 3(b) (as amended), Sch 2 para 3A (as added) (see the text to notes 10-11 *supra*): Sch 2 para 4 (as amended: see note 9 *supra*).

## UPDATE

### 428 Appropriate European diploma

TEXT AND NOTES--Dentists Act 1984 Sch 2 amended: SI 2007/3101.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(4) REGISTRATION AND QUALIFICATIONS/(ii) Entitlement to Registration/B. EUROPEAN UNION AND OVERSEAS DENTISTS/429. Recognised overseas diplomas: requisite skill and knowledge.

#### **429. Recognised overseas diplomas: requisite skill and knowledge.**

In the case of a person holding a recognised overseas diploma<sup>1</sup> and claiming entitlement to be registered in the dentists register<sup>2</sup>, if the diploma held by him is of a kind recognised for the time being by the General Dental Council as furnishing such guarantees of that person's possessing the requisite knowledge and skill as warrant dispensing with further inquiry, he must be taken to have satisfied the Council that he has the requisite knowledge and skill<sup>3</sup>. Except in such a case, the Council must, for the purpose of satisfying itself that a person has the requisite knowledge and skill, and in addition to such other requirements as it may impose on him, require him to sit for examinations held by a dental authority<sup>4</sup>, or a group of dental authorities, under arrangements made by the Council<sup>5</sup>. In deciding whether a person who is a national of an EEA state<sup>6</sup>, or is treated as such<sup>7</sup>, has the requisite knowledge and skill, the Council must take into account all his dental qualifications, knowledge or experience, wherever acquired, which are relevant to that decision<sup>8</sup>; if the person holds a dental qualification granted outside the EEA which has been accepted by another EEA state as qualifying him to practise as a dentist in that state, the Council must take that acceptance into account<sup>9</sup>; and the Council may treat a qualification which is not of a kind recognised for the time being by the Council as furnishing sufficient guarantees that he has the requisite knowledge and skill as if it were such a qualification<sup>10</sup>.

The Council may: (1) make regulations as to the examinations to be held for the purposes of these provisions and may include in the regulations provisions for withdrawing the right to sit for any such examinations from a person who has not first paid the fee prescribed by the regulations for sitting for the examinations or from a person who has previously failed to pass such examinations on such number of occasions as may be prescribed by the regulations<sup>11</sup>; and (2) appoint persons to attend any such examinations who must report to the Council as to the adequacy of the examinations for testing the knowledge and skill of those taking them<sup>12</sup>.

1 The General Dental Council may direct that for the purposes of these provisions a particular person who has passed the examinations required to obtain a recognised overseas diploma be treated as a person holding a recognised overseas diploma: Dentists Act 1984 s 16(6). For the meaning of 'recognised overseas diploma' see PARA 417 note 10 ante. For the meaning of 'diploma' see PARA 424 note 3 ante. As to the General Dental Council see PARA 389 et seq ante.

2 I.e. by virtue of *ibid* s 15(1)(c): see PARAS 417, 427 ante.

3 I.e. for the purposes of *ibid* s 15(4)(c) (see PARA 427 ante): s 16(2). For the purpose of satisfying itself that it is appropriate to recognise any diploma granted by an overseas institution, the Council may appoint persons to visit that institution and to attend the examinations to be taken in order to obtain the diploma; and the persons so appointed must report to the Council as to the sufficiency of the instruction given in the institution and as to the adequacy of the examinations concerned for testing the knowledge and skill of those taking them: s 16(3). The Council has power to remunerate persons who are not members of the Council for acting as such visitors: s 16(5). As to the members of the General Dental Council see PARA 389 ante.

4 For the meaning of 'dental authority' see PARA 421 note 3 ante.

5 Dentists Act 1984 s 16(1).

6 For the meaning of 'national' see PARA 427 note 1 ante; and for the meaning of 'EEA state' see PARA 427 note 2 ante.

7 I.e. for the purposes of the Dentists Act 1984 s 15(1)(b): see PARA 427 note 3 ante.



8 Ibid s 16(2A)(a) (s 16(2A) added by the European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 20(2); and the Dentists Act 1984 s 16(2A)(a), (b) substituted by the European Qualifications (Health Care Professions) Regulations 2003, SI 2003/3148, reg 6(1), (3)).

9 Dentists Act 1984 s 16(2A)(b) (as added and substituted: see note 8 supra).

10 Ibid s 16(2A)(c) (as added: see note 8 supra).

11 Ibid s 16(4)(a). Such regulations do not come into force until approved by order of the Privy Council: s 16(7). These regulations are not required to be made by statutory instrument and are not recorded in this work. As to evidence and proof of documents issued by the General Dental Council see PARA 400 ante. As to the exercise by the Privy Council of its powers under the Dentists Act 1984 see PARA 388 ante. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

12 Ibid s 16(4)(b). The Council has power to remunerate persons who are not members of the Council for acting as such visitors: s 16(5).

## **UPDATE**

### **429 Recognised overseas diplomas: requisite skill and knowledge**

NOTES 8-10--Dentists Act 1984 s 16(2A) amended, s 16(2B) added: SI 2007/3101.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(4) REGISTRATION AND QUALIFICATIONS/(ii) Entitlement to Registration/B. EUROPEAN UNION AND OVERSEAS DENTISTS/430. Effect of disqualification in another member state.

#### **430. Effect of disqualification in another member state.**

A person who is subject to a disqualifying decision in an EEA state<sup>1</sup> in which he is or has been established in dental practice<sup>2</sup> is not entitled to be registered in the dentists register<sup>3</sup>. A disqualifying decision in an EEA state is one made by responsible authorities in that state and expressed to be made on the grounds that the person has committed a criminal offence or has misconducted himself in a professional respect, and having, in that state, the effect either that he is no longer registered or otherwise officially recognised as a dental practitioner or that he is prohibited from practising there<sup>4</sup>. If a person is registered in the dentists register when he is subject to a disqualifying decision, the registrar<sup>5</sup>, on being satisfied that the person was and still is subject to the decision, must remove his name from the register<sup>6</sup>. If a person is refused registration or has his name erased from the register by reason of his being subject to a disqualifying decision, the registrar must, on request, state in writing<sup>7</sup> the grounds for the refusal or erasure<sup>8</sup>. The person may appeal by giving notice in writing to the General Dental Council<sup>9</sup> and any such appeal must be referred to and determined by the professional conduct committee<sup>10</sup>, which must direct the registrar whether the person is or is not entitled to be registered or should have his name erased from the register, as the case may be<sup>11</sup>. If a person who has been registered becomes subject to a disqualifying decision, his case stands referred to the professional conduct committee as the case of a person alleged to have been convicted of a criminal offence or to have been guilty of any serious professional misconduct<sup>12</sup>; and, on being satisfied that he is subject to the disqualifying decision, the committee may exercise its powers<sup>13</sup> of suspension or erasure from the register on the assumption that the criminal offence or misconduct justifies such exercise of its powers<sup>14</sup>.

1 For the meaning of 'EEA state' see PARA 427 note 2 ante.

2 For the meaning of 'the practice of dentistry' see PARA 403 ante.

3 See under the Dentists Act 1984 s 15(1)(b) (see PARAS 417, 427 ante): s 35(1) (s 35(1), (2) amended by the Dental Qualifications (Recognition) Regulations 1996, SI 1996/1496, reg 6(1)).

4 Dentists Act 1984 s 35(2) (as amended: see note 3 supra). A person is not entitled to have his name included in the list of visiting EEA practitioners if he is subject to such a disqualifying decision: see s 36, Sch 4 para 4(a); and PARA 431 post.

5 For the meaning of 'the registrar' see PARA 396 note 1 ante.

6 Dentists Act 1984 s 35(3).

7 For the meaning of 'writing' see PARA 20 note 22 ante.

8 Dentists Act 1984 s 35(4)(a).

9 Ibid s 35(4)(b). As to the General Dental Council see PARA 389 et seq ante.

10 As to the professional conduct committee see PARA 460 et seq post.

11 Dentists Act 1984 s 35(4)(c). Schedule 3 paras 2, 5 (see PARAS 462, 463 post) apply to such appeals as they apply in relation to proceedings of the professional conduct committee under s 27 except that the Council has power to make rules with respect to all or any of the matters mentioned in Sch 3 para 2(2) (see PARA 462 post) but is not required to do so and separate rules may be made by virtue of this provision as respects proceedings under it: s 35(4).

12 le as mentioned in *ibid* s 27(1): see PARA 456 post.

13 le its powers under *ibid* s 27(1): see PARA 456 post.

14 *Ibid* s 35(5).

## **UPDATE**

### **430 Effect of disqualification in another member state**

TEXT AND NOTES 1-4--References to an EEA state now refer to an EEA state or Switzerland: Dentists Act 1984 ss 35, 36, Sch 4 (ss 35, 36 amended, Sch 4 substituted by SI 2007/3101).

TEXT AND NOTE 4--For 'or has misconducted ... respect' read 'or on grounds related to his professional conduct, professional performance or physical or mental health': 1984 Act s 35(2) (amended by SI 2005/2011).

TEXT AND NOTES 7-11--1984 Act s 35(4) repealed: SI 2005/2011.

TEXT AND NOTES 12-14--Where on or after the date on which a person was registered by virtue of the 1984 Act s 15(1)(b) a disqualifying decision relating to him comes into force, Pt 3 (ss 14-36) applies, with any necessary modifications, as if it had been found that he had been convicted of the criminal offence referred to in the disqualifying decision, or that his professional conduct, professional performance or physical or mental health had been such as is imputed to him by that decision, as the case may be: 1984 Act s 35(5) (substituted by SI 2005/2011).

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#### **431. Visiting EEA practitioners.**

Any national of an EEA state<sup>1</sup> who is established in dental practice in an EEA state other than the United Kingdom<sup>2</sup> may render dental services during a visit to the United Kingdom without being registered under the Dentists Act 1984 if he complies with the following provisions<sup>3</sup>. A person who intends to render such dental services must provide the registrar<sup>4</sup> with: (1) a declaration in writing giving particulars of the services to be rendered and the period or periods in which he expects to render them<sup>5</sup>; and (2) a certificate or certificates issued by the authority or body designated by the EEA state concerned as competent for these purposes<sup>6</sup> showing that he is lawfully practising dentistry<sup>7</sup> in an EEA state other than the United Kingdom<sup>8</sup>, and that he holds a diploma<sup>9</sup> in dentistry which EEA states are required to recognise<sup>10</sup>. In an urgent case the declaration and certificates to be provided may be provided after the services have been rendered, but, if so, they must be provided as soon as possible thereafter and in any event not more than 15 days after the date on which the practitioner has rendered the services<sup>11</sup>.

The registrar must keep a list known as the list of visiting EEA practitioners<sup>12</sup>. Where a person complies with the requirements above, the registrar must enter his name, together with particulars of any diplomas held by him, in the list<sup>13</sup>. The entry has effect for the period specified in the list against the entry, being the period which appears to the registrar to be appropriate having regard to the particulars given in the declaration made by that person<sup>14</sup>. However, a person is not entitled to have his name included in the list if he is subject to a disqualifying decision<sup>15</sup> taken in relation to him in an EEA state<sup>16</sup>, or he is subject to a prohibition imposed on him by the professional conduct committee<sup>17</sup>. Any entry in the list relating to a practitioner does not have effect or ceases to have effect if he is or becomes subject to such a decision or prohibition, or if he becomes established in dental practice in the United Kingdom or renders, save in cases of urgency, dental services in the United Kingdom which fall outside those specified in the declaration made by him<sup>18</sup>.

If a person who is or has been entered in the list of visiting EEA practitioners has been convicted of a criminal offence, whether in an EEA state or elsewhere<sup>19</sup>, or has been guilty of any serious professional misconduct<sup>20</sup>, the professional conduct committee may, if it thinks fit, impose on him a prohibition in respect of the rendering of dental services in the United Kingdom in the future<sup>21</sup>. Such a prohibition is for an indefinite period<sup>22</sup>. A person may apply to the General Dental Council<sup>23</sup> for termination of a prohibition imposed on him and the Council may, on any such application, terminate the prohibition<sup>24</sup>. No application may be made earlier than ten months from the date on which the prohibition was imposed<sup>25</sup>, or in the period of ten months following a decision made on an earlier application<sup>26</sup>.

1 For these purposes, 'national', in relation to an EEA state, means the same as in the Community Treaties but does not include a person who by virtue of the Act of Accession (1972) Protocol No 3 (Channel Islands and Isle of Man) art 2 is not to benefit from Community provisions relating to the free movement of persons and services: Dentists Act 1984 s 36, Sch 4 para 1(3) (amended by the Dental Qualifications (Recognition) Regulations 1996, SI 1996/1496, regs 5(2), (3), 6(2)). For the meaning of 'EEA state' see PARA 427 note 2 ante. For the meaning of 'the Community Treaties' see the European Communities Act 1972 s 1(2) (as applied by the Interpretation Act 1978 s 5, Sch 1).

Any person who is not a national of an EEA state, but is, by virtue of a right conferred by EC Council Regulation 1612/68 (OJ L257, 19.10.1968, p 2) art 11 or any other enforceable Community right, entitled to be treated, for the purposes of access to the profession of dentistry, no less favourably than a national of such a state, is treated for these purposes as if he were such a national: Dentists Act 1984 Sch 4 para 1(2A) (Sch 4 para 1(2)).

substituted, and Sch 4 para 1(2A) added, by the Dental Qualifications (Recognition) Regulations 1996, SI 1996/1496, reg 5(2), (3)).

2 Dentists Act 1984 Sch 4 para 1(2) (as substituted: see note 1 supra). For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

3 Ibid Sch 4 para 1(1).

4 For the meaning of 'the registrar' see PARA 396 note 1 ante.

5 Dentists Act 1984 Sch 4 para 2(1)(a).

6 Ie as competent for the purposes of EC Council Directive 78/686 (OJ L233, 19.10.1978, p 1) art 15(3) (provision of services). For the meaning of 'EC Council Directive 78/686' see PARA 428 note 7; definition applied by the Dentists Act 1984 Sch 4 para 1(3) (definition substituted by the Dental Qualifications (Recognition) Regulations 1996, SI 1996/1496, reg 5(2), (3)).

7 For the meaning of 'the practice of dentistry' see PARA 403 ante.

8 Dentists Act 1984 Sch 4 para 2(1)(b)(i) (Sch 4 para 2(1)(b)(i), (ii) amended by the Dental Qualifications (Recognition) Regulations 1996, SI 1996/1496, reg 5(4)).

9 For the meaning of 'diploma' see PARA 424 note 3 ante.

10 Ie by EC Council Directive 78/686 (see note 6 supra): Dentists Act 1984 Sch 4 para 2(1)(b)(ii) (as amended: see note 8 supra). Every such certificate must bear a date not less than 12 months prior to the date on which the certificate was provided: Sch 4 para 2(2)(b).

11 Ibid Sch 4 para 2(2)(a) (amended by the European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 21(2)).

12 Dentists Act 1984 Sch 4 para 3(1) (Sch 4 paras 3(1), (2), 4, 5(1) amended by the Dental Qualifications (Recognition) Regulations 1996, SI 1996/1496, regs 5(5), 6(a), (b)).

13 Dentists Act 1984 Sch 4 para 3(2) (as amended: see note 12 supra).

14 Ie the declaration referred to in ibid Sch 4 para 2(1)(a) (see the text to notes 4-5 supra): Sch 4 para 3(3).

15 Ie within the meaning of ibid s 35: see PARA 430 text to note 4 ante.

16 Ibid Sch 4 para 4(a) (as amended: see note 12 supra).

17 Ie under ibid Sch 4 para 5 (as amended) (see the text to notes 19-26 infra): Sch 4 para 4(b) (as amended: see note 12 supra). As to the professional conduct committee see PARA 460 et seq post.

18 Ie the declaration made under ibid Sch 4 para 2(1)(a) (see the text to notes 4-5 supra): Sch 4 para 4 (as amended: see note 12 supra).

19 Ibid Sch 4 para 5(1)(a) (as amended: see note 12 supra).

20 Ibid Sch 4 para 5(1)(b) (as amended: see note 12 supra).

21 Ibid Sch 4 para 5(1) (as amended: see note 12 supra).

22 Ibid Sch 4 para 5(2).

23 As to the General Dental Council see PARA 389 et seq ante.

24 Dentists Act 1984 Sch 4 para 5(3).

25 Ibid Sch 4 para 5(3)(a).

26 Ibid Sch 4 para 5(3)(b).

## UPDATE

### 431 Visiting EEA practitioners

TEXT AND NOTES---Dentists Act 1984 s 36 amended, Sch 4 substituted, ss 36ZA, 36ZB and Sch 4ZA added: SI 2007/3101.

NOTE 1--As to the meaning of 'the Community Treaties' see EUROPEAN COMMUNITIES vol 51 PARA 1•22.

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### **432. Temporary registrations.**

Where the General Dental Council<sup>1</sup>, with a view to permitting any person holding a recognised overseas diploma<sup>2</sup> temporarily to practise dentistry<sup>3</sup> in a particular post in a hospital or other institution, gives a direction that he be registered as respects practice in that post in that hospital or institution for a specified period, he is entitled to be registered in the dentists register subject to the entry against his name of the restrictions specified in the direction<sup>4</sup>.

No such direction may be given unless the person concerned has satisfied the registrar<sup>5</sup>: (1) of his identity<sup>6</sup>; (2) that he is of good character<sup>7</sup>; (3) that he has the requisite knowledge and skill for the efficient practice of dentistry in the post in question<sup>8</sup>; (4) that he is a national of an EEA state<sup>9</sup> or is treated as such<sup>10</sup>, or has the necessary knowledge of English<sup>11</sup>; and (5) that he is in good health, both physically and mentally<sup>12</sup>. Where the registrar refuses such an application, he must notify the applicant in writing<sup>13</sup> of his reasons and such notification may be sent by post<sup>14</sup>.

Temporary registration does not make it lawful for a person to practise dentistry otherwise than subject to the restrictions specified in the relevant direction nor constitute him a registered dentist<sup>15</sup> for the purpose of membership of the Council<sup>16</sup>.

1 As to the General Dental Council see PARA 389 et seq ante.

2 For the meaning of 'recognised overseas diploma' see PARA 417 note 10 ante. The Council may direct that a particular person who has passed the examinations required to obtain a recognised overseas diploma is to be treated as a person holding a recognised overseas diploma: Dentists Act 1984 s 17(5).

3 For the meaning of 'the practice of dentistry' see PARA 403 ante.

4 Dentists Act 1984 s 17(1). As to the registration of persons holding recognised overseas diplomas see PARAS 417, 427 ante.

5 For the meaning of 'the registrar' see PARA 396 note 1 ante.

6 Dentists Act 1984 s 17(2)(a).

7 Ibid s 17(2)(b).

8 Ibid s 17(2)(c). In deciding for these purposes whether a person who is a national of an EEA state, or a person who is treated as such, has the requisite knowledge and skill for the efficient practice of dentistry in the post in question, the General Dental Council must take into account all his dental qualifications, knowledge or experience, wherever acquired, which are relevant to that decision, and any acceptance by another EEA state of his right to practise as a dentist in that state: s 17(3A) (added by the European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 20(3)(b); and amended by the European Qualifications (Health Care Professions) Regulations 2003, SI 2003/3148, reg 6(1), (4)(a), (b)).

9 For the meaning of 'EEA state' see PARA 427 note 2 ante.

10 Ie for the purposes of the Dentists Act 1984 s 15(1)(b) (see PARA 427 note 3 ante): s 17(2)(d)(i) (s 17(2)(d) substituted by the European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 20(3)(a)).

11 Dentists Act 1984 s 17(2)(d)(ii) (as substituted: see note 10 supra). An applicant for registration has the necessary knowledge of English if he has the knowledge which, in the interests of himself and his patients, is necessary for the practice of dentistry in the United Kingdom: s 17(3).

12 Ibid s 17(2)(e).

13 For the meaning of 'writing' see PARA 20 note 22 ante.

14 Dentists Act 1984 s 21(b). As to references to service by post see PARA 20 note 22 ante.

15 For the meaning of 'registered dentist' see PARA 417 note 6 ante.

16 le under the Dentists Act 1984 s 1, Sch 1 (see PARA 389 ante): s 17(4). As to the practice of dentistry by unqualified persons see PARA 404 ante.

## **UPDATE**

### **432 Temporary registrations**

NOTES 8, 10--Dentists Act 1984 s 17(2)(d)(i) substituted, s 17(3A) amended: SI 2007/3101.

TEXT AND NOTES 13, 14--1984 Act s 21 repealed: Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011.



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### **(iii) Specialist Qualifications**

#### **433. Certificates of completion of specialist training.**

The General Dental Council<sup>1</sup> must award<sup>2</sup> a certificate of completion of specialist training<sup>3</sup> to any person who applies to it for that purpose, and pays any fee<sup>4</sup> determined by it, if it is satisfied that he has satisfactorily completed specialist dental training in orthodontics or, as the case may be, oral surgery approved<sup>5</sup> by it<sup>6</sup>. A certificate of completion of specialist training may be awarded only to a registered dentist<sup>7</sup>.

A certificate of completion of specialist training must state: (1) the date on which it was awarded<sup>8</sup>; (2) the specialty in which it was awarded<sup>9</sup>; (3) the name of its holder<sup>10</sup>; (4) his primary dental qualification<sup>11</sup>; and (5) his registration number<sup>12</sup>. A certificate of completion of specialist training must state where the holder's primary dental qualification was awarded and, in the case of a registered dentist whose primary qualification in the United Kingdom<sup>13</sup> was awarded following the completion of a degree, licence or other dental diploma<sup>14</sup> overseas, it must also state this qualification and the place where it was awarded<sup>15</sup>.

In relation to specialist dental qualifications in orthodontics and oral surgery, the competent authority in the United Kingdom<sup>16</sup> is the General Dental Council<sup>17</sup>.

The Secretary of State<sup>18</sup> may give directions to the Council in connection with any of its functions which arise from Community obligations<sup>19</sup> and which relate to primary qualifications awarded in the EEA<sup>20</sup>, specialist qualifications in orthodontics or oral surgery awarded in the EEA<sup>21</sup>, registration under the Dentists Act 1984 by virtue of any qualifications<sup>22</sup>, or entry in a specialist list for orthodontists or oral surgeons<sup>23</sup>; and it is the duty of the Council to comply with any such directions<sup>24</sup>.

1 As to the General Dental Council see PARA 389 et seq ante.

2 Ie subject to the European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 6(2)-(4): see the text and notes 6-7 infra.

3 Ie a certificate of completion of specialist training in orthodontics or, as the case may be, oral surgery: see *ibid* reg 2(1).

4 As to fees see PARA 435 post.

5 Ie pursuant to the European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 7: see PARA 434 post.

6 *Ibid* reg 6(1). A period of specialist dental training in a branch of specialised dentistry other than orthodontics counts towards completion of the training required for orthodontics if it is common to both specialties (reg 6(3)); and a period of specialist dental training in a branch of specialised dentistry other than oral surgery counts towards completion of the training required for oral surgery if it is common to both specialties (reg 6(4)). As to the minimum requirements of specialist dental training see PARA 434 post.

7 *Ibid* reg 6(2). 'Registered dentist' means a person registered in the dentists register other than with temporary registration, except in reg 8(1), (2) (see PARA 412 ante) and reg 12(1) (see PARA 414 ante), where it has the meaning assigned in the Dentists Act 1984 (see PARA 417 note 6 ante): European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 2(1). As to the dentists register see PARA 417 ante; and as to temporary registration see PARA 432 ante.

- 8 Ibid reg 6(5)(a).
- 9 Ibid reg 6(5)(b).
- 10 Ibid reg 6(5)(c).
- 11 Ibid reg 6(5)(d). For the meaning of 'primary qualification' see PARA 419 note 5 ante.
- 12 Ibid reg 6(5)(e). 'Registration number' means the number by which a registered dentist is identified in the register: reg 2(1).
- 13 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.
- 14 For the meaning of 'diploma' see PARA 424 note 3 ante.
- 15 European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 6(6).
- 16 le for the purposes of the Recognition Directive and the Dental Training Directive (for the meanings of which see PARA 413 note 2 ante).
- 17 European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 4(1). Accordingly, in relation to specialist dental qualifications in orthodontics and oral surgery, in addition to the functions conferred upon it elsewhere in the European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811 (as amended), the Council must as respects the United Kingdom perform the functions: (1) of the host member state referred to in the Recognition Directive art 6(1) (requirement to fulfil domestic requirements for specialist training in certain specialties), art 6(2) (requirement to take into account additional training already undertaken and professional experience etc already acquired), art 21 (which concerns requiring confirmation of authenticity of foreign diplomas and confirmation that a person has fulfilled the Dental Training Directive's training requirements); and (2) of a competent authority referred to in the Recognition Directive art 6(2) (issue of certificates relating to training in the United Kingdom in certain specialties), art 6(3) (requirement to assess content and duration of training, to take into account professional experience etc and to communicate what additional training is required), art 6(4) (requirement to give a decision within four months of receipt of an application together with full supporting documentation), art 7(2) (issue of certificates to specialists whose qualifications were awarded in the United Kingdom or who have practised their specialty in the United Kingdom), art 7(3) (issue of certificates of fulfilment of the Dental Training Directive training requirements in respect of qualifications which do not conform with the designations set out in the Recognition Directive), art 21 (function of confirming authenticity of certificates of completion of specialist training and of confirming that a person has fulfilled the Dental Training Directive's training requirements: European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 4(2)(a), (b) (amended by SI 2003/3148). The Council is also designated as competent authority in accordance with the Recognition Directive art 22 (which requires member states to designate the authorities competent to issue or receive the diplomas, documents and other information referred to in the Directive), and the Dental Training Directive art 2(3) (which requires member states to designate the authorities or bodies competent to issue diplomas, certificates or other evidence of formal qualifications referred to in art 2(1): European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 4(3)(a), (b).
- 18 As to the Secretary of State see PARA 5 ante.
- 19 As to the meaning of 'Community obligation' see the European Communities Act 1972 s 1, Sch 1 Pt II; and the Interpretation Act 1978 s 5, Sch 1.
- 20 European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 3(1)(a). For the meaning of 'EEA' see PARA 413 note 10 ante.
- 21 Ibid reg 3(1)(b).
- 22 Ibid reg 3(1)(c).
- 23 Ibid reg 3(1)(d). As to such lists see PARA 412 ante.
- 24 Ibid reg 3(1). Directions may be as to matters of administration only: reg 3(2).

## UPDATE

### 433 Certificates of completion of specialist training

TEXT AND NOTES 16, 17--SI 1998/811 reg 4 substituted, Sch 1A added: SI 2007/3101.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(4) REGISTRATION AND QUALIFICATIONS/(iii) Specialist Qualifications/434. Minimum requirements of specialist dental training.

#### **434. Minimum requirements of specialist dental training.**

The General Dental Council<sup>1</sup> must not approve specialist dental training intended to lead to the award of a certificate of completion of specialist training<sup>2</sup> unless it complies with the following requirements; and the Council may withdraw any such approval if it is satisfied that the training no longer complies with those requirements<sup>3</sup>.

The training must constitute an entire course of training in the specialty in question and must, subject to the provisions concerning part-time training<sup>4</sup>: (1) comprise theoretical and practical instruction<sup>5</sup>; (2) be full-time training<sup>6</sup>; (3) be supervised by the Council<sup>7</sup>; (4) be of at least three years' duration<sup>8</sup>; (5) be in a university centre, or in a treatment, teaching and research centre, or, where the Council is satisfied that it is appropriate, in a health establishment approved for this purpose by it<sup>9</sup>; and (6) involve the personal participation of the person training to be a specialist in the activity and in the responsibilities of the establishments concerned<sup>10</sup>. Part-time specialist dental training is permitted, under conditions approved by the Council, where training on a full-time basis would not be practicable for well-founded reasons; and accordingly the Council may approve part-time training which satisfies those conditions<sup>11</sup>, the conditions set out in heads (1), (3), (5) and (6) above<sup>12</sup>, and the conditions that: (a) the standard of training must not be lower than that of full-time training<sup>13</sup>; and (b) the total length of training in the specialty in question must not be less than that of full-time training in the same specialty<sup>14</sup>. The curriculum and any other requirements relating to the training for the specialty, as they have effect from time to time, must be published<sup>15</sup>.

1 As to the General Dental Council see PARA 389 et seq ante.

2 As to certificates of completion of specialist training see PARA 433 ante.

3 European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 7(1).

4 I.e. the provisions of *ibid* reg 7(3): see the text to notes 11-14 *infra*.

5 *Ibid* reg 7(2)(a).

6 *Ibid* reg 7(2)(b).

7 *Ibid* reg 7(2)(c).

8 *Ibid* reg 7(2)(d).

9 *Ibid* reg 7(2)(e).

10 *Ibid* reg 7(2)(f).

11 *Ibid* reg 7(3)(a).

12 *Ibid* reg 7(3)(b).

13 *Ibid* reg 7(3)(c)(i).

14 *Ibid* reg 7(3)(c)(ii).

15 *Ibid* reg 7(4).

**UPDATE**

**434 Minimum requirements of specialist dental training**

TEXT AND NOTES 1-14--SI 1998/811 reg 7(1)-(3) now reg 7(1), (2) (substituted by SI 2007/3101).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(4) REGISTRATION AND QUALIFICATIONS/(iii) Specialist Qualifications/435. Fees.

#### **435. Fees.**

The General Dental Council<sup>1</sup> may charge such reasonable fees as it determines to cover the cost of providing services in the course of the performance of any of its functions relating to specialist qualifications<sup>2</sup>. The Council may set those fees at levels such that, taken together, the fees also cover the cost of such of its overheads as are reasonably attributable to the performance of all of those functions; but the fees must not include any element of profit<sup>3</sup>. These provisions do not prevent the Council, where it has power to do so, from setting any other fee which it has power to charge at a level designed to include the costs referred to, but any costs recovered that way cannot also be recovered by way of fees under these provisions<sup>4</sup>.

1 As to the General Dental Council see PARA 389 et seq ante.

2 I.e. its functions under the European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, Pt II (regs 4-15) (see PARAS 412-413, 433-434 ante): reg 5(1).

3 Ibid reg 5(2). The fee charged for any particular service must not include more than a reasonable proportion of the total cost of such overheads: reg 5(3).

4 Ibid reg 5(4).

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#### **436. Appeals.**

The General Dental Council<sup>1</sup> must secure that a person:

- 660 (1) to whom it refuses to award a certificate of completion of specialist training<sup>2</sup>;
- 661 (2) who fails to satisfy it that he is an eligible specialist<sup>3</sup>; and
- 662 (3) who fails to satisfy it that he is an existing specialist<sup>4</sup>,

has the right to appeal against its decision to a panel of independent persons, known as an 'appeal panel', which must be convened by the Council as soon as practicable to reconsider the question and determine whether or not the appellant should be awarded a certificate of completion of specialist training or should so satisfy the Council, as the case may be<sup>5</sup>. The Council must determine and publish the procedure governing its selection of the members of appeal panels and the conduct of appeals<sup>6</sup>, and must secure that an appeal panel gives reasons for its determination<sup>7</sup>.

1 As to the General Dental Council see PARA 389 et seq ante.

2 European Primary and Specialist Dental Qualifications Regulations 1998, SI 1998/811, reg 14(1)(a). As to certificates of completion of specialist training see PARA 433 ante.

3 Ie in accordance with ibid reg 9(2)-(4) (see PARA 413 ante): reg 14(1)(b).

4 Ie in accordance with the matters referred to in ibid reg 12(3)(c) (see PARA 414 ante): reg 14(1)(c).

5 Ibid reg 14(1).

6 Ibid reg 14(2).

7 Ibid reg 14(3).

#### **UPDATE**

#### **436 Appeals**

TEXT AND NOTES 1-14--SI 1998/811 reg 14 amended, reg 14A added: SI 2007/3101.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(4) REGISTRATION AND QUALIFICATIONS/(iv) Entry of Names and Qualifications/437. Registration procedure.

#### **(iv) Entry of Names and Qualifications**

##### **437. Registration procedure.**

Except in the case of the temporary registration of persons holding recognised overseas diplomas<sup>1</sup> or where a dental authority<sup>2</sup> transmits to the registrar lists of its graduates or licentiates<sup>3</sup>, any right to registration in the register<sup>4</sup> is conditional on the making of an application supported by the appropriate evidence<sup>5</sup>. Any person applying to be registered must produce or send to the registrar<sup>6</sup>: (1) the document conferring or evidencing his licence or other qualification<sup>7</sup>; (2) a statement of his name and address and the other particulars, if any, required for registration<sup>8</sup>; and (3) in the case of an application made in reliance on an enforceable Community right<sup>9</sup>, the evidence on which he relies<sup>10</sup>.

A dental authority may from time to time transmit to the registrar certified lists of the persons who are its graduates or licentiates in dentistry, stating their qualifications and places of residence<sup>11</sup>. On receipt of these lists the registrar must, subject to the provisions of the Dentists Act 1984, duly register those persons<sup>12</sup>.

1 For the meaning of 'recognised overseas diploma' see PARA 417 note 10 ante. As to temporary registration see the Dentists Act 1984 s 17; and PARA 432 ante.

2 For the meaning of 'dental authority' see PARA 421 note 3 ante.

3 Ie under the Dentists Act 1984 s 18(3); see the text to note 11 infra.

4 For the meaning of 'the register' see PARA 417 note 1 ante.

5 Dentists Act 1984 s 18(1).

6 For the meaning of 'the registrar' see PARA 396 note 1 ante. As to offences in respect of procuring or attempting to procure registration by making or producing false declarations, certificates or representation see the Perjury Act 1911 ss 6, 7 (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARAS 718, 720.

7 Dentists Act 1984 s 18(2)(a) (s 18(2) substituted by the Dental Qualifications (Recognition) Regulations 1996, SI 1996/1496, reg 2(4)).

8 Dentists Act 1984 s 18(2)(b) (as substituted: see note 7 supra).

9 Ie by virtue of *ibid* s 15(2A) (as added): see PARA 427 note 3 ante. As to the meaning of 'enforceable Community right' see the European Communities Act 1972 s 2(1); and the Interpretation Act 1978 s 5, Sch 1.

10 Dentists Act 1984 s 18(2)(c) (as substituted: see note 7 supra).

11 *Ibid* 1984 s 18(3). Where a dental authority in exercise of a power conferred by law strikes the name of a person who is a registered dentist off a list of its graduates or licentiates in dentistry and notifies the General Dental Council of the fact of the striking off, the registrar must retain a record of that fact: s 27(5)(b). As to the findings of fact in relation to such striking off as evidence in disciplinary proceedings see PARA 471 post.

12 *Ibid* s 18(3).

#### **UPDATE**

##### **437 Registration procedure**



TEXT AND NOTES--Dentists Act 1984 s 18 amended: SI 2007/3101.

TEXT AND NOTE 6--le applying to be registered in the register: 1984 Act s 18(2) (amended by SI 2005/2011).

TEXT AND NOTE 12--le duly register in the register: 1984 Act s 18(3) (amended by SI 2005/2011).

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#### **438. Regulations with respect to the register.**

The General Dental Council<sup>1</sup> may make regulations<sup>2</sup> with respect to the form and keeping of the register<sup>3</sup> and the making of entries and erasures in it, and in particular: (1) prescribing a fee to be charged for the entry of a name in the register or on the restoration of any entry to the register<sup>4</sup>, or in respect of the retention of the name of a person first registered after 28 July 1921 in any year subsequent to the year in which he was first registered<sup>5</sup>; (2) providing for the registration in, and removal from, the register in prescribed circumstances of additional diplomas<sup>6</sup> held by a registered dentist<sup>7</sup> and prescribing a fee to be charged in respect of such registration<sup>8</sup>; and (3) authorising the registrar<sup>9</sup>, notwithstanding anything in the Dentists Act 1984, to refuse to make an entry in, or restore an entry to, the register until the prescribed fee has been paid<sup>10</sup>.

1 As to the General Dental Council see PARA 389 et seq ante.

2 Such regulations are not made by statutory instrument and are not recorded in this work. As to the provision such regulations may make in relation to the publication of the register see the Dentists Act 1984 s 22(2); and PARA 417 note 5 ante.

3 For the meaning of 'the register' see PARA 417 note 1 ante.

4 Dentists Act 1984 s 19(1)(a). Regulations under s 19 (as amended) prescribing fees may provide for the charging of different fees in different classes of cases (s 19(3)); and such regulations prescribing fees or authorising the registrar to erase a person's name for non-payment of a fee do not come into force until approved by order of the Privy Council (s 19(4)). As to the entitlement to registration see PARA 417 ante. As to applications for registration see PARA 437 ante. As to restoration to the register see PARAS 441-442, 480 post. As to the exercise by the Privy Council of its powers under the Dentists Act 1984 see PARA 388 ante. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

5 Ibid s 19(1)(b). See also note 4 supra. Regulations may authorise the registrar to erase from the register the name of a person who, after such notices and warnings as may be prescribed by the regulations, fails to pay such a fee; and where a person's name is so erased, that name may be restored to the register on that person's application if he satisfies the registrar as to the matters specified in s 15(3)(a)-(c) (see PARAS 420, 427 ante) and as to his meeting the requirements specified in rules made under s 34B(1) (as added) (see PARA 446 post) in relation to his case or circumstances: s 19(2) (amended by the Dentists Act 1984 (Amendment) Order 2001, SI 2001/3926, arts 2, 10(1)).

6 For the meaning of 'diploma' see PARA 424 note 3 ante.

7 For the meaning of 'registered dentist' see PARA 417 note 6 ante.

8 Dentists Act 1984 s 19(1)(c). See also note 4 supra.

9 For the meaning of 'the registrar' see PARA 396 note 1 ante.

10 Dentists Act 1984 s 19(1)(d). See also note 4 supra.

#### **UPDATE**

#### **438 Regulations with respect to the register**

TEXT AND NOTES--Dentists Act 1984 s 19(1) amended, s 19(1A) added: SI 2007/3101.

NOTE 4--1984 Act s 19(3), (4) repealed: SI 2005/2011.

NOTE 5--1984 Act s 19(2) now s 19(2), (2A), (2B) (substituted by SI 2005/2011).

Regulations may authorise the registrar to erase from the register the name of a person who, after such notices and warnings as may be prescribed by the regulations, fails to pay a fee prescribed under the 1984 Act s 19(1)(b): s 19(2). Where a person's name has been erased by virtue of such regulations, that name must be restored to the register on that person's application if he satisfies the registrar that he meets the requirements of ss 15(3)(a)-(c), 26A, and any rules made under s 34B which apply to his case: s 19(2A). Where the registrar refuses to restore a person's name to the register under s 19(2A), the registrar must forthwith serve on the person concerned notification of the decision and of the reasons for it: s 19(2B). As to the service and sending of notifications under the 1984 Act see s 50A; and PARA 401A.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(4) REGISTRATION AND QUALIFICATIONS/(iv) Entry of Names and Qualifications/439. Abbreviations of overseas diplomas.

#### **439. Abbreviations of overseas diplomas.**

Where the name of a person entitled to be registered by virtue of a recognised overseas diploma<sup>1</sup> is entered in the register<sup>2</sup>, or an additional diploma<sup>3</sup> granted in a country overseas is entered against a person's name in the register<sup>4</sup>, the registrar<sup>5</sup> must enter that diploma in such abbreviated form as the registrar, after consultation with the president of the General Dental Council<sup>6</sup>, may select as being convenient but not capable of being mistaken for the abbreviated form of any other diploma<sup>7</sup>.

1 For the meaning of 'recognised overseas diploma' see PARA 417 note 10 ante.

2 Dentists Act 1984 s 20(a). For the meaning of 'the register' see PARA 417 note 1 ante. As to the entitlement to registration see PARA 417 ante. As to applications for registration see PARA 437 ante.

3 For the meaning of 'diploma' see PARA 424 note 3 ante.

4 Dentists Act 1984 s 20(b). As to the registration of additional diplomas see s 19(1)(c); and PARA 438 ante.

5 For the meaning of 'the registrar' see PARA 396 note 1 ante.

6 As to the General Dental Council see PARA 389 et seq ante. As to the president of the Council see PARA 394 ante.

7 Dentists Act 1984 s 20. If an abbreviated form of a diploma granted in a country overseas is so entered against a person's name in the register, that person must not take or use, or affix to or use in connection with his premises, any other abbreviation of that diploma: s 26(5).

#### **UPDATE**

#### **439 Abbreviations of overseas diplomas**

TEXT AND NOTES--1984 Act s 20 repealed: SI 2005/2011.

NOTE 7--1984 Act s 26(5) repealed: SI 2005/2011.

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## **(v) Alteration and Erasure of Entries**

### **440. Alteration of entries.**

The registrar<sup>1</sup> must from time to time insert in the register<sup>2</sup> any alteration which comes to his knowledge in the name or address of any registered person<sup>3</sup>.

1 For the meaning of 'the registrar' see PARA 396 note 1 ante.

2 For the meaning of 'the register' see PARA 417 note 1 ante.

3 Dentists Act 1984 s 25. As to the entitlement to registration see PARA 417 ante. As to applications for registration see PARA 437 ante.

## **UPDATE**

### **440-443 Alteration and Erasure of Entries**

As to appealable registration decisions see the Dentists Act 1984 s 25A, Sch 2A; and PARA 443A.

### **440 Alteration of entries**

TEXT AND NOTES--1984 Act s 25 repealed: SI 2005/2011.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(4) REGISTRATION AND QUALIFICATIONS/(v) Alteration and Erasure of Entries/441. Erasure of entries on death or cesser of practice.

#### **441. Erasure of entries on death or cesser of practice.**

The registrar<sup>1</sup> must erase from the register<sup>2</sup> the name of every deceased person, and a registrar of births and deaths<sup>3</sup> on registering the death of a registered dentist<sup>4</sup> must, without charge to the recipient, send forthwith by post<sup>5</sup> to the registrar a certified copy under his hand of the entry in the register of deaths relating to the death<sup>6</sup>.

If a registered dentist has ceased to practise, the registrar may, with his consent, erase his name from the register<sup>7</sup>. The registrar may send by post to a registered dentist a notice inquiring whether he has ceased to practise or has changed his residence, and if no answer is received to the inquiry within six months from the posting of the notice, he may erase the dentist's name from the register<sup>8</sup>. In such a case, or where the person's name was erased at his request<sup>9</sup>, then, unless the original entry was incorrectly or fraudulently made<sup>10</sup>, the person's name may be restored to the register on his application if he satisfies the registrar as to specified matters<sup>11</sup>. Where the registrar refuses such an application, he must notify the applicant in writing<sup>12</sup> of his reasons for refusing the application, and such notification may be sent by post<sup>13</sup>.

1 For the meaning of 'the registrar' see PARA 396 note 1 ante.

2 For the meaning of 'the register' see PARA 417 note 1 ante.

3 As to registration officers see REGISTRATION CONCERNING THE INDIVIDUAL vol 39(2) (Reissue) PARA 609 et seq.

4 For the meaning of 'registered dentist' see PARA 417 note 6 ante. As to the registration of births, deaths and marriages see REGISTRATION CONCERNING THE INDIVIDUAL vol 39(2) (Reissue) PARA 501 et seq.

5 As to references to service by post see PARA 20 note 22 ante.

6 Dentists Act 1984 s 23(1). As to erasure for crime or serious professional misconduct see PARA 456 post.

7 Ibid s 23(2).

8 Ibid s 23(3).

9 There is no express provision laying down that a person's name may be erased from the register at his request. The Dentists Act 1878 s 14 (repealed), provided for the restoration of the name of a person erased from the register at his request or with his consent. Nevertheless, it would seem that a registered dentist cannot demand that his name should be erased, especially if he intends thereby to avoid penal erasure: see *R v General Council of Medical Education and Registration of the United Kingdom* [1930] 1 KB 562, CA.

10 As to incorrect or fraudulent entries see PARA 442 post.

11 As to the matters specified in the Dentists Act 1984 s 15(3)(a)-(c) (see PARAS 420, 427 ante) and as to his meeting requirements specified in rules made under s 34B(1) (as added) (see PARA 446 post) in relation to his case or circumstances: s 23(4) (amended by the Dentists Act 1984 (Amendment) Order 2001, SI 2001/3926, arts 2, 10(2)). As to the prescription of fees payable on such applications see the Dentists Act 1984 s 19(1)(a), (d); and PARA 438 ante.

12 For the meaning of 'writing' see PARA 20 note 22 ante.

13 Dentists Act 1984 s 23(5).

#### **UPDATE**

#### **440-443 Alteration and Erasure of Entries**

As to appealable registration decisions see the Dentists Act 1984 s 25A, Sch 2A; and PARA 443A.

#### **441 Erasure of entries on death or cesser of practice**

NOTE 6--As to the taking effect of a direction for erasure see the 1984 Act s 29A (added by SI 2005/2011).

NOTE 8--As to the service and sending of notifications under the 1984 Act see s 50A; and PARA 401A.

TEXT AND NOTES 9-11--Replaced. In such a case, or where the person's name has been erased from the register at his request, then, unless the original entry of his name was incorrectly made or fraudulently procured, the name must be restored to the register on his application if he satisfies the registrar that he meets the requirements of the 1984 Act ss 15(3)(a)-(c), 26A and any rules made under s 34B which apply to his case: s 23(4) (substituted by SI 2005/2011).

TEXT AND NOTES 12, 13--1984 Act s 23(5) repealed: SI 2005/2011.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(4) REGISTRATION AND QUALIFICATIONS/(v) Alteration and Erasure of Entries/442. Erasure of incorrect and fraudulent entries.

#### **442. Erasure of incorrect and fraudulent entries.**

The General Dental Council<sup>1</sup> must cause to be erased from the register<sup>2</sup> any entry which has been incorrectly or fraudulently made; but where a question arises whether an entry is fraudulent, it must be referred to and determined by the professional conduct committee<sup>3</sup>. Where a person's name has been erased on the ground that it was entered fraudulently, that name must not again be entered in the register except on an application in that behalf to the Council; and on any such application the Council may, if it thinks fit, direct that the person is not to be registered, or is not to be registered until the expiration of such period as may be specified in the direction<sup>4</sup>. The Council must refer any such application to the professional conduct committee for determination<sup>5</sup>.

1 As to the General Dental Council see PARA 389 et seq ante.

2 For the meaning of 'the register' see PARA 417 note 1 ante.

3 Dentists Act 1984 s 24(1). As to the professional conduct committee see PARA 460 et seq post. As to the procedure in the case of fraudulent entries see PARA 476 post. As to offences in respect of procuring or attempting to procure registration by making or producing false declarations, certificates or representation see the Perjury Act 1911 ss 6, 7 (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARAS 718, 720. As to the erasure of entries in the register on death or cesser of practice see PARA 441 ante. As to erasure for crime or serious professional misconduct see PARA 456 post.

4 Dentists Act 1984 s 24(2). As to the prescription of fees payable on such applications see the Dentists Act 1984 s 19(1)(a), (d); and PARA 438 ante.

5 Ibid s 24(3).

### **UPDATE**

#### **440-443 Alteration and Erasure of Entries**

As to appealable registration decisions see the Dentists Act 1984 s 25A, Sch 2A; and PARA 443A.

#### **442 Erasure of incorrect and fraudulent entries**

TEXT AND NOTES--Replaced.

If the registrar<sup>1</sup> is satisfied that any entry in the register<sup>2</sup> has been incorrectly made, he must erase that entry from the register<sup>3</sup>. If he has reason to believe that any entry in the register has been fraudulently procured, he must refer the matter to the professional conduct committee<sup>4</sup> to determine the question of whether that entry has been fraudulently procured<sup>5</sup>. If the professional conduct committee determines that the entry has been fraudulently procured, it may direct that the entry be erased from the register<sup>6</sup>. Where a person's name has been so erased from the register, that person may apply to the General Dental Council for his name to be restored to the register<sup>7</sup>. The Council must refer such an application to the professional conduct committee<sup>8</sup> which must determine the application and may decide (1) that the person's name is to



be restored to the register, (2) that the person's name is not to be restored to the register, or (3) that the person's name is not to be restored to the register until the end of such period as it may specify<sup>9</sup>. If the professional conduct committee gives a direction that an entry be erased from the register or makes a decision under heads (1) to (3) above, the registrar must forthwith serve on the person concerned notification of the direction or decision and, except in the case of a decision under head (1) above, of his right to appeal against it<sup>10</sup>.

1 For the meaning of 'the registrar' see PARA 396 NOTE 1.

2 For the meaning of 'the register' see PARA 417 NOTE 1.

3 Dentists Act 1984 s 24(1) (s 24 substituted by SI 2005/2011).

4 As to the committees of the General Dental Council see PARA 395.

5 1984 Act s 24(2).

6 Ibid s 24(3).

7 Ibid s 24(4).

8 Ibid s 24(5).

9 Ibid s 24(6).

10 Ibid s 24(7). The reference to the right to appeal is to the right to appeal under s 29 (see PARA 454). As to the service and sending of notifications under the 1984 Act see s 50A; and PARA 401A.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(4) REGISTRATION AND QUALIFICATIONS/(v) Alteration and Erasure of Entries/443. Erasure on non-payment of fees.

#### **443. Erasure on non-payment of fees.**

Regulations may be made by the General Dental Council<sup>1</sup> authorising the registrar<sup>2</sup> to erase from the register<sup>3</sup> the name of a person who, after such notices and warnings as may be prescribed by the regulations, fails to pay the prescribed fee in respect of the retention of his name in the register<sup>4</sup>. Where a person's name is so erased, it may be restored on his application, provided he satisfies the registrar as to his identity, good character, and physical and mental health<sup>5</sup>, and as to his meeting the specified requirements in relation to his case or circumstances<sup>6</sup>. Where the registrar refuses such an application for restoration, he must notify the applicant in writing<sup>7</sup> of his reasons, and such notification may be sent by post<sup>8</sup>.

1 As to the General Dental Council see PARA 389 et seq ante. Such regulations are not statutory instruments and are not recorded in this work. Any such regulations do not come into force until approved by order of the Privy Council: Dentists Act 1984 s 19(4). As to the exercise by the Privy Council of its powers under the Dentists Act 1984 see PARA 388 ante. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

2 For the meaning of 'the registrar' see PARA 396 note 1 ante.

3 For the meaning of 'the register' see PARA 417 note 1 ante.

4 Dentists Act 1984 s 19(2). The fee is that referred to in s 19(1)(b): see PARA 438 ante.

5 I.e. the matters referred to in ibid s 15(3)(a)-(c): see PARAS 420, 427 ante.

6 I.e. the requirements specified in rules made under ibid s 34B(1) (as added) (see PARA 446 post): s 19(2) (amended by the Dentists Act 1984 (Amendment) Order 2001, SI 2001/3926, arts 2, 10(1)).

7 For the meaning of 'writing' see PARA 20 note 22 ante.

8 Dentists Act 1984 s 21(c). As to references to service by post see PARA 20 note 22 ante.

#### **UPDATE**

#### **440-443 Alteration and Erasure of Entries**

As to appealable registration decisions see the Dentists Act 1984 s 25A, Sch 2A; and PARA 443A.

#### **443 Erasure on non-payment of fees**

TEXT AND NOTES 1-4--1984 Act s 19(2) now s 19(2), (2A), (2B) (substituted by the Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011). Regulations may now authorise the registrar to erase from the register the name of a person who, after such notices and warnings as may be prescribed by the regulations, fails to pay a fee prescribed under the 1984 Act s 19(1)(b): s 19(2). Where a person's name has been erased by virtue of such regulations, that name must be restored to the register on that person's application if he satisfies the registrar that he meets the requirements of ss 15(3)(a)-(c), 26A, and any rules made under s 34B which apply to his case: s 19(2A). Where the registrar refuses to restore a person's name to the register under s 19(2A),

the registrar must forthwith serve on the person concerned notification of the decision and of the reasons for it: s 19(2B). As to the service and sending of notifications under the 1984 Act see s 50A; and PARA 401A.

TEXT AND NOTES 7, 8--1984 Act s 21 repealed: SI 2005/2011.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(4) REGISTRATION AND QUALIFICATIONS/(v) Alteration and Erasure of Entries/443A. Appeals from appealable registration decisions.

#### **443A. Appeals from appealable registration decisions.**

##### **1. Notification of appealable registration decisions.**

Where an appealable registration decision<sup>1</sup> is made in respect of a person, the registrar<sup>2</sup> must forthwith serve on that person written notification<sup>3</sup> of the decision, the reasons for the decision, and that person's right to appeal<sup>4</sup>. Where an applicant has not been served with notification of a decision in respect of certain applications for registration or restoration of a name<sup>5</sup> within the requisite period<sup>6</sup>, that omission is to be treated as a decision not to register or, as the case may be, restore the applicant's name, which is an appealable registration decision for these purposes<sup>7</sup>.

1 The following decisions are appealable registration decisions: (1) a decision (a) not to register a person's name in the register under the Dentists Act 1984 s 15(1)(a), (b) or (c) on the grounds that any of the requirements of those provisions are not met (qualification for registration); (b) not to register a person's name in the register under s 15(1)(ba) on the grounds that any of the requirements of that provision are not met; (c) under the European Communities (Recognition of Professional Qualifications) Regulations 2007, SI 2007/2781, Pt 3 to require an exempt person within the 1984 Act s 15(1)(b)(i) and (ii) to complete an adaptation period, or pass an aptitude test, in connection with becoming entitled by virtue of those provisions to pursue the profession of dentistry in the United Kingdom; (2) a decision under s 17 not to give a direction for temporary registration; (3) a decision under s 23(3) to erase a person's name from the register (cesser of practice); (4) a decision under s 23(4) not to restore a person's name to the register; (5) a decision under s 24(1) to erase an entry relating to a person from the register (error in register); (6) a decision under s 26A(8)(a), (b) or (c) (insurance) not to register a person's name in the register, not to restore his name to the register or to erase his name from the register; (7) a decision under s 26A(9) not to restore a person's name to the register; (8) a decision under s 34A(2) to erase a person's name from the register (professional training and development requirements); (9) a decision under s 34A(3) not to restore a person's name to the register; (10) a decision not to register a person's name in the register on the grounds that s 35(1) is satisfied (effect on registration of disqualification in another EEA state or Switzerland); (11) a decision under s 35(3) to erase a person's name from the register; and (12) a decision not to register a person's name in the register under Sch 4 (visiting dentists from relevant European States): s 25A, Sch 2A para 2(1) (s 25A, Sch 2A added by SI 2005/2011, amended by SI 2007/3101) (1984 Act Sch 2A para 2(1) in force in part: SI 2005/2011). A decision is not an appealable registration decision for these purposes if it is a decision taken by reason only that the person failed to pay any fee prescribed by regulations made under the 1984 Act s 19, or make an application as required under the 1984 Act or any rules made under it: Sch 2A para 2(2).

2 For the meaning of 'the registrar' see PARA 396 NOTE 1.

3 As to the service and sending of notifications under the 1984 Act see s 50A; and PARA 401A.

4 Ibid Sch 2A para 3(1). The reference to a person's right to appeal is to the right to appeal under Sch 2A para 4 (see PARA 443A.2): Sch 2A para 3(1)(c).

5 Ie applications for registration or restoration of a name mentioned in NOTE 1 head (1), (2), (4), (6), (7), (9) or (10).

6 'The requisite period', in relation to a decision of a kind specified in NOTE (1) head (1), (2), (4), (6), (7), (9) or (10) means the period of three months beginning with the date when the registrar is first in possession of sufficient information to make the decision: 1984 Act Sch 2A para 1.

7 Ibid Sch 2A para 3(2) (Sch 2A para 3 in force in part: SI 2005/2011).

##### **2. Appeals from an appealable registration decision.**

A person concerned<sup>1</sup> may appeal to the General Dental Council's registration appeals committee<sup>2</sup> against (1) the appealable registration decision made in respect of him of which he was notified<sup>3</sup>; or (2) the appealable registration decision treated<sup>4</sup> as having been made in respect of him<sup>5</sup>. Such an appeal must be made by giving notice of appeal to the registrar<sup>6</sup>. In a case within head (1) above, the notice of appeal must be given before the end of the period of 28 days beginning with the date on which notification of the decision was served<sup>7</sup>, subject to any extension of time<sup>8</sup>. In a case within head (2) above, notice of appeal must be given before the end of the period of 28 days following the end of the requisite period<sup>9</sup>. In the case of an appealable registration decision which is a decision to erase a person's name from the register, where no appeal is brought against the decision within the specified period of time<sup>10</sup>, or an appeal is brought but is withdrawn or struck out for want of prosecution, that decision takes effect on the expiry of that period or, as the case may be, on the withdrawal or striking out of that appeal<sup>11</sup>.

For the purposes of considering an appeal, the registration appeals committee may make such inquiries as it considers appropriate<sup>12</sup>. In disposing of an appeal, the registration appeals committee may determine to (a) dismiss the appeal; (b) allow the appeal and quash the decision appealed against; (c) substitute for the decision appealed against any other decision which could have been made by the registrar; or (d) remit the case to the registrar to dispose of in accordance with the directions of the registration appeals committee<sup>13</sup>. In the case of an appealable registration decision which is a decision to erase a person's name from the register, where the registration appeals committee disposes of an appeal by making a determination under heads (a), (c) or (d) above, that decision takes effect (i) where no appeal is brought against the determination of the registration appeals committee<sup>14</sup> within the specified period of time<sup>15</sup>, on the expiry of that period; (ii) where an appeal is brought against the decision of the registration appeals committee but is withdrawn or struck out for want of prosecution, on the withdrawal or striking out of that appeal; or (iii) where an appeal is brought against the decision and dismissed<sup>16</sup>, on the dismissal of that appeal<sup>17</sup>.

Where the registration appeals committee makes such a determination on an appeal, it must, as soon as reasonably practicable, inform the registrar of and serve on the person concerned notification of the committee's determination on the appeal and of the reasons for that determination and, if that determination is not a determination to allow the appeal under head (b) above, serve on the person concerned notification of his right of appeal<sup>18</sup>.

1 'Person concerned' means a person notified under the Dentists Act 1984 Sch 2A para 3(1) (see PARA 443A.1) of an appealable registration decision made in respect of him, or, as the case may be, an applicant in respect of whom an appealable registration decision is treated as having been made by virtue of Sch 2A para 3(2) (see PARA 443A.1): Sch 2A para 1 (Sch 2A added by SI 2005/2011). 'Appealable registration decision' is to be construed in accordance with the 1984 Act Sch 2A paras 2, 3(2) (see PARA 443A.1): Sch 2A para 1.

2 As to the committees of the General Dental Council see PARA 395.

3 Ie under the 1984 Act Sch 2A para 3(1). As to the service and sending of notifications under the 1984 Act see s 50A; and PARA 401A.

4 Ie by virtue of ibid Sch 2A para 3(2).

5 Ibid Sch 2A para 4(1).

6 Ibid Sch 2A para 4(2). For the meaning of 'the registrar' see PARA 396 NOTE 1.

7 Ie under ibid Sch 2A para 3(1).

8 Ibid Sch 2A para 4(3). Where (1) any notification of a decision required under Sch 2A para 3(1) to be served on a person is served by sending it to him by post; and (2) the registrar is satisfied, on the application of that person, that he did not receive the notification within the period of 14 days beginning with the day on which the decision was made, the registrar may, if he thinks fit, by authorisation in writing extend the time for giving notice of appeal under Sch 2A para 4(3): Sch 2A para 5. As to references to service by post see PARA 20 NOTE 22.

9 Ibid Sch 2A para 4(4). For the meaning of 'the requisite period' see PARA 443A.1.

10 Ie the period of time specified in ibid Sch 2A para 4(3).

11 Ibid Sch 2A para 4(5).

12 Ibid Sch 2A para 4(6).

13 Ibid Sch 2A para 4(8).

14 Ie under ibid Sch 2A para 6: see PARA 443A.3.

15 Ie specified in ibid Sch 2A para 6(1).

16 Ie under ibid Sch 2A para 6(2)(a).

17 Ibid Sch 2A para 4(9).

18 Ibid Sch 2A para 4(10). Schedule 3 (proceedings before the investigating committee, the interim orders committee and practice committees: dentists) applies to proceedings under Sch 2A before the registration appeals committee with certain modifications (see Sch 2A para 4(7) (as so added)). See further the General Dental Council (Registration Appeals) Rules 2006 (approved by the General Dental Council (Registration Appeals) Rules Order of Council 2006, SI 2006/1668).

### **3. Appeals from the registration appeals committee.**

Where the registration appeals committee<sup>1</sup> determine an appeal<sup>2</sup> and it does not determine<sup>3</sup> to allow the appeal and quash the decision appealed against, the person concerned may, before the end of 28 days beginning with the date on which notification of the determination was served on him<sup>4</sup>, appeal against the determination to the relevant court<sup>5</sup>.

On such an appeal from the registration appeals committee, the relevant court may (1) dismiss the appeal; (2) allow the appeal and quash the determination appealed against; (3) substitute for the determination appealed against any other determination which could have been made by the registration appeals committee; or (4) remit the case to the registration appeals committee to dispose of in accordance with the directions of the relevant court<sup>6</sup>.

1 As to the committees of the General Dental Council see PARA 395.

2 Ie under the Dentists Act 1984 s 25A, Sch 2A para 4 (Sch 2A added by SI 2005/2011): see PARA 443A.2.

3 Ie under ibid Sch 2A para 4(8)(b).

4 Ie under ibid Sch 2A para 4(10). As to the service and sending of notifications under the 1984 Act see s 50A; and PARA 401A.

5 Ibid Sch 2A para 6(1). 'The relevant court' means the county court: 1984 Act Sch 2A para 6(3)(c).

6 Ibid Sch 2A para 6(2).

## **UPDATE**

### **440-443 Alteration and Erasure of Entries**

As to appealable registration decisions see the Dentists Act 1984 s 25A, Sch 2A; and PARA 443A.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(5) PROFESSIONAL TRAINING AND DEVELOPMENT/444. The continuing professional development committee.

## **(5) PROFESSIONAL TRAINING AND DEVELOPMENT**

### **444. The continuing professional development committee.**

The Dentists Act 1984 provides for the establishment of a committee of the General Dental Council<sup>1</sup>, known as the continuing professional development committee<sup>2</sup>. The membership of the continuing professional development committee consists of five appropriate persons<sup>3</sup>, of whom at least two must be registered dentists<sup>4</sup> and at least two lay persons<sup>5</sup>. When the committee is exercising a fitness to practise function<sup>6</sup>, no person may be appointed as a member of the committee who, prior to his membership of the committee, had any dealings in relation to the matter in respect of which the committee is exercising its fitness to practise function<sup>7</sup>.

1 As to the General Dental Council see PARA 389 et seq ante.

2 Dentists Act 1984 s 2(4A) (s 2(4A), (6), (7) added by the Dentists Act 1984 (Amendment) Order 2001, SI 2001/3926, arts 2, 6(c), (d)). The committee is constituted as provided by order of the Privy Council contained in a statutory instrument: see the Dentists Act 1984 s 2(6), (7) (as so added). As to the order that has been made see the General Dental Council (Constitution of Committees) Order of Council 2003, SI 2003/1081; and the text to notes 3-7 infra. As to the Council's committees generally see PARA 395 ante. As to the exercise by the Privy Council of its powers under the Dentists Act 1984 see PARA 388 ante. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

3 'Appropriate person' means a natural person, of good character, who is a fit and proper person to act as a member of a committee of the General Dental Council: General Dental Council (Constitution of Committees) Order of Council 2003, SI 2003/1081, art 1(2).

4 For the meaning of 'registered dentist' see PARA 417 note 6 ante.

5 General Dental Council (Constitution of Committees) Order of Council 2003, SI 2003/1081, arts 2(1)(e), 7 (both added by SI 2004/67). 'Lay person' means a natural person, who is neither a registered dentist nor a dental auxiliary: General Dental Council (Constitution of Committees) Order of Council 2003, SI 2003/1081, art 1(2). As to dental auxiliaries see PARA 486 et seq post.

6 'Fitness to practise function' means any function of the continuing professional development committee: *ibid* art 1(2) (amended by SI 2004/67). Where the definition applies in relation to the professional conduct committee or the health committee, it refers to the functions of those committees respectively; and where it applies to the functions of the dental auxiliaries committee, it refers to the functions of that committee under regulations made by virtue of the Dentists Act 1984 s 48(2) (see PARA 495 post): see the General Dental Council (Constitution of Committees) Order of Council 2003, SI 2003/1081, art 1(2).

7 *Ibid* art 2(2).

## **UPDATE**

### **444-455 Professional Training and Development**

Continuing professional development committee abolished; Dentists Act 1984 Sch 3A repealed: Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011; as to the committees of the General Dental Council see PARA 395.

### **444 The continuing professional development committee**

NOTES--SI 2003/1081 revoked: SI 2006/1665. See now the General Dental Council (Constitution of Committees) Rules Order of Council 2009, SI 2009/1813.

NOTE 2--1984 Act s 2(6) amended; s 2(6A) added; s 2(7) repealed: see PARA 395.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(5) PROFESSIONAL TRAINING AND DEVELOPMENT/445. Professional training and development requirements.

#### **445. Professional training and development requirements.**

The General Dental Council<sup>1</sup> must make rules requiring registered dentists<sup>2</sup> to undertake professional training and development of descriptions specified in the rules<sup>3</sup>. If it appears to the registrar<sup>4</sup> that a registered dentist has failed to comply with the requirements of such rules, he may erase the dentist's name from the register<sup>5</sup>. The Council must make rules as to the procedures to be followed before the registrar may erase a registered dentist's name from the register under these provisions<sup>6</sup>, and the rules must provide for an appeal to the continuing professional development committee from such a decision<sup>7</sup>. The registrar must not erase a person's name from the register until the end of the period during which he may appeal to the committee by virtue of such rules<sup>8</sup>, or if he does appeal to the committee, until the appeal process, including any appeal to the court<sup>9</sup>, has been exhausted<sup>10</sup>. The registrar must serve on a registered dentist a notice of his decision to erase him from the register and the reasons for it<sup>11</sup>.

1 As to the General Dental Council see PARA 389 et seq ante.

2 For the meaning of 'registered dentist' see PARA 417 note 6 ante.

3 Dentists Act 1984 s 34A(1) (s 34A added by the Dentists Act 1984 (Amendment) Order 2001, SI 2001/3926, arts 2, 8). Rules made under the Dentists Act 1984 s 34A(1) (as added) and s 34A(3) (as added) (see the text to note 6 infra) do not come into force until approved by order of the Privy Council: s 34A(6) (as so added). At the date at which this volume states the law no rules had been made under s 34A(1) (as added). As to the exercise by the Privy Council of its powers under the Dentists Act 1984 see PARA 388 ante. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

4 For the meaning of 'the registrar' see PARA 396 note 1 ante.

5 Dentists Act 1984 s 34A(2) (as added: see note 3 supra). For the meaning of 'the register' see PARA 417 note 1 ante.

6 Ibid s 34A(3) (as added: see note 3 supra). As to the making of such rules see note 3 supra. As to the rules that have been made see note 7 infra.

7 Ibid s 34A(4) (as added: see note 3 supra). As to the rules that have been made see the General Dental Council Continuing Professional Development Committee (Procedure) Rules Order of Council 2003, SI 2004/68; and PARA 448 et seq post. The Dentists Act 1984 Sch 3A (as added) (see PARA 447 post) which provides for the procedures before the committee applies in relation to such an appeal: s 34A(5) (as so added). As to the continuing professional development committee see PARA 444 ante.

8 Ibid s 34A(7)(a) (as added: see note 3 supra).

9 Ie under ibid s 29: see PARA 454 post.

10 Ibid s 34A(7)(b) (as added (see note 3 supra); and amended by the National Health Service Reform and Health Care Professions Act 2002 s 31(1), (5)).

11 Dentists Act 1984 s 34A(8) (as added: see note 3 supra). Any such notice may be served by being sent by a postal service which provides for the delivery of the notice by post to that person's address in the register, or to his last known address if that address differs from his address in the register and it appears to the registrar that such service will be more effective or if he has no address in the register: Sch 3A para 5 (added by the Dentists Act 1984 (Amendment) Order 2001, SI 2001/3926, arts 2, 9).

#### **UPDATE**

#### **444-455 Professional Training and Development**

Continuing professional development committee abolished; Dentists Act 1984 Sch 3A repealed: Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011; as to the committees of the General Dental Council see PARA 395.

#### **445-446 Professional training and development requirements, Restoration of name to the register: professional training and development**

The requirements in respect of post-registration training for dentists are set out in the General Dental Council (Continuing Professional Development) (Dentists) Rules 2008, approved by the General Dental Council (Continuing Professional Development) (Dentists) Rules Order of Council 2008, SI 2008/1822.

#### **445 Professional training and development requirements**

TEXT AND NOTES--1984 Act s 34A substituted by the Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011, appointed day 31 July 2008, London Gazette, 18 July 2008. Substantive changes and changes to section numbering are noted below. See also Dentists Act 1984 s 34AA (added by SI 2007/3101).

TEXT AND NOTES 1-3--Where, in the course of proceedings under the 1984 Act Pt 3 (ss 14-36), it appears to the investigating committee, a practice committee or the interim orders committee that a person to whose registration the proceedings relate may be failing to meet the requirements of rules made under s 34A(1), that committee may refer the question of whether he is failing to meet them to the registrar: s 34A(5).

Provisions of s 34A(6) replicated in s 50C (see PARA 390).

TEXT AND NOTE 6--1984 Act s 34A(3) now s 34A(4)(a).

TEXT AND NOTES 7-10--As to appeals and notification requirements, see now para 443A. The Council must make rules which specify the procedures to be followed before the registrar may make a decision whether to restore a person's name to the register under s 34A(3): s 34A(4)(b).

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#### **446. Restoration of name to the register: professional training and development.**

The General Dental Council<sup>1</sup> must make rules providing for requirements as to professional training and development to be met by a person who seeks the restoration of his name to the register<sup>2</sup> following its erasure under any provision of the Dentists Act 1984<sup>3</sup>. The rules may make different provision for different cases and circumstances<sup>4</sup>, but may not require a person to do anything which amounts to the practice of dentistry<sup>5</sup>. If a person whose name has been erased from the register for failure to undertake professional development or training<sup>6</sup>, whether or not following an appeal, satisfies the registrar<sup>7</sup> that he has met the requirements provided for by the rules in relation to his case or circumstances<sup>8</sup> and as to the specified matters<sup>9</sup>, the registrar must restore his name to the register<sup>10</sup>. The registrar must serve on such a person a notice<sup>11</sup> of his decision and the reasons for it<sup>12</sup>.

1 As to the General Dental Council see PARA 389 et seq ante.

2 For the meaning of 'the register' see PARA 417 note 1 ante.

3 Dentists Act 1984 s 34B(1) (s 34B added by the Dentists Act 1984 (Amendment) Order 2001, SI 2001/3926, arts 2, 8). Rules made under the Dentists Act 1984 s 34B(1) (as added) and s 34B(4) (as added) (see note 10 infra) do not come into force until approved by order of the Privy Council: s 34B(7) (as so added). At the date at which this volume states the law no rules had been made under s 34B(1) (as added). As to erasure from the register see PARAS 441-443, 445 ante, 461 post. As to the exercise by the Privy Council of its powers under the Dentists Act 1984 see PARA 388 ante. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

4 Ibid s 34B(2)(a) (as added: see note 3 supra).

5 Ibid s 34B(2)(b) (as added: see note 3 supra). For the meaning of 'the practice of dentistry' see PARA 403 ante.

6 Ie under ibid s 34A (as added): see PARA 445 ante.

7 For the meaning of 'the registrar' see PARA 396 note 1 ante.

8 Dentists Act 1984 s 34B(3)(a) (as added: see note 3 supra).

9 Ie the matters specified in ibid s 15(3)(a)-(c) (see PARAS 420, 427 ante): s 34B(3)(b) (as added: see note 3 supra).

10 Ibid s 34B(3) (as added: see note 3 supra). The Council must make rules as to the procedures to be followed before the registrar may make a decision whether or not to restore a person's name to the register: s 34B(4) (as so added). Such rules must provide for an appeal to the continuing professional development committee from a decision of the registrar not to restore a person's name to the register and Sch 3A (as added) (see PARA 447 post) applies in relation to such an appeal: s 34B(6) (as so added). As to the making of such rules see note 3 supra. At the date at which this volume states the law no rules had been made under s 34B(4) (as added). As to the continuing professional development committee see PARA 444 ante.

11 Any such notice may be served by being sent by a postal service which provides for the delivery of the notice by post to that person's address in the register, or to his last known address if that address differs from his address in the register and it appears to the registrar that such service will be more effective or if he has no address in the register: ibid Sch 3A para 5 (added by the Dentists Act 1984 (Amendment) Order 2001, SI 2001/3926, arts 2, 9).

12 Dentists Act 1984 s 34B(5) (as added: see note 3 supra).

## **UPDATE**

### **444-455 Professional Training and Development**

Continuing professional development committee abolished; Dentists Act 1984 Sch 3A repealed; Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011; as to the committees of the General Dental Council see PARA 395.

### **445-446 Professional training and development requirements, Restoration of name to the register: professional training and development**

The requirements in respect of post-registration training for dentists are set out in the General Dental Council (Continuing Professional Development) (Dentists) Rules 2008, approved by the General Dental Council (Continuing Professional Development) (Dentists) Rules Order of Council 2008, SI 2008/1822.

### **446 Restoration of name to the register: professional training and development**

TEXT AND NOTES--1984 Act s 34B substituted by the Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011, appointed day 31 July 2008, London Gazette, 18 July 2008. Substantive changes and changes to section numbering are noted below.

NOTE 3--Provisions of the 1984 Act s 34B(7) replicated in s 50C (see PARA 390).

TEXT AND NOTES 4, 5--1984 Act s 34B(2)(a) not replicated; s 34B(2)(b) now s 36B(2).

TEXT AND NOTES 6-10--Substantially similar provision to the 1984 Act s 34B(3) is now made by s 34A(3) (as substituted: see PARA 445). However, the person must now instead satisfy the registrar that he meets the requirements of s 15(3)(a)-(c), s 26A and any rules made under s 34B which apply to his case. Section 34B(4) and (6) not replicated.

TEXT AND NOTES 11, 12--1984 Act s 34B(5) not replicated; as to notification requirements generally, see now PARA 443A.

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#### **447. Continuing professional development committee: rules of procedure.**

The General Dental Council<sup>1</sup> must make rules as to the procedure to be followed and rules of evidence to be observed in proceedings before the continuing professional development committee<sup>2</sup>, and in particular for: (1) securing that notice that the proceedings are to be brought is given, at such time and in such manner as may be specified in the rules, to the person to whose registration the proceedings relate<sup>3</sup>; (2) securing that any party to the proceedings is, if he so requires, entitled to be heard by the committee<sup>4</sup>; (3) enabling any party to the proceedings to be represented by counsel or solicitor or, if the rules so provide and the party so elects, by a person of such other description as may be specified in the rules<sup>5</sup>; (4) requiring proceedings be held in public unless the person to whose registration the proceedings relate requests otherwise<sup>6</sup>. Before making such rules, the Council must consult such bodies of persons representing dentists as appear to it requisite to be consulted<sup>7</sup>. The rules do not come into force until approved by order of the Privy Council contained in a statutory instrument<sup>8</sup>.

1 As to the General Dental Council see PARA 389 et seq ante.

2 Dentists Act 1984 ss 34A(5), 34B(6), Sch 3A para 2(1) (ss 34A, 34B, Sch 3A added by the Dentists Act 1984 (Amendment) Order 2001, SI 2001/3926, arts 2, 8, 9). The Dentists Act 1984 Sch 3 paras 4, 5(1)-(4) (see PARAS 463, 470 post) apply in relation to proceedings before the continuing professional development committee as they apply to proceedings before the professional conduct and the health committees: Sch 3A para 2(3) (as so added). As to the continuing professional development committee see PARA 444 ante.

3 Ibid Sch 3A para 2(1)(a) (as added: see note 2 supra).

4 Ibid Sch 3A para 2(1)(b) (as added: see note 2 supra).

5 Ibid Sch 3A para 2(1)(c) (as added: see note 2 supra).

6 Ibid Sch 3A para 2(1)(d) (as added: see note 2 supra).

7 Ibid Sch 3A para 2(2) (as added: see note 2 supra).

8 Ibid Sch 3A para 2(4) (as added: see note 2 supra). See the General Dental Council Continuing Professional Development Committee (Procedure) Rules Order of Council 2003, SI 2004/68; and PARA 448 et seq post. As to the exercise by the Privy Council of its powers under the Dentists Act 1984 see PARA 388 ante. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

### **UPDATE**

#### **444-455 Professional Training and Development**

Continuing professional development committee abolished; Dentists Act 1984 Sch 3A repealed: Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011; as to the committees of the General Dental Council see PARA 395.

#### **447 Continuing professional development committee: rules of procedure**

NOTE 3--As to the service and sending of notifications under the 1984 Act see s 50A; and PARA 401A.



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#### **448. Appeals to the continuing professional development committee.**

A person who wishes to appeal to the continuing professional development committee<sup>1</sup> must give written<sup>2</sup> notice of appeal within the period of 28 days beginning with the day on which he is served with notice of the registrar's<sup>3</sup> decision to erase his name from the register<sup>4</sup> or not to restore his name to the register<sup>5</sup>. The appellant<sup>6</sup> must state in his notice of appeal his full name and any former names<sup>7</sup>, his registration number and address in the register or last registered address<sup>8</sup>, his address for service of notices and other documents<sup>9</sup>, and grounds of the appeal<sup>10</sup>. The appellant must give<sup>11</sup> with his notice of appeal a copy of the notice given by the registrar of the decision against which the appellant wishes to appeal<sup>12</sup>, and of any document upon which he intends to rely in the course of the appeal<sup>13</sup>.

On receipt of a notice of appeal, the hearings director<sup>14</sup> must verify that the notice of appeal has been received within the required period<sup>15</sup> and that it complies with the appropriate requirements<sup>16</sup>. If a notice of appeal has not been received within the required period, the hearings director must reject the notice and inform the appellant accordingly<sup>17</sup>. If a notice of appeal has been received within the required period, but it does not comply with the appropriate requirements, the hearings director must admit the notice of appeal<sup>18</sup>, and give the appellant notice in writing, specifying the matters in respect of which the notice of appeal is defective and requiring the appellant to rectify those deficiencies within the period of 14 days beginning with the date of the giving of the director's notice<sup>19</sup>. If the appellant fails to rectify the deficiencies in the notice of appeal within that period, the hearings director must strike out the appeal<sup>20</sup>.

An appellant may withdraw his appeal at any time prior to the determination of the appeal, by giving notice to that effect to the hearings director<sup>21</sup>.

If, in advance of the determination of an appeal, the registrar changes the decision against which an appeal is brought so that he decides not to erase the appellant's name from the register<sup>22</sup> or not to refuse to restore the appellant's name to the register<sup>23</sup>, the registrar must so notify the appellant and the hearings director, who must cancel the hearing<sup>24</sup>.

1 As to the continuing professional development committee see PARA 444 ante.

2 For the meaning of 'written' see PARA 20 note 22 ante.

3 For the meaning of 'the registrar' see PARA 396 note 1 ante.

4 Ie under the Dentists Act 1984 s 34A (as added): see PARA 445 ante. For the meaning of 'the register' see PARA 417 note 1 ante.

5 Ie under ibid s 34B (as added) (see PARA 446 ante): ss 34A(5), 34B(6), Sch 3A para 1 (ss 34A, 34B, Sch 3A added by the Dentists Act 1984 (Amendment) Order 2001, SI 2001/3926, arts 2, 8, 9).

6 'Appellant' means the person bringing or wishing to bring an appeal; 'appeal' means an appeal against a decision of the registrar to erase a registered dentist's name from the register under the Dentists Act 1984 s 34A(2) (as added) (see PARA 445 ante) or not to restore a person's name to the register under s 34B (as added) (see PARA 446 ante): General Dental Council Continuing Professional Development Committee (Procedure) Rules Order of Council 2003, SI 2004/68, r 1(2).

7 Ibid r 2(1)(a).

8 Ibid r 2(1)(b).

9 Ibid r 2(1)(c).

10 Ibid r 2(1)(d).

11 'Give', in relation to a notice, document or information, means send or deliver it to the addressee: *ibid* r 1(2). Where, by any provision of the General Dental Council Continuing Professional Development Committee (Procedure) Rules Order of Council 2003, SI 2004/68:

130 (1) any notice or other document is required to be given to any office, that notice or document is treated as having been given on the day that it is received in that office (r 1(3)(a));

131 (2) any notice or other document is required to be given to any person, that notice or document is, if sent by post, treated as having been given three days after it was posted if sent to an address in the United Kingdom; four days after it was posted if sent to an address within the EEA, other than one in the United Kingdom; and seven days after it was posted if sent to an address elsewhere (r 1(3)(b)); and

132 (3) any notice or other document required to be given to any person may also be effected in person (r 1(3)(c)).

For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

12 Ibid r 2(2)(a).

13 Ibid r 2(2)(b). Where it is not possible for the appellant to give a copy of such a document with the notice of appeal, he must specify in the notice of appeal any document he has not yet given and the reasons he has not done so, and give to the hearings director (see note 14 *infra*) any document so specified no later than seven days after the hearings director gives notice of the hearing under r 4(2) (see PARA 449 post): r 2(3)(a), (b).

14 'Hearings director' means the person serving as the secretary to the committee: *ibid* r 1(2).

15 Ie the period required by the Dentists Act 1984 Sch 3A para 1 (as added) (see the text to notes 1-5 *supra*): General Dental Council Continuing Professional Development Committee (Procedure) Rules Order of Council 2003, SI 2004/68, r 3(1)(a).

16 Ie the requirements of the General Dental Council Continuing Professional Development Committee (Procedure) Rules Order of Council 2003, SI 2004/68: r 3(1)(b).

17 Ibid r 3(2).

18 Ibid r 3(3)(a).

19 Ibid r 3(3)(b).

20 Ibid r 3(4).

21 Ibid r 8.

22 Ibid r 9(a).

23 Ibid r 9(b).

24 Ibid r 9.

## UPDATE

### 444-455 Professional Training and Development

Continuing professional development committee abolished; Dentists Act 1984 Sch 3A repealed: Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011; as to the committees of the General Dental Council see PARA 395.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(5) PROFESSIONAL TRAINING AND DEVELOPMENT/449. Preparation for appeal hearing.

#### **449. Preparation for appeal hearing.**

Following receipt of a valid notice of appeal<sup>1</sup>, the hearings director<sup>2</sup> must convene an appeal hearing<sup>3</sup>. No later than 28 days before the date of the appeal hearing, the hearings director must give<sup>4</sup> written<sup>5</sup> notice to the appellant<sup>6</sup> and to the registrar<sup>7</sup> of the time, date and place appointed for the hearing of the appeal<sup>8</sup>. No later than seven days after the hearings director gives notice of the hearing, the registrar must give to the director copies of any document upon which he intends to rely in the course of the appeal<sup>9</sup>. No later than 14 days before the date of the hearing, the hearings director must produce a paginated bundle of documents and give a copy of the bundle to each of the parties<sup>10</sup> and to the members of the committee<sup>11</sup>.

After the hearings director has received a valid notice of appeal, he may of his own motion, or at the request of either of the parties, if he thinks it necessary to do so, convene a meeting of the continuing professional development committee<sup>12</sup>, known as 'a directions hearing', so as to enable the committee to give directions as regards any procedural matter ancillary or preliminary to the hearing of the appeal<sup>13</sup>. At a directions hearing the committee may give such directions as regards any such procedural matter as it thinks just and necessary<sup>14</sup>.

1     le a notice which is received within the period required by the Dentists Act 1984 Sch 3A para 1 (as added) (see PARA 448 ante) and which complies with the requirements of the General Dental Council Continuing Professional Development Committee (Procedure) Rules Order of Council 2003, SI 2004/68, or in respect of which the appellant has rectified any deficiency as required under r 3(3) (see PARA 448 ante). For the meaning of 'appeal' see PARA 448 note 6 ante. As to notices of appeal generally see PARA 448 ante.

2     For the meaning of 'hearings director' see PARA 448 note 14 ante.

3     General Dental Council Continuing Professional Development Committee (Procedure) Rules Order of Council 2003, SI 2004/68, r 4(1). 'Appeal hearing' means a meeting of the continuing professional development committee at which the committee is to hear an appeal: r 1(2).

4     For the meaning of 'give' see PARA 448 note 11 ante.

5     For the meaning of 'written' see PARA 20 note 22 ante.

6     For the meaning of 'appellant' see PARA 448 note 6 ante.

7     For the meaning of 'the registrar' see PARA 396 note 1 ante.

8     General Dental Council Continuing Professional Development Committee (Procedure) Rules Order of Council 2003, SI 2004/68, r 4(2). The notice must be accompanied by a copy of the Dentists Act 1984 Schs 3, 3A (as added) and of the General Dental Council Continuing Professional Development Committee (Procedure) Rules: General Dental Council Continuing Professional Development Committee (Procedure) Rules Order of Council 2003, SI 2004/68, r 4(2).

9     Ibid r 4(3).

10    'Party to the proceedings' means the appellant or the registrar: ibid r 1(2).

11    Ibid r 5. The bundle must comprise the notice of the registrar's decision against which the appellant is appealing, the appellant's notice of appeal, any redrafted notice served pursuant to r 3(3) (see PARA 448 ante), and the documents given to the hearings director by each of the parties: r 5(a)-(d).

12    As to the continuing professional development committee see PARA 444 ante.

13 General Dental Council Continuing Professional Development Committee (Procedure) Rules Order of Council 2003, SI 2004/68, r 6(1).

14 Ibid r 6(2). At a directions hearing rr 7, 10-13 (waiver of right to appear and procedure at appeal hearing: see PARA 450 post) apply as they apply at the hearing of an appeal: r 6(3). As to adjournment of hearings and a record of proceedings see PARA 451 post.

## **UPDATE**

### **444-455 Professional Training and Development**

Continuing professional development committee abolished; Dentists Act 1984 Sch 3A repealed; Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011; as to the committees of the General Dental Council see PARA 395.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(5) PROFESSIONAL TRAINING AND DEVELOPMENT/450. Appeal hearing.

#### **450. Appeal hearing.**

The continuing professional development committee<sup>1</sup> must hear an appeal<sup>2</sup> in public<sup>3</sup>. However, at the request of the appellant<sup>4</sup>, the committee must direct that the public be excluded from all or part of an appeal hearing<sup>5</sup>. The parties may be accompanied at an appeal hearing and may be represented by counsel or solicitor<sup>6</sup>, a professional colleague<sup>7</sup>, or, in the case of the appellant, any officer or member of any organisation of which he is a member or any member of his family<sup>8</sup>. If an appellant fails to appear or to be represented at the hearing of his appeal, the committee may proceed to consider and determine his appeal in his absence<sup>9</sup>. An appellant may elect to waive his right to appear at the hearing of his appeal, whether in person or by his representative, by giving notice to the hearings director<sup>10</sup>, in advance of the hearing, that he will not appear or be represented, in which case the committee may proceed to consider and determine the appeal in his absence<sup>11</sup>.

The parties to the proceedings<sup>12</sup> may address the committee<sup>13</sup>, give evidence<sup>14</sup>, call and examine witnesses<sup>15</sup>, and cross-examine witnesses called by the other party<sup>16</sup>. The committee may receive any evidence, whether or not it is oral or written<sup>17</sup>, is direct or hearsay<sup>18</sup>, was available to the registrar<sup>19</sup> when he made the decision against which the appeal is brought<sup>20</sup>, or would be admissible in a court of law<sup>21</sup>. The committee may also receive evidence which has not been submitted with the notice of appeal or given to the hearings director<sup>22</sup>, if it is necessary in the interests of justice for it to do so<sup>23</sup>.

The chairman of the committee must<sup>24</sup>, having consulted the legal assessor<sup>25</sup>, give such directions as to the conduct of and procedure at an appeal hearing as he considers just, provided always that the appellant has the right to address the committee last<sup>26</sup>.

1 As to the continuing professional development committee see PARA 444 ante.

2 For the meaning of 'appeal' see PARA 448 note 6 ante.

3 General Dental Council Continuing Professional Development Committee (Procedure) Rules Order of Council 2003, SI 2004/68, r 10(1). The Dentists Act 1984 Sch 3 paras 4, 5(1)-(4) (see PARAS 463, 470 post) apply in relation to proceedings before the continuing professional development committee as they apply to proceedings before the professional conduct and the health committees: Sch 3A para 2(3) (added by the Dentists Act 1984 (Amendment) Order 2001, SI 2001/3926, arts 2, 9). As to adjournment of hearings and a record of proceedings see PARA 451 post.

4 For the meaning of 'appellant' see PARA 448 note 6 ante.

5 General Dental Council Continuing Professional Development Committee (Procedure) Rules Order of Council 2003, SI 2004/68, r 10(2). For the meaning of 'appeal hearing' see PARA 449 note 3 ante.

6 Ibid r 10(3)(a).

7 Ibid r 10(3)(b).

8 Ibid r 10(3)(c).

9 Ibid r 10(8).

10 For the meaning of 'hearings director' see PARA 448 note 14 ante.

11 General Dental Council Continuing Professional Development Committee (Procedure) Rules Order of Council 2003, SI 2004/68, r 7.

- 12 For the meaning of 'party to the proceedings' see PARA 449 note 10 ante.
- 13 General Dental Council Continuing Professional Development Committee (Procedure) Rules Order of Council 2003, SI 2004/68, r 10(4)(a).
- 14 Ibid r 10(4)(b).
- 15 Ibid r 10(4)(c).
- 16 Ibid r 10(4)(d).
- 17 Ibid r 10(5)(a).
- 18 Ibid r 10(5)(b).
- 19 For the meaning of 'the registrar' see PARA 396 note 1 ante.
- 20 General Dental Council Continuing Professional Development Committee (Procedure) Rules Order of Council 2003, SI 2004/68, r 10(5)(c).
- 21 Ibid r 10(5)(d). As to evidence generally see CIVIL PROCEDURE vol 11 (2009) PARA 749 et seq.
- 22 Ie in accordance with ibid r 2(3)(b): see PARA 448 note 13 ante.
- 23 Ibid r 10(6).
- 24 Ie subject to the General Dental Council Continuing Professional Development Committee (Procedure) Rules Order of Council 2003, SI 2004/68.
- 25 'Legal assessor' means the assessor required by the Dentists Act 1984 Sch 3 para 5(1) (see PARA 463 post): General Dental Council Continuing Professional Development Committee (Procedure) Rules Order of Council 2003, SI 2004/68, r 1(2).
- 26 Ibid r 10(7).

## **UPDATE**

### **444-455 Professional Training and Development**

Continuing professional development committee abolished; Dentists Act 1984 Sch 3A repealed: Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011; as to the committees of the General Dental Council see PARA 395.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(5) PROFESSIONAL TRAINING AND DEVELOPMENT/451. Adjournment; record of proceedings.

#### **451. Adjournment; record of proceedings.**

The continuing professional development committee<sup>1</sup> may adjourn any of its proceedings or meetings<sup>2</sup> at any time as it thinks fit<sup>3</sup>.

The hearings director<sup>4</sup> must cause a transcript record to be made of the parts of the proceedings at which the parties<sup>5</sup> are entitled to be present<sup>6</sup>. The hearings director must supply a copy of the transcript record to the appellant<sup>7</sup> or to any other person entitled to be present at the proceedings on payment of the cost of preparing the copy<sup>8</sup>.

1 As to the continuing professional development committee see PARA 444 ante.

2 As to directions hearings see PARA 449 ante; as to appeal hearings see PARA 450 ante; and as to committee deliberations see PARA 453 post.

3 General Dental Council Continuing Professional Development Committee (Procedure) Rules Order of Council 2003, SI 2004/68, r 12.

4 For the meaning of 'hearings director' see PARA 448 note 14 ante.

5 For the meaning of 'party to the proceedings' see PARA 449 note 10 ante.

6 General Dental Council Continuing Professional Development Committee (Procedure) Rules Order of Council 2003, SI 2004/68, r 13(1). As to such parts of the proceedings see PARAS 449-450 ante, 453 post.

7 For the meaning of 'appellant' see PARA 448 note 6 ante.

8 General Dental Council Continuing Professional Development Committee (Procedure) Rules Order of Council 2003, SI 2004/68, r 13(2).

#### **UPDATE**

#### **444-455 Professional Training and Development**

Continuing professional development committee abolished; Dentists Act 1984 Sch 3A repealed: Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011; as to the committees of the General Dental Council see PARA 395.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(5) PROFESSIONAL TRAINING AND DEVELOPMENT/452. References to other committees.

#### **452. References to other committees.**

Where, in the course of proceedings relating to a registered dentist<sup>1</sup> before the continuing professional development committee<sup>2</sup>, it appears to the committee that:

- 663 (1) the fitness of the registered dentist to practise may be seriously impaired by reason of his physical or mental condition<sup>3</sup>;
- 664 (2) he may have been convicted of a criminal offence<sup>4</sup>; or
- 665 (3) he may have been guilty of serious professional misconduct<sup>5</sup>,

it may refer the matter to the preliminary proceedings committee<sup>6</sup> or to the health committee<sup>7</sup>, whichever is appropriate<sup>8</sup>.

1 For the meaning of 'registered dentist' see PARA 417 note 6 ante.

2 As to the continuing professional development committee see PARA 444 ante.

3 Dentists Act 1984 ss 34A(5), 34B(6), Sch 3A para 4(a) (ss 34A, 34B, Sch 3A added by the Dentists Act 1984 (Amendment) Order 2001, SI 2001/3926, arts 2, 8, 9).

4 *Ie* as mentioned in the Dentists Act 1984 s 27(1)(a) (see PARA 456 post): Sch 3A para 4(b) (as added: see note 3 *supra*).

5 *Ibid* Sch 3A para 4(c) (as added: see note 3 *supra*). As to serious professional misconduct see PARA 456 post.

6 As to the preliminary proceedings committee see PARA 457 et seq post.

7 As to the health committee see PARA 481 et seq post.

8 Dentists Act 1984 Sch 3A para 4 (as added: see note 3 *supra*).

#### **UPDATE**

#### **444-455 Professional Training and Development**

Continuing professional development committee abolished; Dentists Act 1984 Sch 3A repealed: Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011; as to the committees of the General Dental Council see PARA 395.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(5) PROFESSIONAL TRAINING AND DEVELOPMENT/453. Deliberations and determinations.

#### **453. Deliberations and determinations.**

After the presentation of evidence and submissions by the parties<sup>1</sup>, the parties must withdraw and the continuing professional development committee<sup>2</sup> must deliberate in private<sup>3</sup>. Any determination required to be made by the committee must be made by majority vote of its members; if an equal number of votes is given in relation to any question, the question is deemed to have been resolved in favour of the registrar<sup>4</sup>. The chairman must announce the determination of the committee and the reasons for it in the presence of the parties<sup>5</sup>. As soon as practicable after the conclusion of the proceedings, the hearings director<sup>6</sup> must cause a written statement of the reasons for the determination of the committee to be given<sup>7</sup> to the parties<sup>8</sup>.

Where the committee determines<sup>9</sup> that:

- 666 (1) a person's name is to be erased from the register<sup>10</sup> or is not to be restored to it, the committee must serve on him a notice<sup>11</sup> of the determination and of his right to appeal against it<sup>12</sup>;
- 667 (2) a person's name is to remain on the register, it must serve a notice on him accordingly<sup>13</sup>,

and it must, in either case, notify the registrar of its determination<sup>14</sup>.

1 For the meaning of 'party to the proceedings' see PARA 449 note 10 ante. As to the conduct of appeal hearings see PARA 450 ante.

2 As to the continuing professional development committee see PARA 444 ante.

3 General Dental Council Continuing Professional Development Committee (Procedure) Rules Order of Council 2003, SI 2004/68, r 11(1). As to adjournment of deliberations see PARA 451 ante.

4 Ibid r 11(2). For the meaning of 'the registrar' see PARA 396 note 1 ante.

5 Ibid r 11(3). As to a record of proceedings see PARA 451 ante.

6 For the meaning of 'hearings director' see PARA 448 note 14 ante.

7 For the meaning of 'give' see PARA 448 note 11 ante.

8 General Dental Council Continuing Professional Development Committee (Procedure) Rules Order of Council 2003, SI 2004/68, r 11(4).

9 As to when determinations of the committee take place see PARA 479 post.

10 For the meaning of 'the register' see PARA 417 note 1 ante.

11 Any notice required to be served on a person may be served by being sent by a postal service which provides for the delivery of the notice by post to that person's address in the register, or to his last known address if that address differs from his address in the register and it appears to the registrar that such service will be more effective or if he has no address in the register: Dentists Act 1984 ss 34A(5), 34B(6), Sch 3A para 5 (ss 34A, 34B, Sch 3A added by the Dentists Act 1984 (Amendment) Order 2001, SI 2001/3926, arts 2, 8, 9).

12 Ie under the Dentists Act 1984 s 29 (see PARA 454 post): Sch 3A para 3(1)(a) (as added: see note 11 supra). Where the committee determines that a person's name be erased from the register, it must also direct the registrar accordingly: Sch 3A para 3(2) (as so added).

13 Ibid Sch 3A para 3(1)(b) (as added: see note 11 supra). See also note 11 supra.

14 Ibid Sch 3A para 3(1) (as added: see note 11 supra).

## **UPDATE**

### **444-455 Professional Training and Development**

Continuing professional development committee abolished; Dentists Act 1984 Sch 3A repealed: Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011; as to the committees of the General Dental Council see PARA 395.

### **453 Deliberations and determinations**

NOTE 11--As to the service and sending of notifications under the 1984 Act see s 50A; and PARA 401A.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(5) PROFESSIONAL TRAINING AND DEVELOPMENT/454. Appeals against decisions of the continuing professional development committee.

#### **454. Appeals against decisions of the continuing professional development committee.**

Where a person is notified<sup>1</sup> that a determination has been made in respect of him by the continuing professional development committee<sup>2</sup> to erase his name from the register<sup>3</sup> or not to restore his name to it<sup>4</sup>, he may, within 28 days from the service of the notification, appeal against that determination to the relevant court<sup>5</sup>.

On such an appeal<sup>6</sup>, the court may: (1) dismiss the appeal<sup>7</sup>; (2) allow the appeal and quash the determination appealed against<sup>8</sup>; (3) substitute for the determination appealed against any other determination which could have been made or given by the continuing professional development committee<sup>9</sup>; or (4) remit the case to the committee to dispose of the case in accordance with the directions of the court<sup>10</sup>. The court may make such order as to costs as it thinks fit<sup>11</sup>. The General Dental Council<sup>12</sup> may appear as respondent on any such appeal; and for the purpose of any order as to costs in relation to any appeal the Council is deemed to be a party to it, whether it appears on the hearing of the appeal or not<sup>13</sup>.

1    le under the Dentists Act 1984 ss 34A, 34B, Sch 3A para 3 (all as added): see PARA 453 ante.

2    As to the professional conduct committee see PARA 460 post.

3    For the meaning of 'the register' see PARA 417 note 1 ante.

4    Dentists Act 1984 s 29(1)(a) (amended by the Dentists Act 1984 (Amendment) Order 2001, SI 2001/3926, arts 2, 10(3)(a)). As to registration generally see PARA 420 ante.

5    Dentists Act 1984 s 29(1) (s 29(1) amended, s 29(1A) added, and s 29(3) substituted, by the National Health Service Reform and Health Care Professions Act 2002 s 31(1), (2)(a), (b), (d)). 'The relevant court', in the case of a person whose address in the register is (or if he were registered would be) in Scotland, means the Court of Session; in the case of a person whose address in the register is (or if he were registered would be) in Northern Ireland, means the High Court of Justice in Northern Ireland; and in the case of any other person, means the High Court of Justice in England and Wales: Dentists Act 1984 s 29(1A) (as so added). As to the High Court of Justice in England and Wales see COURTS vol 10 (Reissue) PARA 602 et seq.

6    As to cases in relation to appeals in disciplinary proceedings, the principles of which will apply here also, see PARA 478 note 6 post.

7    Dentists Act 1984 s 29(3)(a) (as substituted: see note 5 supra).

8    Ibid s 29(3)(b) (as substituted: see note 5 supra).

9    Ibid s 29(3)(c) (as substituted: see note 5 supra).

10   Ibid s 29(3)(d) (as substituted: see note 5 supra).

11   Ibid s 29(3) (as substituted: see note 5 supra). As to costs generally see CIVIL PROCEDURE vol 12 (2009) PARA 1729 et seq.

12   As to the General Dental Council see PARA 389 et seq ante.

13   Dentists Act 1984 s 29(4) (amended by the National Health Service Reform and Health Care Professions Act 2002 s 37(1), Sch 8 para 16).

#### **UPDATE**

**444-455 Professional Training and Development**

Continuing professional development committee abolished; Dentists Act 1984 Sch 3A repealed: Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011; as to the committees of the General Dental Council see PARA 395.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(5) PROFESSIONAL TRAINING AND DEVELOPMENT/455. When determinations of the continuing professional development committee take effect.

**455. When determinations of the continuing professional development committee take effect.**

Where no appeal is brought against any determination<sup>1</sup> of the continuing professional development committee<sup>2</sup> within 28 days from the service of the notification of the determination, the determination takes effect at the expiry of that period<sup>3</sup>. Where an appeal is so brought, then the determination does not take effect until such time as the appeal is dismissed or withdrawn or is struck out for want of prosecution<sup>4</sup>.

1     le made under the Dentists Act 1984 ss 34A, 34B, Sch 3A (all as added): see PARA 453 ante.

2     As to the continuing professional development committee see PARA 444 ante.

3     Dentists Act 1984 s 30(1) (amended by the Dentists Act 1984 (Amendment) Order 2001, SI 2001/3926, arts 2, 10(4)). As to appeals see PARA 454 ante.

**UPDATE**

**UPDATE**

**444-455 Professional Training and Development**

Continuing professional development committee abolished; Dentists Act 1984 Sch 3A repealed: Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011; as to the committees of the General Dental Council see PARA 395.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(6) FITNESS TO PRACTISE/(i) Grounds for Disciplinary Proceedings/456. Crime or serious professional misconduct.

## **(6) FITNESS TO PRACTISE**

### **(i) Grounds for Disciplinary Proceedings**

#### **456. Crime or serious professional misconduct.**

Where the professional conduct committee<sup>1</sup> is satisfied that a registered dentist<sup>2</sup>, whether before or after registration<sup>3</sup>, has been convicted in the United Kingdom<sup>4</sup> of a criminal offence or has been convicted elsewhere of an offence which, if committed in England and Wales, would constitute a criminal offence<sup>5</sup>, or has been guilty of serious professional misconduct<sup>6</sup>, it may, if it thinks fit, determine that his name be erased from the register<sup>7</sup> or his registration in it be suspended for a specified period not exceeding 12 months<sup>8</sup>.

1 As to the professional conduct committee see PARA 460 et seq post.

2 For the meaning of 'registered dentist' see PARA 417 note 6 ante.

3 As to registration see PARA 420 et seq ante.

4 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

5 Dentists Act 1984 s 27(1)(a). The purpose of giving a disciplinary committee powers over a professional man who has been convicted of crime is not to punish him for a second time for the same offence but to protect the public who may come to him as patients and to maintain the high standards and good reputation of an honourable profession: *Zideman v General Dental Council* [1976] 2 All ER 334, [1976] 1 WLR 330, PC. Where a professional man has been convicted and punished for a criminal offence which also constitutes professional misconduct and the appropriate disciplinary body imposes what it decides is a proper disciplinary penalty, the court will not interfere on an appeal: *Laud v General Medical Council* (1980) Times, 8 March, PC. The maxim that a person ought not to be punished twice for the same offence does not apply to proceedings before a disciplinary committee: *R v Statutory Committee of the Pharmaceutical Society of Great Britain, ex p Pharmaceutical Society of Great Britain* [1981] 2 All ER 805, [1981] 1 WLR 886, DC. If the disciplinary committee is considering erasure, it must satisfy itself that the criminal offence is of so grave a character as to show that the professional man is unfit to continue to practise: *Zideman v General Dental Council* supra.

6 Dentists Act 1984 s 27(1)(b). There are no closed categories of serious professional misconduct: in every case it is for the committee to decide first whether the facts alleged are proved and secondly whether, in relation to those facts, the practitioner is guilty of such misconduct: *Sloan v General Medical Council* [1970] 2 All ER 686, [1970] 1 WLR 1130n, PC; and see PARA 143 ante. The committee must also decide what is the most appropriate standard to which each practitioner must adhere, not a special standard greater than is ordinarily expected, but the ordinary standard of the profession: *McEniff v General Dental Council* [1980] 1 All ER 461, [1980] 1 WLR 328, PC. The standard to be applied is that considered appropriate for professional purposes and not, say, a purely commercial standard: *Le Scroog v General Optical Council* [1982] 3 All ER 257, [1982] 1 WLR 1238, PC. Serious failure to meet the standard of conduct expected of members of the dental profession is sufficient; serious professional misconduct is not restricted to dishonesty or moral turpitude: *Doughty v General Dental Council* [1988] AC 164, [1987] 3 All ER 843, PC. When considering whether a practitioner should be found guilty and in that event, what action it is to be taken, the committee is entitled to consider his previous conduct as a practitioner: see *McCoan v General Medical Council* [1964] 3 All ER 143, [1964] 1 WLR 1107, PC. See also *Carmichael v General Dental Council* [1990] 1 WLR 134, PC (dentist administering general anaesthetic contrary to proper practice guilty of serious professional misconduct); *Valente v General Dental Council* (1990) 5 BMLR 126, PC (substandard facilities in dental surgery giving rise to avoidable risks to patients justified finding of serious professional misconduct and erasure from the register).

7 For the meaning of 'the register' see PARA 417 note 1 ante.

8 Dentists Act 1984 s 27(1). As a general rule, the court will be very slow to interfere with decisions of the committee on matters relating to penalty but the committee is not entitled to arrive at a decision which can reasonably be said to be wrong and unjustified. Whilst the Dentists Act 1984 s 27(1) places no restriction on the nature or gravity of the criminal offences for the conviction of which a registered dentist may have his name erased from the register or have his registration suspended, it is nevertheless proper to have regard to their nature and gravity when decisions are being taken as to the appropriate penalty and its consequences; in this respect, there is room for a distinction between cases where the penalty is imposed for conduct which the committee has held is serious professional misconduct and cases where the penalty is imposed upon proof of a conviction: *Dad v General Dental Council* [2000] 1 WLR 1538, 56 BMLR 130, PC.

## UPDATE

### 456 Crime or serious professional misconduct

TEXT AND NOTES--Replaced.

Where an allegation is made to the General Dental Council<sup>1</sup> against a registered dentist<sup>2</sup> that his fitness to practise as a dentist is impaired<sup>3</sup>, the registrar<sup>4</sup> must refer the allegation to the investigating committee<sup>5</sup>, and may also, if he considers it appropriate, refer the allegation to the interim orders committee<sup>6</sup>. A person's fitness to practise as a dentist is to be regarded as 'impaired' by reason only of (1) misconduct; (2) deficient professional performance; (3) adverse physical or mental health; (4) a conviction or caution in the United Kingdom for a criminal offence, or a conviction elsewhere for an offence which, if committed in England and Wales, would constitute a criminal offence; (5) the person having agreed to pay a penalty as alternative to prosecution<sup>7</sup>; (6) the person having been given an absolute discharge in respect of an offence which the court considered the person to have committed<sup>8</sup>; (7) a determination by a body in the United Kingdom responsible under any enactment<sup>9</sup> for the regulation of a health or social care profession to the effect that the person's fitness to practise as a member of that profession is impaired, or a determination by a regulatory body<sup>10</sup> elsewhere to the same effect; or (8) the Independent Barring Board including the person in a barred list<sup>11</sup> (within the meaning of Safeguarding Vulnerable Groups Act 2006)<sup>12</sup>.

Where the registrar refers an allegation to the investigating committee, it must investigate the allegation and determine whether the allegation ought to be considered by a practice committee<sup>13</sup>. If the investigating committee determines that the allegation ought to be considered by a practice committee, it must refer the allegation to either the professional performance committee, the health committee or the professional conduct committee, and may also refer the allegation to the interim orders committee<sup>14</sup>. On such a reference, the practice committee must either investigate the allegation and determine whether the person's fitness to practise as a dentist is impaired, or refer the allegation back to the investigating committee<sup>15</sup>. If the practice committee determines that the person's fitness to practise is impaired, it may direct erasure of his name from the register, suspension of his registration, that his registration become conditional, or that he be reprimanded<sup>16</sup>.

Provision is made as to the suspension of a person's registration and the making of a person's registration conditional<sup>17</sup>, as to restoration of a person's name to the register following erasure<sup>18</sup>, and as to the taking effect of a direction relating to erasure, suspension or conditional registration<sup>19</sup>.

1 As to the General Dental Council see PARA 389 et seq.

2 For the meaning of 'registered dentist' see PARA 417 NOTE 6.

3 Dentists Act 1984 s 27(1) (ss 27, 28, 33, Sch 3 substituted, ss 26B, 27A-27C, 29A, 33A-33C added, by SI 2005/2011; 1984 Act s 27(2) amended by SI 2009/1182) (in force on the coming into

force of the Safeguarding Vulnerable Groups Act 2006 s 44(1) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 704)).

4 For the meaning of 'the registrar' see PARA 396 NOTE 1.

5 As to the committees of the General Dental Council see PARA 395.

6 1984 Act s 27(5). The registrar must investigate the allegation for the purpose of exercising his functions under s 27(5): s 27(6). As to the Council's duty to issue guidance as to the standards of conduct, performance and practice expected of registered dentists see s 26B; and PARA 456A.

7 le under the Social Security Administration Act 1992 s 115A or the Criminal Procedure (Scotland) Act 1995 s 302.

8 le where the person has been the subject of an order under the Criminal Procedure (Scotland) Act 1995 s 246(2) or (3) discharging him absolutely.

9 'Regulatory body' means a regulatory body which has the function of authorising persons to practise as members of a health or social care profession: 1984 Act s 27(7)(b).

10 'Enactment' includes a provision of, or an instrument made under, an Act of the Scottish Parliament, a provision of, or an instrument made under, Northern Ireland legislation, and a provision of subordinate legislation: see *ibid* 27(7)(a).

11 As to the barred list see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 681.

12 1984 Act s 27(2). It does not matter whether the allegation is based on a matter alleged to have occurred outside the United Kingdom or at a time when the person was not registered in the register: s 27(3). Section 27 also applies in a case where it comes to the attention of the Council that a registered dentist's fitness to practise as a dentist may be impaired on one or more of the grounds mentioned in s 27(2), but no allegation to that effect has been made to the Council against that person (in which case the 1984 Act applies as if an allegation or allegations to the effect that the person's fitness to practise as a dentist is impaired on the ground or grounds in question had been made to the Council against that person): s 27(4).

13 See *ibid* s 27A(1)-(3), (7)-(10).

14 *Ibid* s 27A(4)-(6).

15 *Ibid* s 27B(1)-(5).

16 See *ibid* s 27B(6)-(10).

17 See *ibid* s 27C.

18 See *ibid* s 28.

19 See *ibid* s 29A. See further s 33 (treatment of persons suspended or whose registration is subject to conditions), s 33A (recoding of suspension and conditional registration), s 33B (Council's power to require disclosure of information), s 33C (notification and disclosure by the Council), and Sch 3 (proceedings before investigating committee, interim orders committee and practice committees). The General Dental Council has made the General Dental Council (Fitness to Practise) Rules 2006 (approved by the General Dental Council (Fitness to Practise) Rules Order of Council 2006, SI 2006/1663 (amended by SI 2009/1182) (in force on the coming into force of the Safeguarding Vulnerable Groups Act 2006 s 44(1) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 704)).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(6) FITNESS TO PRACTISE/(i) Grounds for Disciplinary Proceedings/456A. Guidance.

#### **456A. Guidance.**

The General Dental Council<sup>1</sup> must prepare and from time to time issue guidance as to the standards of conduct, performance and practice expected of registered dentists<sup>2</sup>, and must keep such guidance under review and may vary or withdraw it whenever the Council considers it appropriate to do so<sup>3</sup>. Before issuing such guidance or varying or withdrawing it, the Council is required to consult with representatives from those in the dental profession and users of dental services<sup>4</sup>, primary care trusts in England and local health boards in Wales<sup>5</sup>, and other bodies which make arrangements for the provision of dental services<sup>6</sup>.

1 As to the General Dental Council see PARA 389 et seq.

2 Dentists Act 1984 s 26B(1) (ss 26B, 50B added by SI 2005/2011). Such guidance may make different provision in relation to different cases or classes of case: 1984 Act s 26B(2). The Council must from time to time publish the guidance issued (s 26B(4)), and may charge such fee as it considers reasonable for the provision of a copy of the guidance to any person (s 26B(10)). Such guidance may be published in such form and manner as the Council considers appropriate, including in electronic form: s 50B(1).

3 Ibid s 26B(3).

4 See ibid s 26B(5)-(7).

5 See ibid s 26B(5), (8).

6 See ibid s 26B(5), (9).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(6) FITNESS TO PRACTISE/(ii) Preliminary Proceedings/457. The preliminary proceedings committee.

## **(ii) Preliminary Proceedings**

### **457. The preliminary proceedings committee.**

There is a committee of the General Dental Council<sup>1</sup> known as the preliminary proceedings committee<sup>2</sup>. The committee consists of five members, of whom at least two must be registered dentists<sup>3</sup> and at least two must be lay persons<sup>4</sup> who are members of the Council or, if the Council so determines, appropriate persons<sup>5</sup>. When the committee is exercising a fitness to practise function<sup>6</sup>, no person may be appointed as a member of the committee who, prior to his membership of the committee, had any dealings in relation to the matter in respect of which the committee is exercising its fitness to practise function<sup>7</sup>.

1 As to the General Dental Council see PARA 389 et seq ante.

2 Dentists Act 1984 s 2(1). As to the committees of the Council generally see PARA 395 ante.

3 For the meaning of 'registered dentist' see PARA 417 note 6 ante.

4 For the meaning of 'lay person' see PARA 444 note 5 ante.

5 General Dental Council (Constitution of Committees) Order of Council 2003, SI 2003/1081, arts 2(1)(a), 3. For the meaning of 'appropriate person' see PARA 444 note 3 ante.

6 For the meaning of 'fitness to practise function' see PARA 444 note 6 ante.

7 General Dental Council (Constitution of Committees) Order of Council 2003, SI 2003/1081, art 2(2).

## **UPDATE**

### **457-459 Preliminary Proceedings**

Preliminary proceedings committee abolished: Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011; see PARA 395.

### **457 The preliminary proceedings committee**

TEXT AND NOTES--SI 2003/1081 revoked: SI 2006/1665. See now the General Dental Council (Constitution of Committees) Rules Order of Council 2009, SI 2009/1813.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(6) FITNESS TO PRACTISE/(ii) Preliminary Proceedings/458. Functions of the preliminary proceedings committee.

#### **458. Functions of the preliminary proceedings committee.**

It is the function of the preliminary proceedings committee<sup>1</sup> to decide whether the case of a person alleged to have been convicted of a criminal offence or to have been guilty of misconduct<sup>2</sup> ought to be referred to the professional conduct committee<sup>3</sup> to be dealt with by it<sup>4</sup>.

Where, in the course of any proceedings before it, it appears to the committee that a registered dentist's<sup>5</sup> fitness to practise may be seriously impaired by reason of his physical or mental condition, the committee may refer that question to the health committee<sup>6</sup> for determination<sup>7</sup>. If, following such a reference, the health committee certifies to the preliminary proceedings committee that the fitness of the dentist to practise is not seriously impaired by reason of his condition, the preliminary proceedings committee must then resume its proceedings in the case and dispose of it<sup>8</sup>. If the health committee determines that the fitness of the dentist to practise is seriously impaired by reason of his physical or mental condition, it must certify its opinion to the preliminary proceedings committee<sup>9</sup>, and proceed to dispose of the case<sup>10</sup>.

Where, in the course of any proceedings, it appears to the preliminary proceedings committee that a dentist may be failing to meet the requirements of the rules relating to professional training and development<sup>11</sup>, the committee may refer the question of whether he is failing to meet them to the registrar<sup>12</sup>.

1 As to the preliminary proceedings committee see PARA 457 ante.

2 *Ie* as mentioned in the Dentists Act 1984 s 27(1): see PARA 456 ante.

3 As to the professional conduct committee see PARA 460 et seq post.

4 *Ie* in accordance with the Dentists Act 1984 s 27 (see PARA 461 post): s 27(2).

5 For the meaning of 'registered dentist' see PARA 417 note 6 ante.

6 As to the health committee see PARA 481 et seq post.

7 Dentists Act 1984 s 33(2), Sch 3 para 3(2); General Dental Council Professional Conduct Committee (Procedure) Rules Order of Council 1984, SI 1984/1517, r 19(a).

8 See the Dentists Act 1984 Sch 3 para 3(3); and the General Dental Council Professional Conduct Committee (Procedure) Rules Order of Council 1984, SI 1984/1517, r 19(b).

9 Dentists Act 1984 Sch 3 para 3(4)(a); General Dental Council Professional Conduct Committee (Procedure) Rules Order of Council 1984, SI 1984/1517, r 19(c)(i).

10 *Ie* under the Dentists Act 1984 s 28 (see PARA 482 post): Sch 3 para 3(4)(b); General Dental Council Professional Conduct Committee (Procedure) Rules Order of Council 1984, SI 1984/1517, r 19(c)(ii). On the health committee so certifying, any functions which would otherwise be exercisable by the preliminary proceedings committee under the Dentists Act 1984 s 27 (see PARAS 456 ante, 461 post) cease to be exercisable: Sch 3 para 3(4); General Dental Council Professional Conduct Committee (Procedure) Rules Order of Council 1984, SI 1984/1517, r 19(c).

11 *Ie* rules made under the Dentists Act 1984 s 34A (as added): see PARA 445 ante.

12 *Ibid* Sch 3 para 3A (added by the Dentists Act 1984 (Amendment) Order 2001, SI 2001/3926, arts 2, 10(6)). For the meaning of 'the registrar' see PARA 396 note 1 ante.

**UPDATE****457-459 Preliminary Proceedings**

Preliminary proceedings committee abolished: Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011; see PARA 395.

**458 Functions of the preliminary proceedings committee**

TEXT AND NOTES--1984 Act s 33, Sch 3 substituted by s 33 (treatment of persons suspended or whose registration is subject to conditions), s 33A (recoding of suspension and conditional registration), s 33B (Council's power to require disclosure of information), s 33C (notification and disclosure by the Council), Sch 3 (proceedings before investigating committee, interim orders committee and practice committees): Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011. See further the General Dental Council have made the General Dental Council (Fitness to Practise) Rules 2006 (approved by the General Dental Council (Fitness to Practise) Rules Order of Council 2006, SI 2006/1663 (as amended: see PARA 456)). General Dental Council Health Committee (Procedure) Rules Order of Council 1984, SI 1984/2010, lapsed (see SI 2005/2011 art 50, Sch 7 for transitional provision). Further transitional provision is made by the Dentists Act 1984 (Amendment) Order 2005 Transitional Provisions Order of Council 2006, SI 2006/1671. As to the committees of the General Dental Council see PARA 395.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(6) FITNESS TO PRACTISE/(ii) Preliminary Proceedings/459. Interim suspension by the preliminary proceedings committee.

#### **459. Interim suspension by the preliminary proceedings committee.**

Where the preliminary proceedings committee<sup>1</sup> decides that the case of a person who is alleged to have been convicted of a criminal offence or to have been guilty of any misconduct<sup>2</sup> ought to be referred to the professional conduct committee<sup>3</sup>, and is satisfied that it is necessary for the protection of members of the public<sup>4</sup>, it may order that his registration in the register<sup>5</sup> be suspended pending the determination of his case by the professional conduct committee<sup>6</sup>. Such an order may be made notwithstanding, in the case of a person alleged to have been convicted, that any proceedings by way of appeal are pending in respect of the conviction in question<sup>7</sup>, or, in the case of a person alleged to have been guilty of any misconduct, that any criminal charge has been or might be brought in respect of the alleged misconduct<sup>8</sup>.

No order may be made unless the person concerned has been afforded an opportunity of appearing before the committee and of being heard on the question whether such an order should be made in his case<sup>9</sup>. Where an order is made, the registrar<sup>10</sup> must forthwith serve on the person concerned notification<sup>11</sup> of the order and of his right to make an application for termination of the order<sup>12</sup>. The registration of that person in the register is suspended from the time when the notification is served until such time as the order is revoked<sup>13</sup>.

Any order must be reviewed by the committee not later than three months after it is made and thereafter at intervals of not more than three months; and where the committee, on any such review, is satisfied that the continuation of the order is not necessary for the protection of members of the public, it must revoke it<sup>14</sup>. Where the case of a person to whom an order applies is determined by the professional conduct committee<sup>15</sup>, that committee must revoke the order either forthwith or if it makes an order for immediate suspension<sup>16</sup> as from the time that order takes effect<sup>17</sup>. Where an order is revoked, the registrar must serve forthwith on the person concerned a notification of that revocation<sup>18</sup>.

1 As to the preliminary proceedings committee see PARA 457 ante.

2 *Ie* as mentioned in the Dentists Act 1984 s 27(1): see PARA 456 ante.

3 *Ibid* s 32(1)(a). As to the professional conduct committee see PARA 460 et seq post.

4 *Ibid* s 32(1)(b).

5 For the meaning of 'the register' see PARA 417 note 1 ante. As to registration see PARA 420 et seq ante.

6 Dentists Act 1984 s 32(1). As to the application of the provisions of the Dentists Act 1984 in respect of legal assessors see PARA 463 note 8 post. As to the effect of such suspension on arrangements made with the dentist for the provision by him of general dental services under the national health service see the National Health Service Act 1977 s 35(3); and PARA 386 text to notes 4, 5 ante.

7 Dentists Act 1984 s 32(2)(a).

8 *Ibid* s 32(2)(b).

9 *Ibid* s 32(3). For these purposes, a person may be represented before the committee by counsel or a solicitor or, if rules made under s 1(3), Sch 1 para 8 (see PARA 399 ante) so provide and he so elects, by a person of such other description as may be specified in the rules: s 32(3).

10 For the meaning of 'the registrar' see PARA 396 note 1 ante.

11 Any notification required by the Dentists Act 1984 ss 27-32 to be served on a person by the registrar may be served by post in a registered letter, or in the case of any notification required to be served in connection with any determination or order of the professional conduct committee by the recorded delivery service, addressed to that person at his address in the register, or at his last known address if that address differs from his address in the register and it appears to the registrar that such service will be more effective: s 33(2), Sch 3 para 7(1), (2).

12 Ibid s 32(4). The provisions of s 30(6), (7) (appeals to the court: see PARA 461 post) have effect in relation to an order under s 32 as they have effect in relation to an order of the professional conduct committee under s 30(3) (see PARA 461 post): s 32(8). As to the procedure on appeal against interim suspension see *Vale v General Dental Council* (1988) Times, 29 October, DC.

13 Dentists Act 1984 s 32(4). As to revocation see the text to notes 14-17 infra.

14 Ibid s 32(5).

15 Ie under ibid s 27: see PARA 461 post.

16 Ie an order taking effect under ibid s 30(5): see PARA 484 post.

17 Ibid s 32(6).

18 Ibid s 32(7). See also note 11 supra.

## UPDATE

### 457-459 Preliminary proceedings committee

Preliminary proceedings committee abolished: Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011; see PARA 395.

### 459 Interim suspension by the preliminary proceedings committee

TEXT AND NOTES--Replaced.

Where a committee<sup>1</sup> is satisfied that it is necessary for the protection of the public or is otherwise in the public interest, or is in the interests of the person concerned, for the person's registration to be suspended or to be made subject to conditions, the committee may make an interim suspension order<sup>2</sup> or an order for interim conditional registration<sup>3</sup>. A committee is required to review an interim suspension order or an order for interim conditional registration it has made within six months and every six months<sup>4</sup> thereafter, and may review the order where new evidence relevant to it becomes available<sup>5</sup>. Where an interim suspension order or an order for interim conditional registration has been made in relation to a person<sup>6</sup>, the committee that made the order may (1) revoke the order<sup>7</sup>; (2) make an order adding to, varying or revoking any condition imposed by the order<sup>8</sup>; (3) if satisfied that to do so is necessary for the protection of the public or is otherwise in the public interest, or is in the interests of the person concerned (a) replace an interim suspension order with an order for interim conditional registration having effect for the remainder of the term of the former<sup>9</sup>, or (b) replace an order for interim conditional registration with an interim suspension order having effect for the remainder of the term of the former<sup>10</sup>. The High Court is empowered to terminate an interim suspension order, to revoke or vary an order for interim conditional registration, and to vary the period specified in the either type of order<sup>11</sup>.

1 Ie the professional conduct committee, the professional performance committee, the health committee or the interim orders committee: Dentists Act 1984 s 32(1) (s 32 substituted by SI 2005/2011). The interim orders committee may exercise functions under the 1984 Act s 32 only in relation to a person whose case has been referred to it by the registrar under s 27(5)(b), by the

investigating committee under s 27A(4)(b) or (6)(b), or by a practice committee in accordance with rules under Sch 3 para 7(1)(c): s 32(2). A practice committee may exercise functions under s 32 only in relation to a person whose case has been referred to them by the Investigating Committee under s 27A(4)(a) or (6)(a), or by another practice committee in accordance with rules under Sch 3 para 7(1)(a): s 32(3). As to the committees of the General Dental Council see PARA 395.

2     le an order that his registration in the register be suspended during such period not exceeding 18 months as may be specified in the order: *ibid* s 32(4)(a). For the meaning of 'the register' see PARA 417 NOTE 1.

3     le an order that his registration be conditional on his compliance, during such period not exceeding 18 months as may be specified in the order, with such conditions so specified as the committee thinks fit to impose: *ibid* s 32(4)(b). On making an order under s 32, the registrar must forthwith serve notification of the order on the person to whose registration it relates, and that order takes effect from the time on which such notification is served: s 32(7). As to the service and sending of notifications under the 1984 Act see s 50A and PARA 401A. The General Dental Council may apply to the High Court for an order made by a committee under s 32(4) to be extended, or further extended, and on such an application the court may extend, or further extend, for up to 12 months the period for which the order has effect: see s 32(8)-(10), (13). As to the General Dental Council see PARA 389 *et seq*.

4     See *ibid* s 32(5)(a)(i). However, the committee must review its decision after three months if the person concerned so requests: see s 32(5)(a)(ii).

5     See *ibid* s 32(5)(b). See further s 32(11).

6     le under any provision of *ibid* s 32.

7     *Ibid* s 32(6)(a).

8     *Ibid* s 32(6)(b).

9     *Ibid* s 32(6)(c).

10    *Ibid* s 32(6)(d). The General Dental Council may apply to the High Court for an order made by a committee under s 32(6) to be extended, or further extended, and on such an application the court may extend, or further extend, for up to 12 months the period for which the order has effect: see s 32(8)-(10), (13).

11    *Ibid* s 32(12).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(6) FITNESS TO PRACTISE/ (iii) The Professional Conduct Committee/460. The professional conduct committee.

### **(iii) The Professional Conduct Committee**

#### **460. The professional conduct committee.**

There is a committee of the General Dental Council<sup>1</sup> known as the professional conduct committee<sup>2</sup>. The membership of the professional conduct committee consists of five appropriate persons<sup>3</sup>, of whom at least two must be registered dentists<sup>4</sup> and at least two must be lay persons<sup>5</sup>. When the committee is exercising a fitness to practise function<sup>6</sup>, no person may be appointed as a member of the committee who, prior to his membership of the committee, had any dealings in relation to the matter in respect of which the committee is exercising its fitness to practise function<sup>7</sup>.

1 As to the General Dental Council see PARA 389 et seq ante.

2 See the Dentists Act 1984 s 2(2).

3 For the meaning of 'appropriate person' see PARA 444 note 3 ante.

4 For the meaning of 'registered dentist' see PARA 417 note 6 ante.

5 General Dental Council (Constitution of Committees) Order of Council 2003, SI 2003/1081, arts 2(1)(c), 5. For the meaning of 'lay person' see PARA 444 note 5 ante.

6 For the meaning of 'fitness to practise function' see PARA 444 note 6 ante.

7 General Dental Council (Constitution of Committees) Order of Council 2003, SI 2003/1081, art 2(2).

### **UPDATE**

#### **460-461 The Professional Conduct Committee**

Professional conduct committee replaced: Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011; see PARA 395.

#### **460 The professional conduct committee**

NOTE 2--1984 Act s 2(2) substituted: Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011, art 4(1)(a).

TEXT AND NOTES 3-7--SI 2003/1081 revoked: SI 2006/1665. See now the General Dental Council (Constitution of Committees) Rules Order of Council 2009, SI 2009/1813.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(6) FITNESS TO PRACTISE/ (iii) The Professional Conduct Committee/461. Functions of the professional conduct committee.

#### **461. Functions of the professional conduct committee.**

It is the duty of the professional conduct committee<sup>1</sup> to hold an inquiry into any case of a registered dentist<sup>2</sup> alleged to have been convicted of a criminal offence or to have been guilty of misconduct<sup>3</sup> referred to it by the preliminary proceedings committee<sup>4</sup>. However, if, after the preliminary proceedings committee has referred a case to the professional conduct committee, but before the professional conduct committee has opened its inquiry into the case, it appears to the professional conduct committee that the question whether an inquiry be held needs further consideration, it may refer the case back to the preliminary proceedings committee for consideration of that question<sup>5</sup>. Subject to this, where the professional conduct committee is satisfied that a registered dentist, whether before or after registration<sup>6</sup>, has been convicted of a criminal offence or been guilty of serious professional misconduct, it may, if it thinks fit, determine that his name be erased from the register<sup>7</sup> or that his registration in it be suspended for such period not exceeding 12 months as may be specified in the determination<sup>8</sup>. Where the committee so determines, the registrar<sup>9</sup> must serve on the person concerned a notification<sup>10</sup> of the committee's determination and of his right to appeal against it<sup>11</sup>.

If the committee, on making any such determination in respect of a person, is satisfied that it is necessary for the protection of members of the public, or that it would be in the best interests of that person to do so, it may order that his registration in the register be suspended forthwith; and in that event his registration in the register is suspended from the time when the order is made until the time when the period for bringing an appeal against the determination expires or, if such an appeal is brought, the appeal is determined or withdrawn or is struck out for want of prosecution<sup>12</sup>. A person whose registration has been suspended forthwith may apply to the court<sup>13</sup> for an order terminating the suspension, and the decision of the court on any such application is final<sup>14</sup>.

While a person's registration in the register is suspended by virtue of any determination or order, he is treated as not being registered in the register, notwithstanding that his name still appears in it<sup>15</sup>.

Where in the course of any proceedings before it, it appears to the committee that a registered dentist's fitness to practise may be seriously impaired by reason of his physical or mental condition, the committee may refer that question to the health committee<sup>16</sup> for determination<sup>17</sup>. If, following such a reference, the health committee certifies to the professional conduct committee that the fitness of the dentist to practise is not seriously impaired by reason of his condition, the professional conduct committee must then resume its proceedings in the case and dispose of it<sup>18</sup>. If the health committee determines that the fitness of the dentist to practise is seriously impaired by reason of his physical or mental condition, it must certify its opinion to the professional conduct committee<sup>19</sup>, and proceed to dispose of the case<sup>20</sup>.

Where, in the course of any proceedings, it appears to the professional conduct committee that a dentist may be failing to meet the requirements of the rules relating to professional training and development<sup>21</sup>, the committee may refer the question of whether he is failing to meet them to the registrar<sup>22</sup>.

1 As to the professional conduct committee see PARA 460 ante.

2 For the meaning of 'registered dentist' see PARA 417 note 6 ante.

3 le as mentioned in the Dentists Act 1984 s 27(1): see PARA 456 ante.

4 le under ibid s 27 (see PARA 458 ante): s 27(3). As to the preliminary proceedings committee see PARA 457 ante.

5 Ibid s 27(3).

6 As to registration see PARA 420 et seq ante.

7 For the meaning of 'the register' see PARA 417 note 1 ante.

8 See the Dentists Act 1984 s 27(1); and PARA 456 ante. As to when determinations of the committee take effect see PARA 479 post. As to appeals from such determinations see PARA 478 post. The committee is entitled, in the public interest to publish a fair, bona fide and accurate report of its proceedings and accurate information of the cause of an erasure without being subject to a claim for defamation: *Allbut v General Council of Medical Education and Registration* (1889) 23 QBD 400, CA; *Thompson v New South Wales Branch of the British Medical Association* [1924] AC 764, PC. As to defamation and the publication of reports of the committee see the Defamation Act 1996 s 15, Sch 1 para 10(e); and LIBEL AND SLANDER vol 28 (Reissue) PARA 133.

9 For the meaning of 'the registrar' see PARA 396 note 1 ante.

10 As to the service of such notifications see PARA 459 note 11 ante.

11 le under the Dentists Act 1984 s 29 (see PARA 478 post): s 27(4).

12 Ibid s 30(3). Where such an order is made, the registrar must forthwith serve on the person to whom it applies a notification of the order and of his right to make an application to the court (see the text to notes 13-14 infra): s 30(4). If when such an order is made the person to whom it applies is neither present nor represented at the proceedings, for the reference to the time when the order is made there is substituted a reference to the time when notification of the order is served on him: s 30(5).

13 'The court', in the case of a person whose address in the register is in Scotland, means the Court of Session; in the case of a person whose address in the register is in Northern Ireland, means the High Court in Northern Ireland; and in the case of any other person, means the High Court in England and Wales: ibid s 30(7). As to the High Court of Justice in England and Wales see COURTS vol 10 (Reissue) PARA 602 et seq.

14 Ibid s 30(6). As to judicial review of final decisions of the court see JUDICIAL REVIEW vol 61 (2010) PARA 655.

15 Ibid s 33(1).

16 As to the health committee see PARA 481 et seq post.

17 Dentists Act 1984 s 33(2), Sch 3 para 3(2); General Dental Council Professional Conduct Committee (Procedure) Rules Order of Council 1984, SI 1984/1517, r 19(a).

18 See the Dentists Act 1984 Sch 3 para 3(3); and the General Dental Council Professional Conduct Committee (Procedure) Rules Order of Council 1984, SI 1984/1517, r 19(b).

19 Dentists Act 1984 Sch 3 para 3(4)(a); General Dental Council Professional Conduct Committee (Procedure) Rules Order of Council 1984, SI 1984/1517, r 19(c)(i).

20 le under the Dentists Act 1984 s 28 (see PARA 482 post): Sch 3 para 3(4)(b); General Dental Council Professional Conduct Committee (Procedure) Rules Order of Council 1984, SI 1984/1517, r 19(c)(ii). On the health committee so certifying, any functions which would otherwise be exercisable by the professional conduct committee under the Dentists Act 1984 s 27 (see PARAS 456, 461 ante) cease to be exercisable: Sch 3 para 3(4); General Dental Council Professional Conduct Committee (Procedure) Rules Order of Council 1984, SI 1984/1517, r 19(c).

21 le rules made under the Dentists Act 1984 s 34A (as added): see PARA 445 ante.

22 Ibid Sch 3 para 3A (added by the Dentists Act 1984 (Amendment) Order 2001, SI 2001/3926, arts 2, 10(6)).

## UPDATE

### 460-461 The Professional Conduct Committee



Professional conduct committee replaced: Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011; see PARA 395.

#### **461 Functions of the professional conduct committee**

NOTE 10--As to the service and sending of notifications under the 1984 Act see s 50A and PARA 401A.

TEXT AND NOTES 12-14--1984 Act s 30 substituted by the Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011, so as to make provision for erasure, immediate suspension or immediate conditional registration of a person whose fitness to practise has been determined as being impaired or whose entry in the register has been incorrectly made.

NOTE 13--1984 Act s 30(7) now s 30(8).

TEXT AND NOTES 15-22--1984 Act s 33, Sch 3 substituted by s 33 (treatment of persons suspended or whose registration is subject to conditions), s 33A (recoding of suspension and conditional registration), s 33B (Council's power to require disclosure of information), s 33C (notification and disclosure by the Council), Sch 3 (proceedings before investigating committee, interim orders committee and practice committees): Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011. See further the General Dental Council have made the General Dental Council (Fitness to Practise) Rules 2006 (approved by the General Dental Council (Fitness to Practise) Rules Order of Council 2006, SI 2006/1663 (as amended: see PARA 456)). As to the committees of the General Dental Council see PARA 395.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(6) FITNESS TO PRACTISE/(iv) Disciplinary Proceedings/462. Professional conduct committee procedure rules.

#### **(iv) Disciplinary Proceedings**

##### **462. Professional conduct committee procedure rules.**

The General Dental Council<sup>1</sup> must make rules as to the procedure to be followed and rules of evidence to be observed in proceedings before the professional conduct committee<sup>2</sup>. Before making such rules, the Council must consult any bodies of persons representing dentists which appear to it requisite to be consulted<sup>3</sup>. The rules do not come into force until approved by order of the Privy Council contained in a statutory instrument, and the Privy Council may approve such rules either as submitted to it or subject to any modifications which appear to it requisite<sup>4</sup>.

The rules must provide in particular for: (1) securing that notice of the proceedings is given to the person to whose registration the proceedings relate<sup>5</sup>; (2) securing that any party<sup>6</sup> to the proceedings is entitled to be heard by the committee<sup>7</sup>; (3) enabling any party to the proceedings to be represented by counsel or solicitor or other person specified in the rules<sup>8</sup>; (4) requiring proceedings to be held in public unless otherwise provided<sup>9</sup>; and (5) requiring that where serious professional misconduct<sup>10</sup> has been alleged but the committee judges that it has not been proved, a finding that the dentist is not guilty of such misconduct is to be recorded<sup>11</sup>.

1 As to the General Dental Council see PARA 389 et seq ante.

2 Dentists Act 1984 s 33(2), Sch 3 paras 1(1), 2(1)(a). As to the rules that have been made see the General Dental Council Professional Conduct Committee (Procedure) Rules 1984, approved by the General Dental Council Professional Conduct Committee (Procedure) Rules Order of Council 1984, SI 1984/1517; and PARA 465 et seq post. As to evidence see PARA 470 post. As to the professional conduct committee see PARA 460 ante.

3 Dentists Act 1984 Sch 3 para 2(3).

4 Ibid Sch 3 para 2(4). Where the Privy Council proposes to approve any rules subject to modifications, it must notify to the General Dental Council the modifications it proposes to make and consider any observations of the Council on the modifications: Sch 3 para 2(4). As to the exercise by the Privy Council of its powers under the Dentists Act 1984 see PARA 388 ante. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

5 Ibid Sch 3 para 2(2)(a).

6 A person is a 'party' if he is the person to whose registration the proceedings relate, a person on whose complaint the proceedings are brought, or a solicitor appointed by the General Dental Council to represent it at the proceedings: ibid Sch 3 para 1(2).

7 Ibid Sch 3 para 2(2)(b).

8 Ibid Sch 3 para 2(2)(c).

9 Ibid Sch 3 para 2(2)(d).

10 As to serious professional misconduct see PARA 456 ante.

11 Dentists Act 1984 Sch 3 para 2(2)(e).

#### **UPDATE**

##### **462-477 Disciplinary Proceedings**

Dentists Act 1984 s 33, Sch 3 now s 33 (treatment of persons suspended or whose registration is subject to conditions), s 33A (recoding of suspension and conditional registration), s 33B (Council's power to require disclosure of information), s 33C (notification and disclosure by the Council), Sch 3 (proceedings before investigating committee, interim orders committee and practice committees) (substituted by SI 2005/2011). The General Dental Council has made the General Dental Council (Fitness to Practise) Rules 2006 (approved by the General Dental Council (Fitness to Practise) Rules Order of Council 2006, SI 2006/1663 (amended by SI 2009/1182) (in force on the coming into force of the Safeguarding Vulnerable Groups Act 2006 s 44(1) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 704)). General Dental Council Professional Conduct Committee (Procedure) Rules Order of Council 1984, SI 1984/1517; General Dental Council Professional Conduct Committee (Legal Assessor) Rules 1957, SI 1957/1470, lapsed. Transitional provision is made by SI 2005/2011, SI 2006/1671. As to the committees of the General Dental Council see PARA 395.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(6) FITNESS TO PRACTISE/(iv) Disciplinary Proceedings/463. Legal assessor to the professional conduct committee and the health committee.

#### **463. Legal assessor to the professional conduct committee and the health committee.**

In all proceedings before the professional conduct committee<sup>1</sup> and the health committee<sup>2</sup> there must be an assessor to the committee, appointed by the General Dental Council<sup>3</sup>, for the purpose of advising the committee on questions of law<sup>4</sup>. The assessor must be a person who has a ten year general qualification<sup>5</sup>, an advocate or solicitor in Scotland of at least ten years' standing<sup>6</sup>, or a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least ten years' standing<sup>7</sup>. An assessor may be appointed either generally or for any particular proceedings or class of proceedings, and holds and vacates office in accordance with the terms of the instrument under which he is appointed<sup>8</sup>. The Council may pay to persons appointed to act as assessors such remuneration as the Council may determine<sup>9</sup>.

1 As to the professional conduct committee see PARA 460 ante.

2 As to the health committee see PARA 481 et seq post.

3 As to the General Dental Council see PARA 389 et seq ante.

4 Dentists Act 1984 s 33(2), Sch 3 para 5(1). The legal assessor is not required to give to the committee any elaborate advice upon its legal duty in exercising its sentencing power: *Ziderman v General Dental Council* [1976] 2 All ER 334, [1976] 1 WLR 330, PC.

The Lord Chancellor may by statutory instrument make rules as to the functions of legal assessors; and in particular such rules may contain such provisions as appear to the Lord Chancellor expedient for securing: (1) that where an assessor advises the committee on any question of law as to evidence, procedure or any other matter specified in the rules, he must do so in the presence of every party to the proceedings, or every person representing such a party, who appears at the proceedings or, if the advice is tendered after the committee has begun to deliberate as to its findings, that every such party or person must be informed what advice the assessor has tendered (Dentists Act 1984 Sch 3 para 5(2)(a)); (2) that every such party or person must be informed if in any case the committee does not accept the advice of the assessor on any such question (Sch 3 para 5(2)(b)); and such incidental and supplementary provisions as appear to the Lord Chancellor expedient (Sch 3 para 5(2)). At the date at which this volume states the law no such rules had been made under these provisions but, by virtue of the Interpretation Act 1978 s 17(2)(b), the General Dental Council Professional Conduct Committee (Legal Assessor) Rules 1957, SI 1957/1470 (amended by the Dentists Act 1984 s 55(4), Sch 7 para 4) (see PARA 464 post) have effect as if so made. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

5 Ie within the meaning of the Courts and Legal Services Act 1990 s 71 (see LEGAL PROFESSIONS vol 65 (2008) PARA 742): Dentists Act 1984 Sch 3 para 5(1)(a) (Sch 3 para 5(1)(a)-(c) substituted by the Courts and Legal Services Act 1990 s 71(2), Sch 10 para 56).

6 Dentists Act 1984 Sch 3 para 5(1)(b) (as substituted: see note 5 supra).

7 Ibid Sch 3 para 5(1)(c) (as substituted: see note 5 supra).

8 Ibid Sch 3 para 5(3). The provisions of Sch 3 para 5 (as amended) apply in relation to proceedings before the preliminary proceedings committee under s 32 (see PARA 459 ante) as they apply in relation to proceedings before the professional conduct committee, but with the omission of the words 'or class of proceedings' in Sch 3 para 5(3): Sch 3 para 5(5). As to the preliminary proceedings committee see PARA 457 ante.

9 Ibid Sch 3 para 5(4).

#### **UPDATE**

#### **462-477 Disciplinary Proceedings**

Dentists Act 1984 s 33, Sch 3 now s 33 (treatment of persons suspended or whose registration is subject to conditions), s 33A (recoding of suspension and conditional registration), s 33B (Council's power to require disclosure of information), s 33C (notification and disclosure by the Council), Sch 3 (proceedings before investigating committee, interim orders committee and practice committees) (substituted by SI 2005/2011). The General Dental Council has made the General Dental Council (Fitness to Practise) Rules 2006 (approved by the General Dental Council (Fitness to Practise) Rules Order of Council 2006, SI 2006/1663 (amended by SI 2009/1182) (in force on the coming into force of the Safeguarding Vulnerable Groups Act 2006 s 44(1) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 704)). General Dental Council Professional Conduct Committee (Procedure) Rules Order of Council 1984, SI 1984/1517; General Dental Council Professional Conduct Committee (Legal Assessor) Rules 1957, SI 1957/1470, lapsed. Transitional provision is made by SI 2005/2011, SI 2006/1671. As to the committees of the General Dental Council see PARA 395.

#### **463-464 Legal assessor to the professional conduct committee and the health committee, Functions of the legal assessor**

The Dental Council must appoint legal advisers, and may appoint medical advisers and professional advisers: see the Dentists Act 1984 s 49A, Sch 4C; and PARA 401A.

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#### **464. Functions of the legal assessor.**

It is the duty of the legal assessor<sup>1</sup> to be present at all proceedings before the professional conduct committee<sup>2</sup> in disciplinary cases, and at any other proceedings at which his attendance is required by the committee, and to advise the committee on questions of law arising in the proceedings which may be referred to him by the committee<sup>3</sup>. He must also inform the committee of any irregularity in the conduct of the proceedings which may come to his knowledge, and advise it of his own motion where it appears that a mistake of law may otherwise be made<sup>4</sup>.

In such proceedings, the advice of the legal assessor must be tendered to the committee in the presence of every party<sup>5</sup>, or person representing a party, who appears at the proceedings<sup>6</sup>. If, however, a question is referred by the committee to the assessor after the committee has begun to deliberate as to its findings, the advice may be given in the absence of the parties if the committee thinks that it would be prejudicial to the discharge of its duties for the advice to be given in their presence; in that case every party or person must be personally informed by the legal assessor as to, and supplied with a copy of, the question put to and the advice tendered by the assessor<sup>7</sup>. Further, every such party or person must be informed if the committee does not accept the advice the assessor has tendered, and must be given a copy of the record made of the question referred, the advice given and the refusal to accept it<sup>8</sup>. Copies of written advice<sup>9</sup> must be available to parties to the proceedings who do not appear at the proceedings<sup>10</sup>.

1 As to the legal assessor see PARA 463 ante.

2 As to the professional conduct committee see PARA 460 ante.

3 General Dental Council Professional Conduct Committee (Legal Assessor) Rules 1957, SI 1957/1470, r 3.

4 Ibid r 4.

5 For the meaning of 'party' see PARA 462 note 6 ante.

6 General Dental Council Professional Conduct Committee (Legal Assessor) Rules 1957, SI 1957/1470, r 6.

7 Ibid r 6 proviso.

8 Ibid r 7.

9 Ie made for the purposes of either ibid rr 6, 7: see the text to notes 6-8 supra.

10 Ibid r 8.

#### **UPDATE**

#### **462-477 Disciplinary Proceedings**

Dentists Act 1984 s 33, Sch 3 now s 33 (treatment of persons suspended or whose registration is subject to conditions), s 33A (recoding of suspension and conditional registration), s 33B (Council's power to require disclosure of information), s 33C (notification and disclosure by the Council), Sch 3 (proceedings before investigating

committee, interim orders committee and practice committees) (substituted by SI 2005/2011). The General Dental Council has made the General Dental Council (Fitness to Practise) Rules 2006 (approved by the General Dental Council (Fitness to Practise) Rules Order of Council 2006, SI 2006/1663 (amended by SI 2009/1182) (in force on the coming into force of the Safeguarding Vulnerable Groups Act 2006 s 44(1) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 704)). General Dental Council Professional Conduct Committee (Procedure) Rules Order of Council 1984, SI 1984/1517; General Dental Council Professional Conduct Committee (Legal Assessor) Rules 1957, SI 1957/1470, lapsed. Transitional provision is made by SI 2005/2011, SI 2006/1671. As to the committees of the General Dental Council see PARA 395.

**463-464 Legal assessor to the professional conduct committee and the health committee; Functions of the legal assessor**

The Dental Council must appoint legal advisers, and may appoint medical advisers and professional advisers: see the Dentists Act 1984 s 49A, Sch 4C; and PARA 401A.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(6) FITNESS TO PRACTISE/(iv) Disciplinary Proceedings/465. Notice of inquiry.

#### **465. Notice of inquiry.**

In a misconduct case<sup>1</sup>, as soon as may be after the case has been referred to the professional conduct committee<sup>2</sup>, the solicitor<sup>3</sup> must send to the respondent<sup>4</sup> a notice of inquiry<sup>5</sup>, specifying the matters alleged against him in the form of a charge or charges and stating the day<sup>6</sup>, time and place at which the committee will hold an inquiry into these matters<sup>7</sup>. In any case in which there is a complainant<sup>8</sup>, the solicitor must send the complainant a copy of the notice<sup>9</sup>. The committee may not hold an inquiry unless a notice of inquiry has been served on the respondent, or unless it is satisfied that all reasonable efforts have been taken to serve the notice and that the substance of the matters alleged in it against the respondent and the likelihood of an inquiry resulting from it are well known to him<sup>10</sup>.

1 'Misconduct case' means the case of a person liable to have his name erased from the register or to have it suspended under the Dentists Act 1984 s 27 (see PARA 456 ante): General Dental Council Professional Conduct Committee (Procedure) Rules 1984, SI 1984/1517, r 1(2).

2 As to the professional conduct committee see PARA 460 ante.

3 'Solicitor' means the person who for the time being holds the appropriate office on behalf of the General Dental Council: General Dental Council Professional Conduct Committee (Procedure) Rules 1984, SI 1984/1517, r 1(2).

4 'Respondent' means any registered dentist who is alleged to be liable to have his name erased from the register or his registration suspended or in respect of whom a question has arisen whether an entry in the register is fraudulent, or any body corporate which is the subject of proceedings for the removal of its right to carry on the business of dentistry: *ibid* r 1(2). For the meaning of 'the register' see PARA 417 note 1 ante; and for the meaning of 'registered dentist' see PARA 417 note 6 ante. For the meaning of 'business of dentistry' see PARA 405 ante. As to the erasure from the register of fraudulent entries see PARA 442 ante. As to the withdrawal of the right to carry on the business of dentistry see PARA 408 ante.

5 The notice must be, as nearly as may be, in the form set out in *ibid* Appendix A: r 3(1).

6 Except with the agreement of the respondent the inquiry must not be held on any day earlier than 28 days after the date of posting of the notice: *ibid* r 3(4).

7 *Ibid* r 3(1). The notice must be accompanied by a copy of the General Dental Council Professional Conduct Committee (Procedure) Rules 1984; and the notice and the copy of the rules must be sent in a registered letter to the respondent at his registered or last known address: General Dental Council Professional Conduct Committee (Procedure) Rules 1984, SI 1984/1517, r 3(1). As to the procedure if the notice is defective see r 4(2), (3); and PARA 472 post.

8 'Complainant' means the body or person by whom a complaint has been made to the General Dental Council alleging that a dentist has been convicted of a crime or been guilty of serious professional misconduct or giving rise to a question whether an entry in the register is fraudulent or whether the committee should withdraw from a body corporate its right to carry on the business of dentistry: *ibid* r 1(2).

9 *Ibid* r 3(2). The notice must be accompanied by a copy of the General Dental Council Professional Conduct Committee (Procedure) Rules 1984: General Dental Council: General Dental Council Professional Conduct Committee (Procedure) Rules 1984, SI 1984/1517, r 3(2).

10 *Ibid* r 3(3).

#### **462-477 Disciplinary Proceedings**



Dentists Act 1984 s 33, Sch 3 now s 33 (treatment of persons suspended or whose registration is subject to conditions), s 33A (recoding of suspension and conditional registration), s 33B (Council's power to require disclosure of information), s 33C (notification and disclosure by the Council), Sch 3 (proceedings before investigating committee, interim orders committee and practice committees) (substituted by SI 2005/2011). The General Dental Council has made the General Dental Council (Fitness to Practise) Rules 2006 (approved by the General Dental Council (Fitness to Practise) Rules Order of Council 2006, SI 2006/1663 (amended by SI 2009/1182) (in force on the coming into force of the Safeguarding Vulnerable Groups Act 2006 s 44(1) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 704)). General Dental Council Professional Conduct Committee (Procedure) Rules Order of Council 1984, SI 1984/1517; General Dental Council Professional Conduct Committee (Legal Assessor) Rules 1957, SI 1957/1470, lapsed. Transitional provision is made by SI 2005/2011, SI 2006/1671. As to the committees of the General Dental Council see PARA 395.

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#### **466. Access to documents.**

Upon application by any party<sup>1</sup> to an inquiry in a misconduct case<sup>2</sup>, the solicitor<sup>3</sup> must send him copies of any statutory declaration<sup>4</sup>, explanation, answer, admission or other statement or communication sent to the General Dental Council<sup>5</sup> by any party to the inquiry<sup>6</sup>.

1 For the meaning of 'party' see PARA 462 note 6 ante; definition applied by the General Dental Council Professional Conduct Committee (Procedure) Rules 1984, SI 1984/1517, r 1(2).

2 For the meaning of 'misconduct case' see PARA 465 note 1 ante.

3 For the meaning of 'solicitor' see PARA 465 note 3 ante.

4 As to statutory declarations see the Statutory Declarations Act 1835 (as amended); and CIVIL PROCEDURE vol 11 (2009) PARA 1024.

5 As to the General Dental Council see PARA 389 et seq ante.

6 General Dental Council Professional Conduct Committee (Procedure) Rules 1984, SI 1984/1517, r 5. The solicitor is not, however, compelled to produce copies of any written advice sent by himself to the Council which would be privileged from disclosure in any legal proceedings to which the Council was a party: r 5. As to legal professional privilege see CIVIL PROCEDURE vol 11 (2009) PARA 972.

#### **462-477 Disciplinary Proceedings**

Dentists Act 1984 s 33, Sch 3 now s 33 (treatment of persons suspended or whose registration is subject to conditions), s 33A (recoding of suspension and conditional registration), s 33B (Council's power to require disclosure of information), s 33C (notification and disclosure by the Council), Sch 3 (proceedings before investigating committee, interim orders committee and practice committees) (substituted by SI 2005/2011). The General Dental Council has made the General Dental Council (Fitness to Practise) Rules 2006 (approved by the General Dental Council (Fitness to Practise) Rules Order of Council 2006, SI 2006/1663 (amended by SI 2009/1182) (in force on the coming into force of the Safeguarding Vulnerable Groups Act 2006 s 44(1) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 704)). General Dental Council Professional Conduct Committee (Procedure) Rules Order of Council 1984, SI 1984/1517; General Dental Council Professional Conduct Committee (Legal Assessor) Rules 1957, SI 1957/1470, lapsed. Transitional provision is made by SI 2005/2011, SI 2006/1671. As to the committees of the General Dental Council see PARA 395.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(6) FITNESS TO PRACTISE/(iv) Disciplinary Proceedings/467. Legal representation.

#### **467. Legal representation.**

In proceedings before the professional conduct committee<sup>1</sup>, any party<sup>2</sup> being an individual, including an applicant in proceedings for the restoration of a person's name to the register<sup>3</sup> after erasure by the committee, may appear either in person or by counsel or solicitor, or by an officer or member of any organisation of which he is a member, or by a professional colleague, or by any member of his family<sup>4</sup>.

Any party being a body corporate or an unincorporated body of persons<sup>5</sup> may appear by its clerk or other officer duly appointed for the purpose, or by counsel or solicitor<sup>6</sup>.

1 As to the professional conduct committee see PARA 460 ante.

2 For the meaning of 'party' see PARA 462 note 6 ante; definition applied by the General Dental Council Professional Conduct Committee (Procedure) Rules 1984, SI 1984/1517, r 1(2).

3 For the meaning of 'the register' see PARA 417 note 1 ante. As to applications for restoration after erasure see PARA 480 post.

4 General Dental Council Professional Conduct Committee (Procedure) Rules 1984, SI 1984/1517, r 7.

5 As to corporations and unincorporated associations see CORPORATIONS vol 9(2) (2006 Reissue) PARA 1101.

6 General Dental Council Professional Conduct Committee (Procedure) Rules 1984, SI 1984/1517, r 22.

#### **462-477 Disciplinary Proceedings**

Dentists Act 1984 s 33, Sch 3 now s 33 (treatment of persons suspended or whose registration is subject to conditions), s 33A (recoding of suspension and conditional registration), s 33B (Council's power to require disclosure of information), s 33C (notification and disclosure by the Council), Sch 3 (proceedings before investigating committee, interim orders committee and practice committees) (substituted by SI 2005/2011). The General Dental Council has made the General Dental Council (Fitness to Practise) Rules 2006 (approved by the General Dental Council (Fitness to Practise) Rules Order of Council 2006, SI 2006/1663 (amended by SI 2009/1182) (in force on the coming into force of the Safeguarding Vulnerable Groups Act 2006 s 44(1) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 704)). General Dental Council Professional Conduct Committee (Procedure) Rules Order of Council 1984, SI 1984/1517; General Dental Council Professional Conduct Committee (Legal Assessor) Rules 1957, SI 1957/1470, lapsed. Transitional provision is made by SI 2005/2011, SI 2006/1671. As to the committees of the General Dental Council see PARA 395.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(6) FITNESS TO PRACTISE/(iv) Disciplinary Proceedings/468. Presence of parties and public.

#### **468. Presence of parties and public.**

In general, all proceedings before the professional conduct committee<sup>1</sup> must take place in the presence of all the parties<sup>2</sup> to the proceedings who appear, and must be held in public<sup>3</sup>. Subject to certain exceptions<sup>4</sup>, the committee may at any time and for any purpose during or after the hearing of any proceedings deliberate in private with or without the legal assessor<sup>5</sup>. In addition, if it appears to the committee that in the interests of justice or for any other special reason the public should be excluded from any proceedings or part of them, the committee may direct that the public is to be excluded, but such a direction may not extend to the announcement of a determination of the committee<sup>6</sup>. The committee may adjourn its proceedings from time to time as it thinks fit<sup>7</sup>.

1 As to the professional conduct committee see PARA 460 ante.

2 For the meaning of 'party' see PARA 462 note 6 ante; definition applied by the General Dental Council Professional Conduct Committee (Procedure) Rules 1984, SI 1984/1517, r 1(2).

3 General Dental Council Professional Conduct Committee (Procedure) Rules 1984, SI 1984/1517, r 24(2).

4 In subject to the provisions of the Dentists Act 1984 Sch 3 para 5(2) and of any rules made thereunder: see PARAS 463 note 4, 464 ante.

5 General Dental Council Professional Conduct Committee (Procedure) Rules 1984, SI 1984/1517, r 24(1). As to the legal assessor see PARA 463 ante.

6 Ibid r 24(3). As to the committee's determination see PARA 475 post.

7 Ibid r 24(4). Subject to the provisions of the Dentists Act 1984 and of the rules and regulations made by the General Dental Council so far as they relate to the constitution of the committee (see PARA 460 ante), the validity of any resumed proceedings cannot be called into question by reason only that members of the committee who were present at any former meeting were not present at the resumed meeting or that members present at the resumed meeting were not present at any former meeting: General Dental Council Professional Conduct Committee (Procedure) Rules 1984, SI 1984/1517, r 25.

#### **462-477 Disciplinary Proceedings**

Dentists Act 1984 s 33, Sch 3 now s 33 (treatment of persons suspended or whose registration is subject to conditions), s 33A (recoding of suspension and conditional registration), s 33B (Council's power to require disclosure of information), s 33C (notification and disclosure by the Council), Sch 3 (proceedings before investigating committee, interim orders committee and practice committees) (substituted by SI 2005/2011). The General Dental Council has made the General Dental Council (Fitness to Practise) Rules 2006 (approved by the General Dental Council (Fitness to Practise) Rules Order of Council 2006, SI 2006/1663 (amended by SI 2009/1182) (in force on the coming into force of the Safeguarding Vulnerable Groups Act 2006 s 44(1) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 704)). General Dental Council Professional Conduct Committee (Procedure) Rules Order of Council 1984, SI 1984/1517; General Dental Council Professional Conduct Committee (Legal Assessor) Rules 1957, SI 1957/1470, lapsed. Transitional provision is made by SI 2005/2011, SI 2006/1671. As to the committees of the General Dental Council see PARA 395.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(6) FITNESS TO PRACTISE/(iv) Disciplinary Proceedings/469. Record of proceedings.

#### **469. Record of proceedings.**

A shorthand-writer must be appointed by the professional conduct committee<sup>1</sup> to take shorthand notes of its proceedings; and any party<sup>2</sup> to the proceedings, on application to the solicitor<sup>3</sup> and on payment of the proper charges, must be furnished by the solicitor with a transcript of the shorthand notes of any part of the proceedings at which the parties were entitled to be present<sup>4</sup>.

1 As to the professional conduct committee see PARA 460 ante.

2 For the meaning of 'party' see PARA 462 note 6 ante; definition applied by the General Dental Council Professional Conduct Committee (Procedure) Rules 1984, SI 1984/1517, r 1(2).

3 For the meaning of 'solicitor' see PARA 465 note 3 ante.

4 General Dental Council Professional Conduct Committee (Procedure) Rules 1984, SI 1984/1517, r 28. As to the presence of the parties at proceedings see PARA 468 ante.

#### **462-477 Disciplinary Proceedings**

Dentists Act 1984 s 33, Sch 3 now s 33 (treatment of persons suspended or whose registration is subject to conditions), s 33A (recoding of suspension and conditional registration), s 33B (Council's power to require disclosure of information), s 33C (notification and disclosure by the Council), Sch 3 (proceedings before investigating committee, interim orders committee and practice committees) (substituted by SI 2005/2011). The General Dental Council has made the General Dental Council (Fitness to Practise) Rules 2006 (approved by the General Dental Council (Fitness to Practise) Rules Order of Council 2006, SI 2006/1663 (amended by SI 2009/1182) (in force on the coming into force of the Safeguarding Vulnerable Groups Act 2006 s 44(1) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 704)). General Dental Council Professional Conduct Committee (Procedure) Rules Order of Council 1984, SI 1984/1517; General Dental Council Professional Conduct Committee (Legal Assessor) Rules 1957, SI 1957/1470, lapsed. Transitional provision is made by SI 2005/2011, SI 2006/1671. As to the committees of the General Dental Council see PARA 395.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(6) FITNESS TO PRACTISE/(iv) Disciplinary Proceedings/470. Witnesses and evidence.

#### 470. Witnesses and evidence.

For the purposes of any proceedings<sup>1</sup> before it, the professional conduct committee<sup>2</sup> may administer oaths<sup>3</sup>, and any party<sup>4</sup> to the proceedings may require a witness to attend to give evidence or to produce documents<sup>5</sup> but no person can be compelled to produce any document which he could not be compelled to produce on the trial of a claim<sup>6</sup>.

The committee may receive oral, documentary or other evidence of any fact which appears to it relevant to the inquiry into the case before it, but where a fact which it is sought to prove or the form in which any evidence is tendered is such that it would not be admissible in criminal proceedings in an English court<sup>7</sup>, the committee may not receive evidence of that fact or in that form unless, after consultation with the legal assessor<sup>8</sup>, the committee is satisfied that it is desirable in the interests of justice to receive it having regard to the difficulty and expense of obtaining evidence which would be admissible<sup>9</sup>. The committee may cause any person to be called as a witness in any proceedings before it whether or not the parties consent, and questions may be put to any witness by the committee through the chairman or by the legal assessor with the leave of the chairman<sup>10</sup>.

Where any respondent<sup>11</sup> or applicant has supplied to the committee, or to the registrar<sup>12</sup> on its behalf, the name of any person to whom reference may be made confidentially as to his character or conduct, the committee may consider any information received from that person in consequence of the reference without disclosing it to the respondent or applicant<sup>13</sup>.

1     In proceedings under the Dentists Act 1984 s 27 (see PARAS 456, 461 ante): s 33(2), Sch 3 para 1(1).

2     As to the professional conduct committee see PARA 460 ante.

3     Dentists Act 1984 Sch 3 para 4(1)(a). For the meaning of 'oath' see PARA 153 note 4 ante. As to oaths and affirmations see CIVIL PROCEDURE vol 11 (2009) PARA 1021 et seq.

4     For the meaning of 'party' see PARA 462 note 6 ante.

5     Dentists Act 1984 Sch 3 para 4(1)(b). As to witness summonses see CIVIL PROCEDURE vol 11 (2009) PARA 1004. The Supreme Court Act 1981 s 36 (see CIVIL PROCEDURE vol 11 (2009) PARA 1008) and the Judicature (Northern Ireland) Act 1978 s 67 (subpoena issued by High Court to run throughout United Kingdom) apply in relation to any such proceedings in England and Wales and in Northern Ireland respectively as they apply in relation to causes or matters in the High Court: Dentists Act 1984 Sch 3 para 4(2).

6     Ibid Sch 3 para 4(1). As to the production of documents in civil proceedings see CIVIL PROCEDURE vol 11 (2009) PARAS 538-583.

7     As to the admissibility of evidence in criminal proceedings see CIVIL PROCEDURE vol 11 (2009) PARA 758 et seq; CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1359 et seq.

8     As to the legal assessor see PARA 463 ante.

9     General Dental Council Professional Conduct Committee (Procedure) Rules 1984, SI 1984/1517, r 26(2).

10    Ibid r 26(3).

11    For the meaning of 'respondent' see PARA 465 note 4 ante.

12    For the meaning of 'the registrar' see PARA 396 note 1 ante.

13    General Dental Council Professional Conduct Committee (Procedure) Rules 1984, SI 1984/1517, r 26(1).

## **462-477 Disciplinary Proceedings**

Dentists Act 1984 s 33, Sch 3 now s 33 (treatment of persons suspended or whose registration is subject to conditions), s 33A (recoding of suspension and conditional registration), s 33B (Council's power to require disclosure of information), s 33C (notification and disclosure by the Council), Sch 3 (proceedings before investigating committee, interim orders committee and practice committees) (substituted by SI 2005/2011). The General Dental Council has made the General Dental Council (Fitness to Practise) Rules 2006 (approved by the General Dental Council (Fitness to Practise) Rules Order of Council 2006, SI 2006/1663 (amended by SI 2009/1182) (in force on the coming into force of the Safeguarding Vulnerable Groups Act 2006 s 44(1) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 704)). General Dental Council Professional Conduct Committee (Procedure) Rules Order of Council 1984, SI 1984/1517; General Dental Council Professional Conduct Committee (Legal Assessor) Rules 1957, SI 1957/1470, lapsed. Transitional provision is made by SI 2005/2011, SI 2006/1671. As to the committees of the General Dental Council see PARA 395.

### **UPDATE**

## **470 Witnesses and evidence**

NOTE 5--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(6) FITNESS TO PRACTISE/(iv) Disciplinary Proceedings/471. Findings of dental authorities as evidence.

#### **471. Findings of dental authorities as evidence.**

Where a dental authority<sup>1</sup> in exercise of a power conferred by law strikes the name of a person who is a registered dentist<sup>2</sup> off a list of its graduates or licentiates in dentistry<sup>3</sup> and notifies the General Dental Council<sup>4</sup> of the fact of the striking off, the registrar<sup>5</sup> must retain a record of that fact<sup>6</sup>.

If the dental authority notifies to the Council the findings of fact on which the decision to strike off the name was based, then, for the purpose of any inquiry under the Dentists Act 1984 as to whether that person has been guilty of serious professional misconduct<sup>7</sup>, the findings may, if the body holding the inquiry think fit, be treated as conclusive of the facts found<sup>8</sup>.

1 For the meaning of 'dental authority' see PARA 421 note 3 ante.

2 For the meaning of 'registered dentist' see PARA 417 note 6 ante.

3 As to lists of graduates and licentiates in dentistry see PARAS 417, 437 ante.

4 As to the General Dental Council see PARA 389 et seq ante.

5 For the meaning of 'the registrar' see PARA 396 note 1 ante.

6 Dentists Act 1984 s 27(5)(a). If a dental authority strikes the name of a dentist off its list of graduates or licentiates this does not of itself render him liable to be erased from the dentists register in the absence of proceedings by the professional conduct committee: *Ex p Partridge* (1887) 19 QBD 467, CA.

7 As to serious professional misconduct see PARA 456 ante.

8 Dentists Act 1984 s 27(5)(b).

#### **462-477 Disciplinary Proceedings**

Dentists Act 1984 s 33, Sch 3 now s 33 (treatment of persons suspended or whose registration is subject to conditions), s 33A (recoding of suspension and conditional registration), s 33B (Council's power to require disclosure of information), s 33C (notification and disclosure by the Council), Sch 3 (proceedings before investigating committee, interim orders committee and practice committees) (substituted by SI 2005/2011). The General Dental Council has made the General Dental Council (Fitness to Practise) Rules 2006 (approved by the General Dental Council (Fitness to Practise) Rules Order of Council 2006, SI 2006/1663 (amended by SI 2009/1182) (in force on the coming into force of the Safeguarding Vulnerable Groups Act 2006 s 44(1) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 704)). General Dental Council Professional Conduct Committee (Procedure) Rules Order of Council 1984, SI 1984/1517; General Dental Council Professional Conduct Committee (Legal Assessor) Rules 1957, SI 1957/1470, lapsed. Transitional provision is made by SI 2005/2011, SI 2006/1671. As to the committees of the General Dental Council see PARA 395.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(6) FITNESS TO PRACTISE/(iv) Disciplinary Proceedings/472. Postponement or cancellation of inquiry.

#### **472. Postponement or cancellation of inquiry.**

The president of the General Dental Council<sup>1</sup>, of his own motion or upon the application of any party<sup>2</sup> to an inquiry before the professional conduct committee<sup>3</sup>, may postpone the hearing or may refer the matter to the preliminary proceedings committee<sup>4</sup> for further consideration as to whether an inquiry should be held<sup>5</sup>; but where the complainant<sup>6</sup>, if any, has intimated his intention of participating in the proceedings, then except with his agreement the preliminary proceedings committee must not direct that an inquiry is not to be held<sup>7</sup>.

Where, before the inquiry opens, it appears to the president, or at any stage of the proceedings it appears to the professional conduct committee, that a notice of inquiry<sup>8</sup> is defective, the president or the committee, as the case may be, must cause the notice to be amended unless it appears that the required amendment cannot be made without injustice; or, if he or it considers that the circumstances in which an amendment is made require it, the president or the committee may direct that the inquiry is to be postponed or is not to be held<sup>9</sup>. The solicitor<sup>10</sup> must, as soon as may be, give to all the parties to whom a notice of inquiry has been sent notification of any postponement or cancellation, and inform them of any date fixed for the hearing of a postponed inquiry<sup>11</sup>.

1 Anything authorised or required by the General Dental Council Professional Conduct Committee (Procedure) Rules 1984, SI 1984/1517, to be done by the president may, if he is absent or unable to act, be done by any other member of the General Dental Council authorised in that behalf by the president: r 29. As to the president of the General Dental Council see PARA 394 ante. As to the General Dental Council see PARA 389 et seq ante.

2 For the meaning of 'party' see PARA 462 note 6 ante.

3 As to the professional conduct committee see PARA 460 ante.

4 As to the preliminary proceedings committee see PARA 457 ante.

5 General Dental Council Professional Conduct Committee (Procedure) Rules 1984, SI 1984/1517, r 4(1).

6 For the meaning of 'complainant' see PARA 465 note 8 ante.

7 General Dental Council Professional Conduct Committee (Procedure) Rules 1984, SI 1984/1517, r 4(1).

8 As to the notice of inquiry see PARA 465 ante.

9 General Dental Council Professional Conduct Committee (Procedure) Rules 1984, SI 1984/1517, r 4(2).

10 For the meaning of 'solicitor' see PARA 465 note 3 ante.

11 General Dental Council Professional Conduct Committee (Procedure) Rules 1984, SI 1984/1517, r 4(3).

#### **462-477 Disciplinary Proceedings**

Dentists Act 1984 s 33, Sch 3 now s 33 (treatment of persons suspended or whose registration is subject to conditions), s 33A (recoding of suspension and conditional registration), s 33B (Council's power to require disclosure of information), s 33C (notification and disclosure by the Council), Sch 3 (proceedings before investigating committee, interim orders committee and practice committees) (substituted by SI 2005/2011). The General Dental Council has made the

General Dental Council (Fitness to Practise) Rules 2006 (approved by the General Dental Council (Fitness to Practise) Rules Order of Council 2006, SI 2006/1663 (amended by SI 2009/1182) (in force on the coming into force of the Safeguarding Vulnerable Groups Act 2006 s 44(1) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 704)). General Dental Council Professional Conduct Committee (Procedure) Rules Order of Council 1984, SI 1984/1517; General Dental Council Professional Conduct Committee (Legal Assessor) Rules 1957, SI 1957/1470, lapsed. Transitional provision is made by SI 2005/2011, SI 2006/1671. As to the committees of the General Dental Council see PARA 395.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(6) FITNESS TO PRACTISE/(iv) Disciplinary Proceedings/473. Voting.

### **473. Voting.**

Any question put to the vote must be put in the form of a motion, and the chairman of the professional conduct committee<sup>1</sup> must call upon the members present to vote for or against the motion by raising their hands and must declare that the motion appears to him to have been carried or not carried as the case may be<sup>2</sup>. If any member challenges the result so declared, the registrar<sup>3</sup> must read the roll, each member saying 'For' or 'Against' as his name is called<sup>4</sup>. If the voting is equal, the question is deemed to have been resolved in favour of the respondent<sup>5</sup> or applicant, as the case may be<sup>6</sup>.

1 As to the professional conduct committee see PARA 460 ante.

2 General Dental Council Professional Conduct Committee (Procedure) Rules 1984, SI 1984/1517, r 27(1).

3 For the meaning of 'the registrar' see PARA 396 note 1 ante.

4 General Dental Council Professional Conduct Committee (Procedure) Rules 1984, SI 1984/1517, r 27(2). The chairman is called last, and he must declare the result of the voting: r 27(2).

5 For the meaning of 'respondent' see PARA 465 note 4 ante.

6 General Dental Council Professional Conduct Committee (Procedure) Rules 1984, SI 1984/1517, r 27(3). For this purpose, a decision to postpone judgment must be taken to be in favour of the respondent or applicant unless he has indicated to the committee that he is opposed to postponement: r 27(3). As to postponement of judgment see PARAS 475, 477 post.

### **462-477 Disciplinary Proceedings**

Dentists Act 1984 s 33, Sch 3 now s 33 (treatment of persons suspended or whose registration is subject to conditions), s 33A (recoding of suspension and conditional registration), s 33B (Council's power to require disclosure of information), s 33C (notification and disclosure by the Council), Sch 3 (proceedings before investigating committee, interim orders committee and practice committees) (substituted by SI 2005/2011). The General Dental Council has made the General Dental Council (Fitness to Practise) Rules 2006 (approved by the General Dental Council (Fitness to Practise) Rules Order of Council 2006, SI 2006/1663 (amended by SI 2009/1182) (in force on the coming into force of the Safeguarding Vulnerable Groups Act 2006 s 44(1) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 704)). General Dental Council Professional Conduct Committee (Procedure) Rules Order of Council 1984, SI 1984/1517; General Dental Council Professional Conduct Committee (Legal Assessor) Rules 1957, SI 1957/1470, lapsed. Transitional provision is made by SI 2005/2011, SI 2006/1671. As to the committees of the General Dental Council see PARA 395.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(6) FITNESS TO PRACTISE/(iv) Disciplinary Proceedings/474. Procedure at hearings.

#### **474. Procedure at hearings.**

At an inquiry held by the professional conduct committee<sup>1</sup> in a misconduct case<sup>2</sup>, the charge must be read in the presence of the parties<sup>3</sup>, after which the respondent<sup>4</sup> may object to the charge, or any part of it, on a point of law and any other party may reply<sup>5</sup>. If the objection is upheld, no further proceedings may be taken on that charge or that part of the charge<sup>6</sup>.

Where the case arises out of a complaint or information from which it appears that a registered dentist<sup>7</sup> has been convicted of a criminal offence<sup>8</sup>, the complainant<sup>9</sup> or, if no complainant appears, the solicitor<sup>10</sup> then adduces evidence of the convictions which form the basis of the charge<sup>11</sup>. Where the case arises out of a complaint or information which raises the question whether the conduct of a registered dentist constitutes serious professional misconduct<sup>12</sup>, the complainant or the solicitor opens the case against the respondent<sup>13</sup> and adduces evidence<sup>14</sup> of the facts which he alleges constitute serious professional misconduct<sup>15</sup>.

If, in a case relating to conviction, the respondent appears and: (1) does not admit all the convictions; or (2) submits that the conviction was outside the United Kingdom<sup>16</sup> for an offence which would not be an offence in England and Wales, he may then adduce evidence concerning any such conviction, and may address the committee in that regard<sup>17</sup>.

Where the respondent appears in a case relating to conduct, he may at the close of the case against him submit either that no sufficient evidence has been adduced to enable the committee to find the facts alleged against him proved<sup>18</sup>, or that the facts alleged do not constitute serious professional misconduct<sup>19</sup>, or he may make both these submissions<sup>20</sup>. Where any such submission is made, any other party may reply to it<sup>21</sup>. The committee must then consider the submission and determine whether it should be upheld, and, if it so determines, it must record and the chairman must announce its findings that the respondent is not guilty of serious professional misconduct<sup>22</sup>. The respondent may adduce evidence in answer to any charge concerning which evidence has been adduced, and, whether he adduces evidence or not, he may address the committee<sup>23</sup>.

Where a respondent adduces evidence, the complainant or the solicitor may adduce evidence in rebuttal<sup>24</sup> and, in the case of charges of serious professional misconduct, may address the committee in reply to the respondent's case<sup>25</sup>.

1 As to the professional conduct committee see PARA 460 ante.

2 For the meaning of 'misconduct case' see PARA 465 note 1 ante.

3 General Dental Council Professional Conduct Committee (Procedure) Rules 1984, SI 1984/1517, r 8(1). For the meaning of 'party' see PARA 462 note 6 ante. As to the presence of the parties and the public generally see PARA 468 ante. If the respondent does not appear but the committee nevertheless decides that the inquiry is to proceed, the charge must be read in his absence: r 8(1). If there are two or more respondents, this procedure applies with the necessary adaptations and subject to any directions of the committee, so however that any of the rights ensured to a respondent may be exercised separately by each respondent: r 18.

4 For the meaning of 'respondent' see PARA 465 note 4 ante.

5 General Dental Council Professional Conduct Committee (Procedure) Rules 1984, SI 1984/1517, r 8(2).

6 Ibid r 8(2).

7 For the meaning of 'registered dentist' see PARA 417 note 6 ante.

8 See the Dentists Act 1984 s 27(1)(a); and PARA 456 ante. Where in any case it is alleged against the respondent both that he has been convicted and that he has been guilty of serious professional misconduct, the committee must proceed upon the charge or charges of each kind separately under r 9 (see the text and note 11 infra) or r 10 (see the text and notes 12-25 infra) according as the charge relates to a conviction or to conduct and must then proceed under so much of r 11 (see PARA 475 post) as may be applicable either upon the charge or charges of each kind separately or upon the charges of both kinds concurrently, according as the circumstances of the case may require: r 15.

9 For the meaning of 'complainant' see PARA 465 note 8 ante.

10 For the meaning of 'solicitor' see PARA 465 note 3 ante.

11 General Dental Council Professional Conduct Committee (Procedure) Rules 1984, SI 1984/1517, r 9(1)(a). If no evidence is adduced as to any particular conviction, the chairman of the committee must thereupon announce that it has not been proved: r 9(1)(b). See note 15 infra. If the respondent appears, the chairman must ask him whether he admits each conviction of which evidence is adduced, and if he admits it the chairman must thereupon announce that it has been proved: r 9(1)(c). See also r 15; and note 8 supra. As to certificates of conviction see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1500.

12 See the Dentists Act 1984 s 27(1)(b); and PARA 456 ante. See also note 8 supra.

13 General Dental Council Professional Conduct Committee (Procedure) Rules 1984, SI 1984/1517, r 10(1)(a).

14 As to witnesses and evidence see PARA 470 ante.

15 General Dental Council Professional Conduct Committee (Procedure) Rules 1984, SI 1984/1517, r 10(1)(b). If no evidence is adduced as to any particular charge, the committee must record and the chairman must announce a finding of not guilty of serious professional misconduct in respect of the relevant matters: r 10(1)(c).

16 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

17 See General Dental Council Professional Conduct Committee (Procedure) Rules 1984, SI 1984/1517, r 9(2)(a). The respondent may address the committee once only under either head (1) or head (2) in the text, and when he adduces evidence, this address may be either before the evidence is begun or after it is concluded: r 9(2)(a).

18 Ibid r 10(2)(a)(i).

19 Ibid r 10(2)(a)(ii).

20 Ibid r 10(2)(a).

21 Ibid r 10(2)(a).

22 Ibid r 10(2)(b). As to the record of proceedings see PARA 469 ante.

23 Ibid r 10(2)(c). Except with the committee's leave, only one address may be made, either before or after the evidence is adduced: r 10(2)(c).

24 Ibid rr 9(2)(b), 10(2)(d). In the case of charges of serious professional misconduct, the committee's leave is required, and the respondent may make a further address limited to the rebutting of evidence: r 10(2)(d).

25 Ibid r 10(2)(e). Unless oral evidence, other than evidence as to character or evidence given by the respondent himself, has been given on the respondent's behalf, the committee's leave is required: r 10(2)(e). If the respondent has made a submission on a point of law, any other party has a right of reply to it: r 10(2)(f).

## **462-477 Disciplinary Proceedings**

Dentists Act 1984 s 33, Sch 3 now s 33 (treatment of persons suspended or whose registration is subject to conditions), s 33A (recoding of suspension and conditional registration), s 33B (Council's power to require disclosure of information), s 33C (notification and disclosure by the Council), Sch 3 (proceedings before investigating committee, interim orders committee and practice committees) (substituted by SI 2005/2011). The General Dental Council has made the

General Dental Council (Fitness to Practise) Rules 2006 (approved by the General Dental Council (Fitness to Practise) Rules Order of Council 2006, SI 2006/1663 (amended by SI 2009/1182) (in force on the coming into force of the Safeguarding Vulnerable Groups Act 2006 s 44(1) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 704)). General Dental Council Professional Conduct Committee (Procedure) Rules Order of Council 1984, SI 1984/1517; General Dental Council Professional Conduct Committee (Legal Assessor) Rules 1957, SI 1957/1470, lapsed. Transitional provision is made by SI 2005/2011, SI 2006/1671. As to the committees of the General Dental Council see PARA 395.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(6) FITNESS TO PRACTISE/(iv) Disciplinary Proceedings/475. The committee's determination.

#### **475. The committee's determination.**

At the conclusion of the proceedings in a misconduct case<sup>1</sup>, the professional conduct committee<sup>2</sup> must consider and determine whether the conviction or the conduct complained of has been proved<sup>3</sup>. If it so finds, the chairman must announce the decision and invite the complainant<sup>4</sup> or the solicitor<sup>5</sup> to address the committee and adduce evidence<sup>6</sup> as to the circumstances leading up to the conviction, or the circumstances leading up to the conduct in question and the extent to which such conduct is indicative of serious professional misconduct<sup>7</sup> and, in both such cases, as to the character and previous history of the respondent<sup>8</sup>, and must then invite the respondent to address the committee by way of mitigation and adduce the like evidence<sup>9</sup>.

Except where in a case relating to conduct the respondent has been found not guilty on all charges, the committee must next consider and determine whether it is sufficient to conclude the case, and if the committee determines not to conclude the case, it must then consider and determine whether to postpone judgment<sup>10</sup>. If the committee determines to postpone judgment, judgment stands postponed until such future meeting of the committee as it may determine<sup>11</sup>. If the committee determines not to postpone judgment, it must consider and determine whether by reason of the convictions proved against the respondent or of his serious professional misconduct it is sufficient to direct the registrar<sup>12</sup> to suspend the respondent's registration for a specified period not exceeding 12 months<sup>13</sup> or, if it does not direct suspension, it must direct the registrar to erase the respondent's name from the register<sup>14</sup>.

If the committee does not find the conviction or conduct proved, the chairman must announce its determination or record its finding accordingly<sup>15</sup>.

1 For the meaning of 'misconduct case' see PARA 465 note 1 ante. As to the procedure where the respondent is alleged to have been both convicted and guilty of professional misconduct see PARA 474 note 8 ante. As to the procedure at hearings generally see PARA 474 ante.

2 As to the professional conduct committee see PARA 460 ante.

3 General Dental Council Professional Conduct Committee (Procedure) Rules 1984, SI 1984/1517, rr 9(3), 10(3). If in any case an order has been made by the preliminary proceedings committee under the Dentists Act 1984 s 32 (see PARA 459 ante) for interim suspension, the professional conduct committee must, when it has determined the case, in accordance with s 32(6) (see PARA 459 ante) revoke such order: General Dental Council Professional Conduct Committee (Procedure) Rules 1984, SI 1984/1517, r 14. As to the preliminary proceedings committee see PARA 457 ante. As to the power of the Council for the Regulation of Health Care Professionals to refer decisions of the professional conduct committee to the court see PARA 402 ante.

4 For the meaning of 'complainant' see PARA 465 note 8 ante.

5 For the meaning of 'solicitor' see PARA 465 note 3 ante.

6 As to witnesses and evidence see PARA 470 ante.

7 As to serious professional misconduct see PARA 456 ante.

8 For the meaning of 'respondent' see PARA 465 note 4 ante.

9 General Dental Council Professional Conduct Committee (Procedure) Rules 1984, SI 1984/1517, r 11(1), (2). In a case relating to serious professional misconduct, the committee must determine whether in relation to the facts proved the dentist is guilty of such misconduct and, if it determines that he is not so guilty, it must record a finding to that effect: r 11(2). When considering whether a practitioner should be found guilty and, in

that event, what action it is to be taken, the committee is entitled to consider his previous conduct as a practitioner: see *McCoan v General Medical Council* [1964] 3 All ER 143, [1964] 1 WLR 1107, PC.

10 General Dental Council Professional Conduct Committee (Procedure) Rules 1984, SI 1984/1517, r 11(3). If judgment is postponed, the solicitor must give the parties six weeks' notice of the resumed hearing, inviting the respondent to submit any statement or statutory declarations relating to his conduct since the hearing and, unless the president otherwise directs, inviting the respondent to submit the names of referees as to his character and conduct: see r 16(1)(a). Copies of the notice and statement or statutory declaration must be sent to the complainant, who may himself make or submit a statement or declaration: r 16(1)(b). At the resumed hearing, the committee may further postpone judgment if it thinks fit: see r 16(1)(c)-(e). At any resumed hearing, any new charge against the respondent must be dealt with before proceeding to the question of judgment on the prior charge: r 16(2). Proceedings at a resumed hearing are not invalidated by the fact that the committee is differently constituted: r 25. For the meaning of 'party' see PARA 462 note 6 ante. As to the president of the General Dental Council see PARA 394 ante; and as to the exercise of his powers under the rules see PARA 472 note 1 ante. As to statutory declarations see the Statutory Declarations Act 1835 (as amended); and CIVIL PROCEDURE vol 11 (2009) PARA 1024.

11 General Dental Council Professional Conduct Committee (Procedure) Rules 1984, SI 1984/1517, r 11(4). Since the committee has a discretion whether to erase from the register, the conduct of a dentist after conviction is a relevant factor for the committee's consideration, and it may properly, in an appropriate case, postpone sentence for a period during which the dentist would have an opportunity to show whether he has rehabilitated himself: *Ziderman v General Dental Council* [1976] 2 All ER 334, [1976] 1 WLR 330, PC. See also *Dad v General Dental Council* [2000] 1 WLR 1538, 56 BMLR 130, PC.

12 In accordance with the Dentists Act 1984 s 27(1): see PARA 456 ante. For the meaning of 'the registrar' see PARA 396 note 1 ante.

13 General Dental Council Professional Conduct Committee (Procedure) Rules 1984, SI 1984/1517, r 11(5). If in any case the committee determines to suspend the registration of a respondent or to erase his name from the register, the committee must then consider and determine also whether it is necessary for the protection of members of the public or would be in the best interests of the respondent to order, in accordance with the Dentists Act 1984 s 30(3) (see PARA 461 ante) that his registration is to be suspended forthwith: General Dental Council Professional Conduct Committee (Procedure) Rules 1984, SI 1984/1517, r 12. As to registration generally see PARA 420 et seq ante.

14 Ibid r 11(6). See also r 12; and note 13 supra. For the meaning of 'the register' see PARA 417 note 1 ante. As to the committee's powers to impose such sanctions see PARAS 456, 461 ante. If the disciplinary committee is considering erasure, it must satisfy itself that the criminal offence is of so grave a character as to show that the professional man is unfit to continue to practise: *Ziderman v General Dental Council* [1976] 2 All ER 334, [1976] 1 WLR 330, PC. See also *Dad v General Dental Council* [2000] 1 WLR 1538, 56 BMLR 130, PC; and see the cases referred to in the notes to para 456 ante.

15 See the General Dental Council Professional Conduct Committee (Procedure) Rules 1984, SI 1984/1517, rr 9(3), 10(4), 13. As to notification of the committee's finding see PARA 461 ante. As to the record of proceedings see PARA 469 ante.

## 462-477 Disciplinary Proceedings

Dentists Act 1984 s 33, Sch 3 now s 33 (treatment of persons suspended or whose registration is subject to conditions), s 33A (recording of suspension and conditional registration), s 33B (Council's power to require disclosure of information), s 33C (notification and disclosure by the Council), Sch 3 (proceedings before investigating committee, interim orders committee and practice committees) (substituted by SI 2005/2011). The General Dental Council has made the General Dental Council (Fitness to Practise) Rules 2006 (approved by the General Dental Council (Fitness to Practise) Rules Order of Council 2006, SI 2006/1663 (amended by SI 2009/1182) (in force on the coming into force of the Safeguarding Vulnerable Groups Act 2006 s 44(1) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 704)). General Dental Council Professional Conduct Committee (Procedure) Rules Order of Council 1984, SI 1984/1517; General Dental Council Professional Conduct Committee (Legal Assessor) Rules 1957, SI 1957/1470, lapsed. Transitional provision is made by SI 2005/2011, SI 2006/1671. As to the committees of the General Dental Council see PARA 395.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(6) FITNESS TO PRACTISE/(iv) Disciplinary Proceedings/476. Procedure in cases of fraudulent registration.

#### **476. Procedure in cases of fraudulent registration.**

Where any question whether an entry in the register<sup>1</sup> is fraudulent is referred to the professional conduct committee<sup>2</sup>, the solicitor<sup>3</sup> must send the respondent<sup>4</sup> a notice of inquiry<sup>5</sup>. The procedure at the inquiry is similar to that at an inquiry relating to serious professional misconduct<sup>6</sup>. If the committee determines that the entry has been proved to its satisfaction to have been made fraudulently, it must order<sup>7</sup> that the entry be erased from the register, and the chairman must announce the determination<sup>8</sup>. Whether or not it so finds, if the committee is satisfied that the entry was incorrectly made, it may recommend the General Dental Council<sup>9</sup> to amend the entry accordingly<sup>10</sup>.

1 For the meaning of 'the register' see PARA 417 note 1 ante.

2 As to such reference see PARA 442 ante. As to the professional conduct committee see PARA 460 ante.

3 For the meaning of 'solicitor' see PARA 465 note 3 ante.

4 For the meaning of 'respondent' see PARA 465 note 4 ante.

5 General Dental Council Professional Conduct Committee (Procedure) Rules 1984, SI 1984/1517, r 17(1). The provisions of r 3 (see PARA 465 ante) apply to the notice: r 17(1). A copy of the notice must be sent to any person alleged to have been a party to the alleged fraud and to such other persons as the president of the General Dental Council directs; and, with the leave of the president or committee, any such person may appear at the inquiry as an additional party: r 17(2). As to the president of the General Dental Council see PARA 394 ante; and as to the exercise of his powers under the rules see PARA 472 note 1 ante.

6 Ibid r 17(3). This provides that r 10 (see PARA 474 ante) applies.

7 The order must be in writing under the hand of the committee chairman: ibid r 17(4).

8 Ibid r 17(4). Where the inquiry relates to two or more entries, the committee may proceed in respect of those entries either separately or taken together; where it relates to one entry specifying two or more particulars, those particulars may be treated as a separate entry: r 17(6).

9 As to the General Dental Council see PARA 389 et seq ante.

10 General Dental Council Professional Conduct Committee (Procedure) Rules 1984, SI 1984/1517, r 17(5).

#### **462-477 Disciplinary Proceedings**

Dentists Act 1984 s 33, Sch 3 now s 33 (treatment of persons suspended or whose registration is subject to conditions), s 33A (recoding of suspension and conditional registration), s 33B (Council's power to require disclosure of information), s 33C (notification and disclosure by the Council), Sch 3 (proceedings before investigating committee, interim orders committee and practice committees) (substituted by SI 2005/2011). The General Dental Council has made the General Dental Council (Fitness to Practise) Rules 2006 (approved by the General Dental Council (Fitness to Practise) Rules Order of Council 2006, SI 2006/1663 (amended by SI 2009/1182) (in force on the coming into force of the Safeguarding Vulnerable Groups Act 2006 s 44(1) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 704)). General Dental Council Professional Conduct Committee (Procedure) Rules Order of Council 1984, SI 1984/1517; General Dental Council Professional Conduct Committee (Legal Assessor) Rules

1957, SI 1957/1470, lapsed. Transitional provision is made by SI 2005/2011, SI 2006/1671. As to the committees of the General Dental Council see PARA 395.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(6) FITNESS TO PRACTISE/(iv) Disciplinary Proceedings/477. Procedure in cases relating to bodies corporate.

#### **477. Procedure in cases relating to bodies corporate.**

Where a case is referred to the professional conduct committee<sup>1</sup> for inquiry whether to direct that the right to carry on the business of dentistry<sup>2</sup> is to cease to extend to any body corporate<sup>3</sup>, the solicitor<sup>4</sup> must post<sup>5</sup> to the company's registered office a notice of inquiry giving at least 28 days' notice of the day, time and place fixed for the hearing<sup>6</sup>, setting out the purpose of the inquiry, specifying the causes of complaint<sup>7</sup>, and inviting the company to appear<sup>8</sup>. A copy of the notice must also be posted to any complainant<sup>9</sup>, to every person named in it, to every person who appears<sup>10</sup> to be a director of the company, and to such other person or body as the president of the General Dental Council<sup>11</sup> may direct<sup>12</sup>.

The inquiry opens with a statement by the chairman of the committee describing its purpose, after which the complainant, if any, appears or the solicitor opens the case and adduces evidence<sup>13</sup>. The company and any other party<sup>14</sup> appearing may then adduce evidence and address the committee<sup>15</sup>.

On the conclusion of the proceedings, the committee may either postpone its determination, or may determine and announce its decision whether or not to direct the withdrawal of the body's right to carry on the business of dentistry<sup>16</sup>. If it decides to postpone its determination, the parties must be given at least six weeks' notice of the resumed hearing; and at that hearing the committee may further postpone, or may make and announce its determination<sup>17</sup>.

1 As to the professional conduct committee see PARA 460 ante.

2 For the meaning of 'business of dentistry' see PARA 405 ante.

3 See the Dentists Act 1984 s 43; and PARA 406 ante.

4 For the meaning of 'solicitor' see PARA 465 note 3 ante.

5 As to references to service by post see PARA 20 note 22 ante.

6 General Dental Council Professional Conduct Committee (Procedure) Rules 1984, SI 1984/1517, r 21(1).

7 As to the causes of complaint see the Dentists Act 1984 s 44; and PARA 408 ante.

8 General Dental Council Professional Conduct Committee (Procedure) Rules 1984, SI 1984/1517, r 21(2). A copy of the General Dental Council Professional Conduct Committee (Procedure) Rules 1984 must also be sent: General Dental Council Professional Conduct Committee (Procedure) Rules 1984, SI 1984/1517, r 21(2). A body corporate or an unincorporated body of persons may appear by its clerk or other officer appointed for the purpose, or by counsel or solicitor: r 22. As to corporations and unincorporated associations see CORPORATIONS vol 9(2) (2006 Reissue) PARA 1101. As to bodies corporate generally see COMPANIES; CORPORATIONS.

9 For the meaning of 'complainant' see PARA 465 note 8 ante.

10 Ie according to the latest return made to the General Dental Council under the Dentists Act 1984 s 43(4) (see PARA 407 ante): General Dental Council Professional Conduct Committee (Procedure) Rules 1984, SI 1984/1517, r 21(3).

11 As to the president of the General Dental Council see PARA 394 ante; and as to the exercise of his powers under the rules see PARA 472 note 1 ante.

12 General Dental Council Professional Conduct Committee (Procedure) Rules 1984, SI 1984/1517, r 21(3). Absence of proof of receipt of a notice does not preclude the committee from proceeding: r 21(4). Any person or

body may, with leave, appear as an additional party: r 21(5). The provisions as to postponement or cancellation and access to documents (see rr 4, 5; and PARAS 466, 472 ante) apply to the inquiry: r 21(6).

13 Ibid r 23(1). As to evidence see PARA 470 ante. Any erasure from the register is proved by a certificate under the hand of the registrar: r 23(2)(a). As to such certificates see PARA 418 ante. For the meaning of 'the registrar' see PARA 396 note 1 ante. Convictions are proved in the same manner as under r 9 (see PARA 474 ante): r 23(2)(e). The correctness of any conviction cannot be questioned: r 23(2)(c). Where any name in a certificate of conviction or erasure agrees with any name in the register or in the statutory return, there arises a rebuttable presumption that the name in each case refers to the same person: r 23(2)(b). As to certificates of conviction see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1500. Where any person named in the notice of inquiry is or was a registered dentist, any finding of fact or fraud made against him by the committee in other proceedings is conclusive evidence of that fact or fraud except where an appeal in those other proceedings is pending: r 23(2)(d). For the meaning of 'registered dentist' see PARA 417 note 6 ante.

14 For the meaning of 'party' see PARA 462 note 6 ante.

15 General Dental Council Professional Conduct Committee (Procedure) Rules 1984, SI 1984/1517, r 23(3). The provisions of r 10(2)(c)-(f) (see PARA 474 ante) apply with the necessary modifications: r 23(3).

16 Ibid r 23(4), (5).

17 Ibid r 23(6), (7). Proceedings at a resumed hearing are not invalidated by the fact that the committee is differently constituted: r 25.

## **462-477 Disciplinary Proceedings**

Dentists Act 1984 s 33, Sch 3 now s 33 (treatment of persons suspended or whose registration is subject to conditions), s 33A (recoding of suspension and conditional registration), s 33B (Council's power to require disclosure of information), s 33C (notification and disclosure by the Council), Sch 3 (proceedings before investigating committee, interim orders committee and practice committees) (substituted by SI 2005/2011). The General Dental Council has made the General Dental Council (Fitness to Practise) Rules 2006 (approved by the General Dental Council (Fitness to Practise) Rules Order of Council 2006, SI 2006/1663 (amended by SI 2009/1182) (in force on the coming into force of the Safeguarding Vulnerable Groups Act 2006 s 44(1) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 704)). General Dental Council Professional Conduct Committee (Procedure) Rules Order of Council 1984, SI 1984/1517; General Dental Council Professional Conduct Committee (Legal Assessor) Rules 1957, SI 1957/1470, lapsed. Transitional provision is made by SI 2005/2011, SI 2006/1671. As to the committees of the General Dental Council see PARA 395.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(6) FITNESS TO PRACTISE/(v) Appeals; Restoration to the Register/478. Appeals against decisions of the professional conduct committee.

## **(v) Appeals; Restoration to the Register**

### **478. Appeals against decisions of the professional conduct committee.**

Where a person is notified<sup>1</sup> that a determination has been made in respect of him by the professional conduct committee<sup>2</sup> to erase his name from the register<sup>3</sup> or to suspend his registration<sup>4</sup>, he may, within 28 days from the service of the notification, appeal against that determination or direction to the relevant court<sup>5</sup>.

On such an appeal<sup>6</sup>, the court may: (1) dismiss the appeal<sup>7</sup>; (2) allow the appeal and quash the determination appealed against<sup>8</sup>; (3) substitute for the determination appealed against any other determination which could have been made or given by the professional conduct committee<sup>9</sup>; or (4) remit the case to the professional conduct committee to dispose of the case in accordance with the directions of the court<sup>10</sup>. The court may make such order as to costs as it thinks fit<sup>11</sup>. The General Dental Council<sup>12</sup> may appear as respondent on any such appeal; and for the purpose of any order as to costs in relation to any appeal the Council is deemed to be a party to it, whether it appears on the hearing of the appeal or not<sup>13</sup>.

1    Ie under the Dentists Act 1984 s 27(4): see PARA 461 ante.

2    As to the professional conduct committee see PARA 460 ante.

3    For the meaning of 'the register' see PARA 417 note 1 ante.

4    Dentists Act 1984 s 29(1)(a). As to registration generally see PARA 420 ante.

5    Ibid s 29(1) (s 29(1) amended, s 29(1A) added, and s 29(3) substituted, by the National Health Service Reform and Health Care Professions Act 2002 s 31(1), (2)(a), (b), (d)). 'The relevant court', in the case of a person whose address in the register is (or if he were registered would be) in Scotland, means the Court of Session; in the case of a person whose address in the register is (or if he were registered would be) in Northern Ireland, means the High Court of Justice in Northern Ireland; and in the case of any other person, means the High Court of Justice in England and Wales: Dentists Act 1984 s 29(1A) (as so added). As to the High Court of Justice in England and Wales see COURTS vol 10 (Reissue) PARA 602 et seq. Although the registrar has no discretion to allow an appeal to be brought out of time, the court has an inherent jurisdiction to allow such an appeal to be brought in the interests of justice if it appears that the appeal has substantial merits: *Bainton v General Dental Council* [2000] All ER (D) 1217, PC.

6    As to appeals generally see CPR Pt 52. An appeal is by way of re-hearing: Practice Direction--Appeals PD52 para 22.3(1)(e), (2); and see *Felix v General Dental Council* [1960] AC 704, [1960] 2 All ER 391, PC; *Dad v General Dental Council* [2000] 1 WLR 1538, 56 BMLR 130, PC. A court will always be reluctant to take a different view of the evidence than the committee, but it will reverse a view of the facts taken by the committee if it appears to the court that the committee has misread the evidence to such an extent that it was not entitled to make such a finding: *Hossack v General Dental Council* (1997) 40 BMLR 97, 141 Sol Jo LB 100, PC. As to the registrar see PARA 396 ante. Whilst respect will be accorded to the opinion of a professional tribunal on technical matters, the appropriate degree of deference will depend on the circumstances: *Preiss v General Dental Council* [2001] UKPC 36, [2001] 1 WLR 1926, [2001] Lloyd's Rep Med 491. See also the cases referred to in PARA 188 note 14 ante.

7    Dentists Act 1984 s 29(3)(a) (as substituted: see note 5 supra).

8    Ibid s 29(3)(b) (as substituted: see note 5 supra).

9    Ibid s 29(3)(c) (as substituted: see note 5 supra).

10 Ibid s 29(3)(d) (as substituted: see note 5 supra).

11 Ibid s 29(3) (as substituted: see note 5 supra). As to costs generally see CIVIL PROCEDURE vol 12 (2009) PARA 1729 et seq.

12 As to the General Dental Council see PARA 389 et seq ante.

13 Dentists Act 1984 s 29(4) (amended by the National Health Service Reform and Health Care Professions Act 2002 s 37(1), Sch 8 para 16).

## **UPDATE**

### **478 Appeals against decisions of the professional conduct committee**

TEXT AND NOTES 1-5--1984 Act s 29(1), (1A) now s 29(1), (1A)-(1D) (substituted by SI 2005/2011), enabling appeals also to be made against the refusal to restore a person's name to the register and conditional registration.

NOTE 5--1984 Act s 29(1A) now s 29(1D).

TEXT AND NOTES 8-10--1984 Act s 29(3)(b)-(d) substituted: SI 2005/2011.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(6) FITNESS TO PRACTISE/(v) Appeals; Restoration to the Register/479. When determinations of the professional conduct committee take effect.

#### **479. When determinations of the professional conduct committee take effect.**

Where no appeal is brought, within 28 days from the service of the notification of the determination, against any determination<sup>1</sup> by the professional conduct committee<sup>2</sup> to erase a person's name from the register<sup>3</sup> or to suspend his registration, the determination takes effect at the expiry of that period<sup>4</sup>. Where an appeal is so brought, the determination does not take effect until such time as the appeal is dismissed or withdrawn or is struck out for want of prosecution<sup>5</sup>.

However, if the professional conduct committee, on making any determination<sup>6</sup>, is satisfied that it is necessary for the protection of members of the public, or that it would be in the best interests of the person concerned, to do so, it may order that his registration in the register be suspended forthwith; and in that event his registration in the register is suspended from the time when the order is made until the time when the period for bringing an appeal against the determination expires or, if such an appeal is brought, the appeal is determined or withdrawn or is struck out for want of prosecution<sup>7</sup>.

1    le a determination made under the Dentists Act 1984 s 27: see PARA 461 ante.

2    As to the professional conduct committee see PARA 460 ante.

3    For the meaning of 'the register' see PARA 417 note 1 ante.

4    Dentists Act 1984 s 30(1). See, however, *Bainton v General Dental Council* [2000] All ER (D) 1217, PC, in which it was held that although the registrar has no discretion to allow an appeal to be brought out of time, the court has an inherent jurisdiction to allow such an appeal to be brought in the interests of justice if it appears that the appeal has substantial merits. As to the registrar see PARA 396 ante.

5    Dentists Act 1984 s 30(2).

6    Ibid s 30(3)(a).

7    Ibid s 30(3). If, when such an order is made, the person to whom it applies is neither present nor represented at the proceedings, the reference to the time when the order is made has effect as if it were a reference to the time when notification of the order is served: s 30(5). As to notification of such orders, and applications to the court in respect of them, see PARA 461 text to notes 13-14 ante.

#### **UPDATE**

#### **479 When determinations of the professional conduct committee take effect**

TEXT AND NOTES--Provision is now made for erasure, immediate suspension or immediate conditional registration of a person whose fitness to practise has been determined as being impaired or whose entry in the register has been incorrectly made: 1984 Act s 30 (substituted by SI 2005/2011).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(6) FITNESS TO PRACTISE/(v) Appeals; Restoration to the Register/480. Restoration to the register following erasure.

#### **480. Restoration to the register following erasure.**

Where a person's name has been erased from the register<sup>1</sup> in consequence of a determination by the professional conduct committee<sup>2</sup>, his name may not again be entered in the register except by direction of the General Dental Council<sup>3</sup>. The Council may direct that a person's name be restored to the register<sup>4</sup> provided that no application may be made within ten months from the date of erasure<sup>5</sup> or within ten months from a previous application<sup>6</sup>; and the applicant is not entitled to have his name restored to the register until he has satisfied the professional conduct committee<sup>7</sup> as to the specified matters<sup>8</sup> and as to his meeting the specified requirements<sup>9</sup>. The Council must refer any application to the professional conduct committee for determination<sup>10</sup>.

The professional conduct committee may determine its own procedure on the hearing of the application<sup>11</sup>, save that it must afford the applicant an opportunity of being heard<sup>12</sup> and of adducing evidence<sup>13</sup>. The committee may require any evidence which it thinks necessary concerning the applicant's identity or character or his conduct since his name was erased from the register, and for this purpose it may receive written or oral evidence, including any observations on the applicant which may be offered by the body granting the diploma by virtue of which he was registered<sup>14</sup>.

1 For the meaning of 'the register' see PARA 417 note 1 ante.

2 Ie under the Dentists Act 1984 s 27: see PARA 456 ante. As to the professional conduct committee see PARA 460 ante.

3 Dentists Act 1984 s 34(1) (s 34(1) amended, and s 34(4) added, by the Dentists Act 1984 (Amendment) Order 2001, SI 2001/3926, arts 2, 10(5)(a), (b)). As to the General Dental Council see PARA 389 et seq ante.

4 Dentists Act 1984 s 34(1) (as amended: see note 3 supra).

5 Ibid s 34(2)(a).

6 Ibid s 34(2)(b).

7 As to the professional conduct committee see PARA 460 ante.

8 Ie the matters specified in the Dentists Act 1984 s 15(3)(a)-(c): see PARAS 420, 427 ante.

9 Ie the requirements specified in rules made under ibid s 34B(1) (as added) (see PARA 446 ante) in relation to his case or circumstances: s 34(4) (as added: see note 3 supra).

10 Ibid s 34(3). As to the power of the Council for the Regulation of Health Care Professionals to refer a decision to restore a person to the register to the court see PARAS 402 ante.

11 General Dental Council Professional Conduct Committee (Procedure) Rules 1984, SI 1984/1517, r 20.

12 Ie subject to ibid r 7: see PARA 467 ante.

13 Ibid r 20(1). As to evidence see PARA 470 ante.

14 Ibid r 20(2). As to such qualifications and bodies see PARAS 420-421 ante.

As a general principle, where a practitioner has been convicted of a serious criminal offence or offences, he should not be permitted to resume his practice until he has satisfactorily completed his sentence, and only circumstances which plainly justify a different course should permit otherwise; such circumstances could arise



in connection with a period of disqualification from driving or time allowed by the court for the payment of a fine. The rationale for the principle is not that it can serve to punish the practitioner whilst serving his sentence, but that good standing in a profession must be earned if the reputation of the profession is to be maintained: *Council for the Regulation of Healthcare Professionals v General Dental Council* [2005] EWHC 87 (Admin), [2005] All ER (D) 47 (Feb).

## **UPDATE**

### **480 Restoration to the register following erasure**

TEXT AND NOTES--1984 Act s 34 repealed: SI 2005/2011. General Dental Council Professional Conduct Committee (Procedure) Rules Order of Council 1984, SI 1984/1517, lapsed (see SI 2005/2011 art 50, Sch 7 for transitional provision). Further transitional provision is made by the Dentists Act 1984 (Amendment) Order 2005 Transitional Provisions Order of Council 2006, SI 2006/1671.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(6) FITNESS TO PRACTISE/(vi) The Health Committee/481. Constitution of the health committee.

## **(vi) The Health Committee**

### **481. Constitution of the health committee.**

There is a committee of the General Dental Council<sup>1</sup> known as the health committee<sup>2</sup>. The membership of the health committee consists of five appropriate persons<sup>3</sup>, of whom at least two must be registered dentists<sup>4</sup> and at least two must be lay persons<sup>5</sup>. When the committee is exercising a fitness to practise function<sup>6</sup>, no person may be appointed as a member of the committee who, prior to his membership of the committee, had any dealings in relation to the matter in respect of which the committee is exercising its fitness to practise function<sup>7</sup>.

1 As to the General Dental Council see PARA 389 et seq ante.

2 See the Dentists Act 1984 s 2(4).

3 For the meaning of 'appropriate person' see PARA 444 note 3 ante.

4 For the meaning of 'registered dentist' see PARA 417 note 6 ante.

5 General Dental Council (Constitution of Committees) Order of Council 2003, SI 2003/1081, arts 2(1)(d), 6. For the meaning of 'lay person' see PARA 444 note 5 ante.

6 For the meaning of 'fitness to practise function' see PARA 444 note 6 ante.

7 General Dental Council (Constitution of Committees) Order of Council 2003, SI 2003/1081, art 2(2).

## **UPDATE**

### **481-485 The Health Committee**

Health committee replaced: Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011; see PARA 395.

### **481 Constitution of the health committee**

NOTE 2--1984 Act s 2(1)-(4A) now s 2(1)-(3) (substituted by SI 2005/2011).

TEXT AND NOTES 3-7--SI 2003/1081 revoked: SI 2006/1665. See now the General Dental Council (Constitution of Committees) Rules Order of Council 2009, SI 2009/1813.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(6) FITNESS TO PRACTISE/(vi) The Health Committee/482. Functions of the health committee.

#### **482. Functions of the health committee.**

Where the fitness of a registered dentist<sup>1</sup> to practise is judged by the health committee<sup>2</sup> to be seriously impaired by reason of his physical or mental condition, the committee may, if it thinks fit, direct: (1) that his registration in the register<sup>3</sup> be suspended for such period not exceeding 12 months as may be specified in the direction<sup>4</sup>; or (2) that his registration be conditional on his compliance, during such period not exceeding three years as may be specified in the direction, with such requirements so specified as the committee thinks fit to impose for the protection of the public or in his own interests<sup>5</sup>. Where a registered dentist whose registration is for the time being conditional is judged by the committee to have failed to comply with any of those requirements, the committee may, if it thinks fit, direct that his registration in the register be suspended during such period not exceeding 12 months as may be specified in the direction<sup>6</sup>.

Where the committee has given a direction for suspension<sup>7</sup>, it may subsequently direct that: (a) the current period of suspension be extended for such further period from the time when it would otherwise expire as may be specified in the direction<sup>8</sup>; (b) the registration of the person whose registration is suspended be, as from the expiry of the current period of suspension, conditional on his compliance, during such period not exceeding three years as may be specified in the direction, with such requirements so specified as the committee has power to impose<sup>9</sup>; but the committee must not so extend any period of suspension by more than 12 months at a time<sup>10</sup>.

Where the committee have given a direction for conditional registration, it may subsequently revoke that direction or do one or more of the following<sup>11</sup>: (i) revoke any of the requirements imposed by the direction<sup>12</sup>; (ii) direct that the requirements be varied<sup>13</sup>; or (iii) direct that the current period of conditional registration be extended for a further period from the time when it would otherwise expire<sup>14</sup>. However, the committee must not so extend any period of conditional registration by more than 12 months at a time<sup>15</sup>.

Where the committee gives any of the above directions, the registrar<sup>16</sup> must forthwith serve on the person to whom it applies a notification of the direction and of his right to appeal against it<sup>17</sup>; and where the committee revokes<sup>18</sup> any direction or requirement of a direction the registrar must forthwith serve on the person to whom the direction applied or, as the case may be, applies a notification of the revocation<sup>19</sup>. Where a direction or order for suspension or a direction for conditional registration takes effect in relation to any person, the registrar must make a note in the register of that fact and of the period for which that person's registration is to be suspended or subject to conditions by virtue of the direction or order<sup>20</sup>.

If the committee is satisfied, on giving a direction for suspension<sup>21</sup>, that it is necessary to do so for the protection of the public or that it is in the best interests of the person concerned, it may order that his registration be suspended forthwith; and, in that case, his registration is suspended from the time that the order is made until the expiry of the time limit for bringing an appeal, or if an appeal is brought, until it is determined or withdrawn or struck out for want of prosecution<sup>22</sup>. On the making of such an order, the registrar must forthwith serve on the person to whom it applies notification<sup>23</sup> of the order and of his right to make an application for an order terminating the suspension<sup>24</sup>.

While a person's registration in the register is suspended by virtue of any direction or order, he is treated as not being registered in the register, notwithstanding that his name still appears in it<sup>25</sup>.

Where, in the course of any proceedings, it appears to the committee that a dentist may be failing to meet the requirements of the rules relating to professional training and development<sup>26</sup>, the committee may refer the question of whether he is failing to meet them to the registrar<sup>27</sup>.

1 For the meaning of 'registered dentist' see PARA 417 note 6 ante.

2 As to the health committee see PARA 481 ante.

3 For the meaning of 'the register' see PARA 417 note 1 ante.

4 Dentists Act 1984 s 28(1)(a).

5 Ibid s 28(1)(b). As to the referral of cases to the health committee by other committees of the General Dental Council see PARAS 452, 458, 461 ante.

6 Ibid s 28(2). Where a direction under s 28(2), (3) or (4)(c) (see the text to notes 7-10, 14 infra) is given while a person's registration is subject to conditions or suspended by virtue of a direction under the Dentists Act 1984, his registration continues to be conditional or suspended throughout any period which may intervene between the time when (but for this provision) his registration would cease to be conditional or suspended, as the case may be, and the time when the period for bringing an appeal against the direction under s 29 (see PARA 478 ante) expires or, if such an appeal is brought, the appeal is determined or withdrawn or is struck out for want of prosecution: s 31(1). If, however, on the determination of any appeal any such direction takes effect after the time when (but for s 31(1)) the current period of conditional registration or suspension referred to in s 28(2), (3) or (4)(c) would have ended, the period for which that direction is to have effect is treated as having started to run at that time: s 31(2).

7 Ie under ibid s 28(1)(a) (see the text to notes 1-4 supra) or s 28(2) (see the text to note 6 supra).

8 Ibid s 28(3)(a).

9 Ie under ibid s 28(1)(b) (see the text to note 5 supra): s 28(3)(b).

10 Ibid s 28(3). See also s 31; and note 6 supra.

11 Ibid s 28(4).

12 Ibid s 28(4)(a).

13 Ibid s 28(4)(b).

14 Ibid s 28(4)(c). See also s 31; and note 6 supra.

15 Ibid s 28(4).

16 For the meaning of 'the registrar' see PARA 396 note 1 ante.

17 Ie under the Dentists Act 1984 s 29: see PARA 483 post.

18 Ie under ibid s 28(4): see the text to notes 11-12 supra.

19 Ibid s 28(5). As to the service of such notifications see PARA 459 note 11 ante.

20 Ibid s 33(2), Sch 3 para 8(1). The registrar must erase that note from the register at such time as the direction or order (for any reason) ceases to have effect: Sch 3 para 8(2). Any reference in this provision to a direction for suspension or for conditional registration includes a reference to a direction extending a period of suspension or conditional registration: Sch 3 para 8(3).

21 Ie under ibid s 28(1), (2): see the text to notes 1-6 supra.

22 Ibid s 30(3). If, when such an order is made, the person to whom it applies is neither present or represented at the proceedings, the reference to the time when the order is made has effect as if it were a reference to the time when notification of the order is served under s 30(4) (see the text to notes 23-24 infra): s 30(5).

23 As to the service of such notifications see PARA 459 note 11 ante.

24 Ibid s 30(4). A person whose registration in the register has been so suspended may apply to the court for an order terminating the suspension, and the decision of the court on any such application is final: s 30(6). 'The court', in the case of a person whose address in the register is in Scotland, means the Court of Session; in the case of a person whose address in the register is in Northern Ireland, means the High Court in Northern Ireland; and in the case of any other person, means the High Court in England and Wales: s 30(7). As to the High Court of Justice in England and Wales see COURTS vol 10 (Reissue) PARA 602 et seq. As to judicial review of final decisions of the court see JUDICIAL REVIEW vol 61 (2010) PARA 655.

25 Ibid s 33(1).

26 The rules made under ibid s 34A (as added): see PARA 445 ante.

27 Ibid Sch 3 para 3A (added by the Dentists Act 1984 (Amendment) Order 2001, SI 2001/3926, arts 2, 10(6)).

## **UPDATE**

### **481-485 The Health Committee**

Health committee replaced: Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011; see PARA 395.

### **482 Functions of the health committee**

TEXT AND NOTES 1-19--1984 Act s 28 substituted: see PARA 456.

NOTE 6--1984 Act s 31 repealed: SI 2005/2011.

TEXT AND NOTES 20-27--1984 Act s 33, Sch 3 replaced by s 33 (treatment of persons suspended or whose registration is subject to conditions), s 33A (recording of suspension and conditional registration), s 33B (Council's power to require disclosure of information), s 33C (notification and disclosure by the Council), Sch 3 (proceedings before investigating committee, interim orders committee and practice committees): SI 2005/2011. As to the committees of the General Dental Council see PARA 395. See further General Dental Council (Fitness to Practise) Rules 2006 (approved by General Dental Council (Fitness to Practise) Rules Order of Council 2006, SI 2006/1663 (as amended: see PARA 456)).

TEXT AND NOTES 21-24--Provision is now made for immediate suspension or immediate conditional registration of a person whose fitness to practise has been determined as being impaired: 1984 Act s 30 (substituted by SI 2005/2011).

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### **483. Appeals against the decisions of the health committee.**

Where a person is notified<sup>1</sup> that a direction has been given<sup>2</sup> in respect of him by the health committee<sup>3</sup> to suspend his registration in the register<sup>4</sup> or to make his registration conditional<sup>5</sup>, he may, within 28 days from the service of the notification, appeal against that determination to the relevant court<sup>6</sup>.

On such an appeal<sup>7</sup>, the court may: (1) dismiss the appeal<sup>8</sup>; (2) allow the appeal and quash the determination appealed against<sup>9</sup>; (3) substitute for the determination appealed against any other determination which could have been made or given by the health committee<sup>10</sup>; or (4) remit the case to the committee to dispose of the case in accordance with the directions of the court<sup>11</sup>. The court may make such order as to costs as it thinks fit<sup>12</sup>. The General Dental Council<sup>13</sup> may appear as respondent on any such appeal; and for the purpose of any order as to costs in relation to any appeal the Council is deemed to be a party to it, whether it appears on the hearing of the appeal or not<sup>14</sup>.

1    le under the Dentists Act 1984 s 28(5): see PARA 482 ante.

2    le under *ibid* s 28: see PARA 482 ante.

3    As to the health committee see PARA 481 ante.

4    For the meaning of 'the register' see PARA 417 note 1 ante.

5    Dentists Act 1984 s 29(1)(b). As to registration generally see PARA 420 ante.

6    Ibid s 29(1) (s 29(1) amended, s 29(1A) added, and s 29(3) substituted, by the National Health Service Reform and Health Care Professions Act 2002 s 31(1), (2)(a), (b), (d)). 'The relevant court', in the case of a person whose address in the register is (or if he were registered would be) in Scotland, means the Court of Session; in the case of a person whose address in the register is (or if he were registered would be) in Northern Ireland, means the High Court of Justice in Northern Ireland; and in the case of any other person, means the High Court of Justice in England and Wales: Dentists Act 1984 s 29(1A) (as so added). As to the High Court of Justice in England and Wales see COURTS vol 10 (Reissue) PARA 602 et seq.

7    As to cases in relation to appeals in disciplinary proceedings, the principles of which will apply here also, see PARA 478 note 6 ante.

8    Dentists Act 1984 s 29(3)(a) (as substituted: see note 6 supra).

9    Ibid s 29(3)(b) (as substituted: see note 6 supra).

10   Ibid s 29(3)(c) (as substituted: see note 6 supra).

11   Ibid s 29(3)(d) (as substituted: see note 6 supra).

12   Ibid s 29(3) (as substituted: see note 6 supra). As to costs generally see CIVIL PROCEDURE vol 12 (2009) PARA 1729 et seq.

13   As to the General Dental Council see PARA 389 et seq ante.

14   Dentists Act 1984 s 29(4) (amended by the National Health Service Reform and Health Care Professions Act 2002 s 37(1), Sch 8 para 16).

### **UPDATE**

## **481-485 The Health Committee**

Health committee replaced: Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011; see PARA 395.

### **483 Appeals against the decisions of the health committee**

TEXT AND NOTES 1-6--1984 Act s 29(1), (1A) now s 29(1), (1A)-(1D) (substituted by SI 2005/2011) enabling appeals also to be made against the refusal to restore a person's name to the register and conditional registration. As to the service and sending of notifications under the 1984 Act see s 50A; and PARA 401A.

NOTE 6--1984 Act s 29(1A) now s 29(1D).

TEXT AND NOTES 9-11--1984 Act s 29(3)(b)-(d) substituted: SI 2005/2011.

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#### **484. When directions of the health committee take effect.**

Where no appeal is brought, within 28 days from the service of the notification of the direction, against any direction<sup>1</sup> by the health committee<sup>2</sup> to suspend a person's registration in the register<sup>3</sup> or to make his registration conditional, the direction takes effect at the expiry of that period<sup>4</sup>. Where an appeal is so brought, the direction does not take effect until such time as the appeal is dismissed or withdrawn or is struck out for want of prosecution<sup>5</sup>.

However, if the health committee, on giving a direction for suspension in respect of a person<sup>6</sup>, is satisfied that it is necessary for the protection of members of the public, or that it would be in the best interests of the person concerned, to do so, it may order that his registration in the register be suspended forthwith; and in that event his registration in the register is suspended from the time when the order is made until the time when the period for bringing an appeal against the direction expires or, if such an appeal is brought, the appeal is determined or withdrawn or is struck out for want of prosecution<sup>7</sup>.

1    le a direction made under the Dentists Act 1984 s 28: see PARA 482 ante.

2    As to the health committee see PARA 481 ante.

3    For the meaning of 'the register' see PARA 417 note 1 ante.

4    Dentists Act 1984 s 30(1). See, however, *Bainton v General Dental Council* [2000] All ER (D) 1217, PC, in which it was held that the court has an inherent jurisdiction to allow an appeal to be brought in the interests of justice if it appears that the appeal has substantial merits. As to the registrar see PARA 396 ante.

5    Dentists Act 1984 s 30(2). This provision is expressed to be subject to s 31(2) (see PARA 482 note 6 ante): s 30(2). As to appeals see PARA 483 ante.

6    le under *ibid* s 28(1), (2) (see PARA 482 ante): s 30(3)(b).

7    Ibid s 30(3). If, when such an order is made, the person to whom it applies is neither present nor represented at the proceedings, the reference to the time when the order is made has effect as if it were a reference to the time when notification of the order is served: s 30(5). As to notification of such orders, and applications to the court in respect of them, see PARA 482 ante.

### **UPDATE**

#### **481-485 The Health Committee**

Health committee replaced: Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011; see PARA 395.

#### **484 When directions of the health committee take effect**

TEXT AND NOTES--Provision is now made for immediate suspension or immediate conditional registration of a person whose fitness to practise has been determined as being impaired: 1984 Act s 30 (substituted by SI 2005/2011). As to the service and sending of notifications under the 1984 Act see s 50A; and PARA 401A.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(6) FITNESS TO PRACTISE/(vi) The Health Committee/485. Procedure before the health committee.

#### **485. Procedure before the health committee.**

The General Dental Council<sup>1</sup> must make rules as to the procedure to be followed and rules of evidence to be observed in proceedings before the health committee<sup>2</sup>. The rules must make provision for requiring that, before any case is considered by the committee<sup>3</sup>, it must have been considered by a member of the Council appointed for the purpose by the Council and have been referred by that person to the committee<sup>4</sup>. The rules must also make provision for the appointment of medical examiners and medical assessors to assist the committee in proceedings before it, and for the remuneration of such persons<sup>5</sup>. For the purposes of any proceedings before it, the health committee may administer oaths<sup>6</sup>, and any party<sup>7</sup> to the proceedings may require a witness to attend to give evidence or to produce documents<sup>8</sup>, but no person may be compelled to produce any document which he could not be compelled to produce on the trial of a claim<sup>9</sup>.

The committee may consider only cases referred to it by the president of the General Dental Council<sup>10</sup>, the preliminary proceedings committee<sup>11</sup> or the professional conduct committee<sup>12</sup>. The president, or some person nominated by him, may make inquiries into the case, including obtaining a medical opinion from an assessor<sup>13</sup>, and inviting the dentist in question to submit to a medical examination<sup>14</sup>. The dentist must be informed that a question has been raised as to his fitness, and must be supplied with any relevant material intended to be supplied to the health committee<sup>15</sup>. The president may refer the case to the committee if the dentist does not respond to the notice within 28 days, or refuses to submit to a medical examination, or as a result of such examination<sup>16</sup>. On a referral from the preliminary proceedings committee or the professional conduct committee, the dentist may be invited to submit to medical examination, a report of which is made to the health committee<sup>17</sup>.

The dentist must be sent a notice of referral to the health committee at least 28 days<sup>18</sup> before the committee meets to determine the case<sup>19</sup>. Provision is made as to prior notice to be given of certain oral evidence; additionally, copies of certain evidence must be sent to members of the committee and medical assessors<sup>20</sup> before the meeting<sup>21</sup>. The president may postpone or cancel the inquiry<sup>22</sup>. The dentist is entitled to be present and represented or accompanied<sup>23</sup>, and the person or body who originally raised the question of the dentist's fitness may be present and represented by a solicitor or counsel<sup>24</sup>. After the presentation of evidence and the examination of any witnesses<sup>25</sup>, the proceedings may be adjourned to obtain further medical or other evidence; and the committee may postpone its finding as to the dentist's fitness to practise<sup>26</sup>.

The committee must consider whether the dentist's fitness to practise is seriously impaired by his physical or mental condition<sup>27</sup>, and if so, whether the imposition of conditions on his registration is sufficient, or suspension for not more than 12 months is necessary<sup>28</sup>.

The committee, which sits in private, may adjourn its proceedings or meetings at any time, and may conduct its deliberations in camera<sup>29</sup>. A shorthand record of the proceedings must be made, and, on application and payment of the proper charge, the dentist must be furnished with a copy of the shorthand notes of the proceedings which he was entitled to attend, whether he so attended or not<sup>30</sup>. Provision is made as to the method of voting on any question to be determined by the committee<sup>31</sup>; and if the votes are equal the question is deemed to have been resolved in favour of the dentist<sup>32</sup>.

1 As to the General Dental Council see PARA 389 et seq ante.

2 Dentists Act 1984 s 33(1), Sch 3 para 2(1)(b). As to the rules that have been made see the General Dental Council Health Committee (Procedure) Rules 1984, approved by the General Dental Council Health Committee (Procedure) Rules Order of Council 1984, SI 1984/2010; and the text to notes 10-32 infra. As to the health committee see PARA 481 ante. As to the legal assessor to the committee see PARA 463 ante.

The Council must in particular make rules for securing that notice that the proceedings are to be brought is given, at such time and in such manner as may be specified in the rules, to the person to whose registration the proceedings relate; that any party to the proceedings is entitled to be heard, if he so requires, by the committee in question; and for enabling any party to the proceedings to be represented by counsel or solicitor, or (if the rules so provide and the party so elects) by a person of such other description as may be specified in the rules: Dentists Act 1984 Sch 3 para 2(2)(a)-(c). Before making any such rules, the Council must consult such bodies of persons representing dentists as appear to it requisite to be consulted: Sch 3 para 2(3). The rules do not come into force until approved by order of the Privy Council contained in a statutory instrument, and the Privy Council may approve such rules either as submitted to it or subject to such modifications as appear to it requisite; but where the Privy Council proposes to approve any rules subject to modifications, it must notify to the General Dental Council the modifications it proposes to make and it must consider any observations of the Council on the modifications: Sch 3 para 2(4). As to the exercise by the Privy Council of its powers under the Dentists Act 1984 see PARA 388 ante. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

3 Ie otherwise than under the provisions of ibid Sch 3 para 3(2)-(4): see PARAS 458, 461 ante.

4 Ibid Sch 3 para 3(1).

5 Ibid Sch 3 para 6; and see the General Dental Council Health Committee (Procedure) Rules Order of Council 1984, SI 1984/2010, r 4, Sch 2.

6 Dentists Act 1984 Sch 3 para 4(1)(a). For the meaning of 'oath' see PARA 153 note 4 ante. As to oaths and affirmations see CIVIL PROCEDURE vol 11 (2009) PARA 1021 et seq.

7 For the meaning of 'party' see PARA 462 note 6 ante.

8 Dentists Act 1984 Sch 3 para 4(1)(b). As to witness summonses see CIVIL PROCEDURE vol 11 (2009) PARA 1004. The Supreme Court Act 1981 s 36 (see CIVIL PROCEDURE vol 11 (2009) PARA 1008) and the Judicature (Northern Ireland) Act 1978 s 67 (subpoena issued by High Court to run throughout United Kingdom) apply in relation to any such proceedings in England and Wales and in Northern Ireland respectively as they apply in relation to causes or matters in the High Court: Dentists Act 1984 Sch 3 para 4(2). As to the High Court of Justice in England and Wales see COURTS vol 10 (Reissue) PARA 602 et seq.

9 Ibid Sch 3 para 4(1). As to the production of documents in civil proceedings see CIVIL PROCEDURE vol 11 (2009) PARAS 538-583.

10 If the registrar receives information raising a question as to whether the fitness of a dentist to practise is seriously impaired by reason of his physical or mental condition, the registrar must submit that information to the president of the General Dental Council: General Dental Council Health Committee (Procedure) Rules Order of Council 1984, SI 1984/2010, r 6(1). If the information is supplied by a person acting in a private capacity, the president may require statutory declarations of the informant: r 6(2). As to the president of the General Dental Council see PARA 394 ante. For the meaning of 'the registrar' see PARA 396 note 1 ante. As to statutory declarations see the Statutory Declarations Act 1835 (as amended); and CIVIL PROCEDURE vol 11 (2009) PARA 1024.

11 As to the preliminary proceedings committee see PARA 457 ante. As to the power of the committee to refer cases to the health committee see PARA 458 ante.

12 General Dental Council Health Committee (Procedure) Rules Order of Council 1984, SI 1984/2010, r 5(1). As to the professional conduct committee see PARA 460 ante. As to the power of the committee to refer cases to the health committee see PARA 461 ante.

13 See ibid rr 5(2), 6(3). As to the nomination of medical assessors see r 4, Sch 2.

14 See ibid rr 6(4)(b), 7. Such invitation need not be issued if the Council has received reports from at least two medical practitioners of recent examinations: r 6(5). The dentist may make his own choice of practitioners: r 6(4)(c).

15 See ibid r 6(4), (6), (7).

16 See ibid rr 6(8), 8.

- 17 See *ibid* r 9.
- 18 *Ie* unless the dentist consents to a referral sooner than 28 days after notification: *ibid* r 10(4).
- 19 *Ibid* r 10. The notice must state, *inter alia*, the nature of the condition allegedly impairing his fitness: see r 10(1)(a). As to meetings and the summoning of members see r 3, Sch 1.
- 20 One or more medical assessors must attend such a meeting: see *ibid* r 12.
- 21 See *ibid* rr 11, 13. Subject to this, the committee may generally receive written evidence without its being given orally: r 34.
- 22 See *ibid* rr 14, 15. On a referral from the preliminary proceedings committee or the professional conduct committee, the president may cancel the inquiry only after consultation with the referring committee: see r 15(2), (3).
- 23 *Ie* by an officer of his defence society or other organisation, by counsel or solicitor or by any member of his family; and his medical adviser may also accompany him: *ibid* r 16(2).
- 24 See *ibid* r 16(6).
- 25 See *ibid* rr 16-19.
- 26 See *ibid* rr 20, 21. As to resumed hearings see rr 25, 27-31. In particular, the dentist may be required to submit to a medical examination before such resumed hearing: r 25(3). The fact that the membership of the committee present at the resumed proceedings is not the same as that present at the adjourned proceedings does not invalidate the resumed proceedings: r 31.
- 27 See *ibid* r 22(1)-(3). If, on a referral from the preliminary proceedings committee or the professional conduct committee, the health committee judges that his fitness is not seriously impaired, it must certify that opinion to the referring committee and notify the dentist: r 26. As to the consideration of such cases by the referring committees see *PARAS* 458, 461 *ante*.
- 28 See *ibid* rr 22(4), (5), 23(1). If the committee decides on suspension, it must also consider whether it should be with immediate effect: r 23(2); and see *PARA* 482 text to notes 21-24 *ante*.
- 29 See *ibid* rr 16(1), 32, 33.
- 30 *Ibid* r 37.
- 31 See *ibid* r 35.
- 32 *Ibid* r 35(3).

## **UPDATE**

### **481-485 The Health Committee**

Health committee replaced: Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011; see *PARA* 395.

### **485 Procedure before the health committee**

TEXT AND NOTES--1984 Act s 33, Sch 3 replaced by s 33 (treatment of persons suspended or whose registration is subject to conditions), s 33A (recoding of suspension and conditional registration), s 33B (Council's power to require disclosure of information), s 33C (notification and disclosure by the Council), Sch 3 (proceedings before investigating committee, interim orders committee and practice committees): SI 2005/2011. See further the General Dental Council have made the General Dental Council (Fitness to Practise) Rules 2006 (approved by General Dental Council (Fitness to Practise) Rules Order of Council 2006, SI 2006/1663 (as amended: see *PARA* 456)). General Dental Council Health Committee (Procedure) Rules Order of Council 1984, SI

1984/2010, lapsed (see SI 2005/2011 art 50, Sch 7 for transitional provision). Further transitional provision is made by the Dentists Act 1984 (Amendment) Order 2005 Transitional Provisions Order of Council 2006, SI 2006/1671. As to the committees of the General Dental Council see PARA 395.

NOTE 8--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

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## **(7) DENTAL AUXILIARIES**

### **(i) Permitted Dental Work**

#### **486. Classes of dental auxiliaries.**

The General Dental Council<sup>1</sup> may by statutory instrument<sup>2</sup> make regulations<sup>3</sup> for the establishment of classes of dental auxiliaries to undertake dental work of kinds prescribed by the regulations, being dental work amounting to the practice of dentistry<sup>4</sup>. The regulations may in particular make provision as respects any class so established for prescribing the qualifications for becoming a member of that class<sup>5</sup>, for prescribing the dental work which a member of that class may undertake and the conditions, if any, under which he may undertake it<sup>6</sup>, and for the establishment of a roll or record for that class<sup>7</sup>. The regulations must be so framed as to secure that provisions in the regulations as to the arrangements to be made for training persons to become members of a class of dental auxiliaries do not materially impair the facilities for the training of dental students<sup>8</sup>. The regulations may make provision for the appointment of persons to visit places providing courses of instruction approved by the Council or to attend examinations so approved by it, and for the remuneration of such persons<sup>9</sup>. The Council may not make any regulations unless a draft of those regulations, which has been approved by the Privy Council<sup>10</sup>, has been laid before and approved by a resolution of each House of Parliament<sup>11</sup>.

If, after regulations have been made establishing a class of dental auxiliaries, the General Dental Council proposes to make further regulations varying the provisions relating to that class or abolishing that class, the further regulations must be so framed as to secure that a person belonging to that class at the time when the further regulations are made is still permitted to do any dental work of a kind which he was previously permitted to do<sup>12</sup>.

1 As to the General Dental Council see PARA 389 et seq ante.

2 The Statutory Instruments Act 1946 applies to a statutory instrument containing such regulations as if the regulations had been made by a Minister of the Crown: Dentists Act 1984 s 52(1). As to statutory instruments and the Statutory Instruments Act 1946 see STATUTES vol 44(1) (Reissue) PARA 1501 et seq.

3 The power to make such regulations is subject to the provisions of the Dentists Act 1984 ss 45 (see infra; and PARA 487 post) and of s 46 (see PARAS 488-489 post).

4 Ibid s 45(1). For the meaning of 'the practice of dentistry' see PARA 403 ante. As to the regulations that have been made see the Dental Auxiliaries Regulations 1986, SI 1986/887 (as amended); and PARAS 490-492, 494 post. Dental auxiliaries are among the classes of persons who may be granted rights to prescribe prescription only medicines: see the Medicines Act s 58(1)(e) (as amended), s 58(1A)(c) (as added); and MEDICAL PROFESSIONS.

5 Dentists Act 1984 s 45(2)(a); and see PARA 492 post.

6 Ibid s 45(2)(b); and see PARAS 490-491 post.

7 Ibid s 45(2)(c); and see PARA 494 post. Where a roll or record is established for a class of dental auxiliaries, the regulations may, in particular, provide for: (1) prescribing a fee to be charged when a person's name is entered in the roll or record (s 45(7)(a)); (2) prescribing a fee to be charged in respect of the retention of a person's name in the roll or record in any year subsequent to the year in which that person's name was first recorded (s 45(7)(b)); and (3) authorising the person in charge of the roll or record to erase from the roll or

record the name of a person who, after such notices and warnings as may be prescribed by the regulations, fails to pay a fee prescribed under head (2) supra (s 45(7)(c)).

8 Ibid s 45(3). As to the training of dental students see PARAS 420-426 ante.

9 Ibid s 45(4). As to such visitors see PARA 492 post.

10 As to the exercise by the Privy Council of its powers under the Dentists Act 1984 see PARA 388 ante. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

11 Ibid s 45(9). As to the laying of documents before Parliament see PARLIAMENT vol 34 (Reissue) PARA 941.

12 Ibid s 45(5). The Council need not comply with this provision in framing the regulations if it is satisfied that reasonable steps have been taken to give each of the persons belonging to the class in question particulars of the proposals with an opportunity of raising objections and none of those persons has maintained any objection to those proposals: s 45(6).

## **UPDATE**

### **486-498 Dental Auxiliaries**

Dentists Act 1984 Pt 5 (ss 45-48) revoked by the Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011. Dental Auxiliaries Regulations 1986, SI 1986/887, lapsed (see SI 2005/2011 art 50, Sch 7 for transitional provision). Further transitional provision is made by the Dentists Act 1984 (Amendment) Order 2005 Transitional Provisions Order of Council 2006, SI 2006/1671. The regulation of professions complementary to dentistry now corresponds to the regulation of dentists: see the 1984 Act Pt 3A (ss 36A-36Z2) (added by SI 2005/2011); and PARAS 498A-498C.

### **486 Classes of dental auxiliaries**

NOTE 2--Any power to make regulations under the 1984 Act (1) may be exercised (a) so as to make different provision with respect to different cases or different classes of case or different provision in respect of the same case or class of case for different purposes of the 1984 Act; and (b) either in relation to all cases to which the power extends or in relation to all those cases subject to specified exceptions; and (2) includes power to make any incidental, consequential, saving, transitional, transitory or supplementary provision which the General Dental Council consider necessary or expedient: s 52(1A), (1B) (added by SI 2005/2011).

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#### **487. Privileges of dental auxiliaries.**

The prohibition on the practice of dentistry<sup>1</sup> by unqualified persons<sup>2</sup> does not prevent a person doing anything which he is permitted to do by regulations establishing a class of dental auxiliaries<sup>3</sup>, and the prohibition on a person holding himself out as practising or as being prepared to practise dentistry<sup>4</sup> does not apply to a person for the time being permitted by the regulations to practise dentistry of any particular kind<sup>5</sup>. In addition, dental work is not treated as amounting to the practice of dentistry for the purpose of those prohibitions if it is undertaken under the direct personal supervision of a registered dentist<sup>6</sup> by a person as part of a course of instruction he is following, or as part of examinations he must pass, in order to qualify for membership of a class of dental auxiliaries<sup>7</sup>.

1 For the meaning of 'the practice of dentistry' see PARA 403 ante.

2 Ie under the Dentists Act 1984 s 38: see PARA 404 ante.

3 Ie regulations made under ibid s 45: see PARA 486 ante.

4 Ie under ibid s 38: see PARA 404 ante.

5 Ibid s 45(8).

6 For the meaning of 'registered dentist' see PARA 417 note 6 ante.

7 Dentists Act 1984 s 37(2)(b). Subject to this, a person who undertakes dental work in the course of his studies (whether or not under the supervision of a registered dentist) is treated as practising dentistry if he would have been so treated if he had undertaken that work in the course of earning his livelihood: s 37(2).

#### **UPDATE**

#### **486-498 Dental Auxiliaries**

Dentists Act 1984 Pt 5 (ss 45-48) revoked by the Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011. Dental Auxiliaries Regulations 1986, SI 1986/887, lapsed (see SI 2005/2011 art 50, Sch 7 for transitional provision). Further transitional provision is made by the Dentists Act 1984 (Amendment) Order 2005 Transitional Provisions Order of Council 2006, SI 2006/1671. The regulation of professions complementary to dentistry now corresponds to the regulation of dentists: see the 1984 Act Pt 3A (ss 36A-36Z2) (added by SI 2005/2011); and PARAS 498A-498C.

#### **487 Privileges of dental auxiliaries**

TEXT AND NOTES 6-8--1984 Act s 37(2) now s 37(2), (2A), (2B): see PARA 403.

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#### **488. Restrictions on employment of dental auxiliaries.**

Regulations<sup>1</sup> may not permit a dental auxiliary of any class to undertake the extraction of teeth other than deciduous teeth<sup>2</sup> or, except in the course of the provision of national health services<sup>3</sup>, the filling of teeth or extraction of deciduous teeth<sup>4</sup>, or the fitting, insertion or fixing of dentures or artificial teeth<sup>5</sup>.

1    le made under the Dentists Act 1984 s 45: see PARA 486 ante.

2    Ibid s 46(1)(a).

3    For the meaning of 'the provision of national health services' see PARA 405 note 9 ante.

4    Dentists Act 1984 s 46(1)(b). It may be provided by Order in Council that this restriction is to cease to have effect in relation to any class of dental auxiliaries specified in the order: s 46(4)(a). Such an order must not be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament: s 46(5). As to Orders in Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 907. As to the laying of documents before Parliament see PARLIAMENT vol 34 (Reissue) PARA 941. Section 46(1)(b) no longer has effect in relation to dental therapists: Dentists Act 1984 (Dental Auxiliaries) Order 2002, SI 2002/1399, art 2. As to dental therapists see PARA 491 post.

5    Dentists Act 1984 s 46(1)(c).

#### **UPDATE**

#### **486-498 Dental Auxiliaries**

Dentists Act 1984 Pt 5 (ss 45-48) revoked by the Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011. Dental Auxiliaries Regulations 1986, SI 1986/887, lapsed (see SI 2005/2011 art 50, Sch 7 for transitional provision). Further transitional provision is made by the Dentists Act 1984 (Amendment) Order 2005 Transitional Provisions Order of Council 2006, SI 2006/1671. The regulation of professions complementary to dentistry now corresponds to the regulation of dentists: see the 1984 Act Pt 3A (ss 36A-36Z2) (added by SI 2005/2011); and PARAS 498A-498C.



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#### **489. Control by registered dentists.**

Regulations<sup>1</sup> must be so framed as to ensure that dental work amounting to the practice of dentistry<sup>2</sup> carried out by a dental auxiliary is carried out under the direction of a registered dentist<sup>3</sup>; and it is the duty of the General Dental Council<sup>4</sup> to secure, either by provision in the regulations or otherwise, that, so long as it thinks it advisable, such work is carried out only after the registered dentist has examined the patient and has indicated to the dental auxiliary the course of treatment to be provided for the patient<sup>5</sup>.

1    le made under the Dentists Act 1984 s 45: see PARA 486 ante.

2    For the meaning of 'the practice of dentistry' see PARA 403 ante.

3    For the meaning of 'registered dentist' see PARA 417 note 6 ante.

4    As to the General Dental Council see PARA 389 et seq ante.

5    Dentists Act 1984 s 46(2) (amended by the Dentists Act 1984 (Dental Auxiliaries) Amendment Order 1991, SI 1991/1705, art 2). See the Dental Auxiliaries Regulations 1986, SI 1986/887, reg 23(2), (3) (amended by SI 1991/1706; SI 2002/1671); the Dental Auxiliaries Regulations 1986, SI 1986/887, reg 27(1), (2) (amended by SI 2002/1671); and PARAS 490, 491 post.

#### **UPDATE**

##### **486-498 Dental Auxiliaries**

Dentists Act 1984 Pt 5 (ss 45-48) revoked by the Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011. Dental Auxiliaries Regulations 1986, SI 1986/887, lapsed (see SI 2005/2011 art 50, Sch 7 for transitional provision). Further transitional provision is made by the Dentists Act 1984 (Amendment) Order 2005 Transitional Provisions Order of Council 2006, SI 2006/1671. The regulation of professions complementary to dentistry now corresponds to the regulation of dentists: see the 1984 Act Pt 3A (ss 36A-36Z2) (added by SI 2005/2011); and PARAS 498A-498C.

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#### **490. Dental hygienists.**

A class of dental auxiliaries known as dental hygienists is established<sup>1</sup>. A dental hygienist may carry out the following dental work, amounting to the practice of dentistry<sup>2</sup>: cleaning and polishing teeth<sup>3</sup>; scaling teeth<sup>4</sup>; applying to teeth such prophylactic materials as the General Dental Council<sup>5</sup> from time to time determines<sup>6</sup>; removing excess cement by instruments which may include rotary instruments<sup>7</sup>; and taking impressions<sup>8</sup>. However, a dental hygienist may not carry out any such dental work except under the direction of a registered dentist<sup>9</sup> and after the registered dentist has examined the patient and has indicated in writing<sup>10</sup> to the dental hygienist the course of treatment to be provided for the patient<sup>11</sup>. A dental hygienist may administer local infiltration anaesthesia or inferior dental nerve block anaesthesia only under the direct personal supervision of a registered dentist who is on the premises at which the hygienist is carrying out such work at the time at which it is being carried out<sup>12</sup>. A dental hygienist may place a temporary dressing in a tooth or replace a crown with a temporary cement, under the direction of a registered dentist, where a filling has fallen out or a crown been dislodged during the course of dental work being carried out by the dental hygienist under these provisions<sup>13</sup>, provided that the dental hygienist advises the patient to make an appointment with his dentist as soon as is reasonably practical after the dental work has taken place<sup>14</sup>, and informs the patient's dentist as soon as reasonably practical after it has taken place<sup>15</sup>.

1 Dental Auxiliaries Regulations 1986, SI 1986/887, reg 21. A person enrolled in the roll of dental hygienists is authorised to use the title 'dental hygienist': reg 22. See also the Dentists Act 1984 s 47(1); and PARA 493 post. As to the training and qualifications of dental hygienists see PARA 492 post. As to classes of dental auxiliaries and matters relating to them see PARAS 486-489 ante. As to the roll of dental hygienists see PARA 494 post.

2 For the meaning of 'the practice of dentistry' see PARA 403 ante.

3 Dental Auxiliaries Regulations 1986, SI 1986/887, reg 23(1)(a).

4 Ibid reg 23(1)(b). 'Scaling teeth' means the removal of deposits, accretions and stains from parts of the teeth which are exposed or directly below the free margins of the gums, including the application of appropriate medicaments: reg 23(1)(b).

5 As to the General Dental Council see PARA 389 et seq ante.

6 Dental Auxiliaries Regulations 1986, SI 1986/887, reg 23(1)(c).

7 Ibid reg 23(1)(d) (reg 23(1)(d), (e) added by SI 2002/1671).

8 Dental Auxiliaries Regulations 1986, SI 1986/887, reg 23(1)(e) (as added: see note 7 supra).

9 For the meaning of 'registered dentist' see PARA 417 note 6 ante.

10 For the meaning of 'writing' see PARA 20 note 22 ante.

11 Dental Auxiliaries Regulations 1986, SI 1986/887, reg 23(2) (reg 23(2), (3) amended by SI 1991/1706).

12 Dental Auxiliaries Regulations 1986, SI 1986/887, reg 23(3) (as amended (see note 11 supra); and further amended by SI 2002/1671). A dental hygienist may carry out any of the dental work described in the Dental Auxiliaries Regulations 1986, SI 1986/887, reg 23(1), (4) (see the text to notes 1-8 supra, 13-15 infra) under local infiltration anaesthesia or inferior dental nerve block anaesthesia administered by the dental hygienist or any local or regional block anaesthesia administered by a registered dentist: reg 23(5) (reg 23(5)-(7) added by

SI 2002/1671). A dental hygienist may administer inferior dental nerve block anaesthesia only under the direct personal supervision of a registered dentist who is on the premises at which the hygienist is carrying out such work at the time at which it is being carried out: Dental Auxiliaries Regulations 1986, SI 1986/887, reg 23(6) (as so added). A dental hygienist may carry out any such dental work on patients under conscious sedation, provided that a registered dentist is in the room in which the work is being carried out for the duration of the work: reg 23(7) (as so added).

13 Ibid reg 23(4) (reg 23(4) added by SI 1999/3460; and amended by SI 2002/1671).

14 Dental Auxiliaries Regulations 1986, SI 1986/887, reg 23(4)(a) (as added: see note 13 supra).

15 Ibid reg 23(4)(b) (as added: see note 13 supra).

## **UPDATE**

### **486-498 Dental Auxiliaries**

Dentists Act 1984 Pt 5 (ss 45-48) revoked by the Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011. Dental Auxiliaries Regulations 1986, SI 1986/887, lapsed (see SI 2005/2011 art 50, Sch 7 for transitional provision). Further transitional provision is made by the Dentists Act 1984 (Amendment) Order 2005 Transitional Provisions Order of Council 2006, SI 2006/1671. The regulation of professions complementary to dentistry now corresponds to the regulation of dentists: see the 1984 Act Pt 3A (ss 36A-36Z2) (added by SI 2005/2011); and PARAS 498A-498C.

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#### **491. Dental therapists.**

A class of dental auxiliaries known as dental therapists is established<sup>1</sup>. A dental therapist may carry out the following dental work amounting to the practice of dentistry<sup>2</sup>: extracting deciduous teeth<sup>3</sup>; undertaking simple dental fillings<sup>4</sup>; cleaning and polishing teeth<sup>5</sup>; scaling teeth<sup>6</sup>; applying to teeth such prophylactic materials as the General Dental Council<sup>7</sup> may from time to time determine<sup>8</sup>; removal of excess cement by instruments which may include rotary instruments<sup>9</sup>; taking of impressions<sup>10</sup>; restoration of primary teeth by pulp therapy<sup>11</sup>; placing of pre-formed crowns for the purpose of restoring primary teeth<sup>12</sup>; and giving advice<sup>13</sup> such as may be necessary to the proper performance of the dental work he is carrying out<sup>14</sup>. A dental therapist may not carry out any such dental work except under the direction of a registered dentist<sup>15</sup> and after the registered dentist has examined the patient and has indicated in writing<sup>16</sup> to the dental therapist the specific treatment to be provided for the patient by the therapist<sup>17</sup>. A dental therapist may place a temporary dressing in a tooth or replace a crown with a temporary cement, under the direction of a registered dentist, where a filling has fallen out or a crown been dislodged during the course of dental work being carried out by the dental therapist under these provisions, provided that the dental therapist<sup>18</sup> advises the patient to make an appointment with his dentist as soon as is reasonably practical after the dental work has taken place<sup>19</sup>, and informs the patient's dentist as soon as is reasonably practical after it has taken place<sup>20</sup>.

1 Dental Auxiliaries Regulations 1986, SI 1986/887, reg 25. A person enrolled in the roll of dental therapists is authorised to use the title 'dental therapist': reg 26. See also the Dentists Act 1984 s 47(1); and PARA 493 post. As to classes of dental auxiliaries and matters relating to them see PARAS 486-489 ante. As to the roll of dental therapists see PARA 494 post. As to the training and qualifications of dental therapists see PARA 492 post.

2 For the meaning of 'the practice of dentistry' see PARA 403 ante.

3 Dental Auxiliaries Regulations 1986, SI 1986/887, reg 27(1)(a).

4 Ibid reg 27(1)(b).

5 Ibid reg 27(1)(c).

6 Ibid reg 27(1)(d). For the meaning of 'scaling teeth' see PARA 490 note 4 ante.

7 As to the General Dental Council see PARA 389 et seq ante.

8 Dental Auxiliaries Regulations 1986, SI 1986/887, reg 27(1)(e).

9 Ibid reg 27(1)(ea) (reg 27(1)(ea)-(ed) added by SI 2002/1671).

10 Dental Auxiliaries Regulations 1986, SI 1986/887, reg 27(1)(eb) (as added: see note 9 supra).

11 Ibid reg 27(1)(ec) (as added: see note 9 supra).

12 Ibid reg 27(1)(ed) (as added: see note 9 supra).

13 Ie within the meaning of the Dentists Act 1984 s 37(1): see PARA 403 ante.

14 Dental Auxiliaries Regulations 1986, SI 1986/887, reg 27(1)(f).

15 Ibid reg 27(2)(b). For the meaning of 'registered dentist' see PARA 417 note 6 ante.

16 For the meaning of 'writing' see PARA 20 note 22 ante.

17 Dental Auxiliaries Regulations 1986, SI 1986/887, reg 27(2)(c). A dental therapist may carry out any of the dental work in reg 27(1), (3) (see the text to notes 1-14 supra, 18-20 infra) under local infiltration anaesthesia or inferior dental nerve block anaesthesia administered by the dental therapist or any local or regional block anaesthesia administered by a registered dentist: reg 27(4) (reg 27(4)-(6) added by SI 2002/1671). A dental therapist may administer inferior dental nerve block anaesthesia only under the direct personal supervision of a registered dentist who is on the premises at which the therapist is carrying out such work at the time at which it is being carried out: Dental Auxiliaries Regulations 1986, SI 1986/887, reg 27(5) (as so added). A dental therapist may carry out any such dental work on patients under conscious sedation, provided that a registered dentist is in the room in which the work is carried out for the duration of the work: reg 27(6) (as so added).

18 Ibid reg 27(3) (reg 27(3) added by SI 1999/3460; and amended by SI 2002/1671).

19 Dental Auxiliaries Regulations 1986, SI 1986/887, reg 27(3)(a) (as added: see note 18 supra).

20 Ibid reg 27(3)(b) (as added: see note 18 supra).

## **UPDATE**

### **486-498 Dental Auxiliaries**

Dentists Act 1984 Pt 5 (ss 45-48) revoked by the Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011. Dental Auxiliaries Regulations 1986, SI 1986/887, lapsed (see SI 2005/2011 art 50, Sch 7 for transitional provision). Further transitional provision is made by the Dentists Act 1984 (Amendment) Order 2005 Transitional Provisions Order of Council 2006, SI 2006/1671. The regulation of professions complementary to dentistry now corresponds to the regulation of dentists: see the 1984 Act Pt 3A (ss 36A-36Z2) (added by SI 2005/2011); and PARAS 498A-498C.

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## **(ii) Qualifications, Titles and Enrolment**

### **492. Qualifications.**

The General Dental Council<sup>1</sup> may approve courses of instruction and examinations held by dental authorities<sup>2</sup> or such other bodies as the Council thinks fit for the purpose of training and examining dental auxiliaries<sup>3</sup>, and the arrangements for such training and examinations<sup>4</sup>. A certificate granted by a dental authority or other body providing approved examinations for a particular class of dental auxiliaries which purports to attest the fitness of the holder to practise dentistry to the extent permitted for that class<sup>5</sup> confers on the holder the right to be enrolled in the appropriate roll of that class<sup>6</sup>.

The Council must from time to time appoint a visitor or visitors to visit places where instruction is given and examinations<sup>7</sup>, who must, in relation to each of the places which he visits, report to the Council: on the sufficiency of the instruction given<sup>8</sup>; on the examinations held<sup>9</sup>; whether the arrangements materially impair the facilities for the training of dental students<sup>10</sup>; and on any other matters which may be specified by the Council either generally or in any particular case<sup>11</sup>. The report of a visitor or visitors must be considered by the Council before any decision is taken to withdraw the Council's approval of training or examination arrangements<sup>12</sup>.

1 As to the General Dental Council see PARA 389 et seq ante.

2 For the meaning of 'dental authority' see PARA 421 note 3 ante.

3 As to classes of dental auxiliaries and matters relating to them see PARAS 486-489 ante.

4 See the Dental Auxiliaries Regulations 1986, SI 1986/887, reg 7(1), (2). The Council must not approve training arrangements unless satisfied that they do not materially impair the facilities for training dental students: reg 7(1). The Council may withdraw its approval if it subsequently appears that the arrangements do materially impair those facilities or that courses of instruction or examinations are defective: reg 7(4). As to the training of dental students see PARAS 420-426 ante. Courses of instruction must not be approved unless they extend over a period of at least nine months in the case of dental hygienists (reg 24), and a period of at least two academic years in the case of dental therapists (reg 28).

5 For the meaning of 'the practice of dentistry' see PARA 403 ante. As to the work permitted to be done by dental hygienists and dental therapists see PARAS 490-491 ante.

6 Dental Auxiliaries Regulations 1986, SI 1986/887, reg 7(3). A certificate granted by the dental authority or other body concerned after the date on which approval was withdrawn by the Council (see note 4 supra) is not a certificate for these purposes and does not confer that right: reg 7(4). As to the rolls see PARA 494 post.

7 Ibid reg 8(1). A visitor must not interfere with the giving of any instruction or with examinations: reg 8(2). A visitor is entitled to be paid fees and expenses as if he were a visitor appointed in accordance with the Dentists Act 1984 ss 9, 10 (see PARAS 401, 424 ante): Dental Auxiliaries Regulations 1986, SI 1986/887, reg 8(3).

8 Ibid reg 8(2)(a).

9 Ibid reg 8(2)(b).

10 Ibid reg 8(2)(c).

11 Ibid reg 8(2)(d).

12 Ie under ibid reg 7(4) (see note 4 supra): reg 8(4).

## **UPDATE**

### **486-498 Dental Auxiliaries**

Dentists Act 1984 Pt 5 (ss 45-48) revoked by the Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011. Dental Auxiliaries Regulations 1986, SI 1986/887, lapsed (see SI 2005/2011 art 50, Sch 7 for transitional provision). Further transitional provision is made by the Dentists Act 1984 (Amendment) Order 2005 Transitional Provisions Order of Council 2006, SI 2006/1671. The regulation of professions complementary to dentistry now corresponds to the regulation of dentists: see the 1984 Act Pt 3A (ss 36A-36Z2) (added by SI 2005/2011); and PARAS 498A-498C.

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### **493. Use of titles.**

Regulations made by the General Dental Council<sup>1</sup> may authorise members of a class of dental auxiliaries to use a title indicating their membership of that class<sup>2</sup>. A person who wilfully uses that title when he is not so authorised to use it is liable on summary conviction to a fine<sup>3</sup>.

If a member of a class of dental auxiliaries uses any title or description reasonably calculated to suggest that he possesses any status or qualification connected with dentistry other than a status or qualification which he in fact possesses and which is indicated by particulars entered in the roll or record of the class<sup>4</sup>, he is liable on summary conviction to a fine<sup>5</sup>.

1     Ie under the Dentists Act 1984 s 45: see PARA 486 ante. As to the General Dental Council see PARA 389 et seq ante.

2     Ibid s 47(1). As to the use of the titles 'dental hygienist' and 'dental therapist' see PARAS 490 note 1, 491 note 1 ante.

3     Ibid s 47(1). The penalty is a fine not exceeding level 3 on the standard scale: see s 47(1). As to the standard scale see PARA 185 note 11 ante.

4     As to such rolls and records see PARA 494 post.

5     Dentists Act 1984 s 47(2). The penalty is a fine not exceeding level 3 on the standard scale: see s 47(2).

Where in the case of any class of dental auxiliaries regulations do not provide for a roll or record of the class in which particulars of status and qualifications may be entered, s 47(2) applies as if the words 'and which is indicated by particulars entered in the roll or record of the class in respect of him' were omitted: s 47(3).

## **UPDATE**

### **486-498 Dental Auxiliaries**

Dentists Act 1984 Pt 5 (ss 45-48) revoked by the Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011. Dental Auxiliaries Regulations 1986, SI 1986/887, lapsed (see SI 2005/2011 art 50, Sch 7 for transitional provision). Further transitional provision is made by the Dentists Act 1984 (Amendment) Order 2005 Transitional Provisions Order of Council 2006, SI 2006/1671. The regulation of professions complementary to dentistry now corresponds to the regulation of dentists: see the 1984 Act Pt 3A (ss 36A-36Z2) (added by SI 2005/2011); and PARAS 498A-498C.



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#### **494. Rolls and records.**

The registrar<sup>1</sup> must keep a separate roll for each class of dental auxiliaries established by the General Dental Council<sup>2</sup> and must enter in such roll, in respect of every person entitled to have his name entered therein, his name and address, the date on which the entry is made and particulars of the certificate by virtue of which the entry is made<sup>3</sup>. The registrar may also enter in the roll, in respect of any person entitled to have his name entered therein, details of any additional diplomas<sup>4</sup> connected with dentistry held by that person, which have been approved by the Council for that purpose<sup>5</sup>.

A person is entitled to be so enrolled if he has paid the appropriate fee<sup>6</sup> and has satisfied the registrar that he is of good character and holds a certificate conferring a right to be enrolled<sup>7</sup>, and submits an application in the form provided by the Council for that purpose<sup>8</sup>. Except where a name has been erased from the roll<sup>9</sup>, the registrar must retain in the appropriate roll of dental auxiliaries the name of any enrolled person in respect of whom he has received before 31 December in every year payment of the appropriate fee<sup>10</sup> together with sufficient information to identify the person in respect of whom the payment is made<sup>11</sup>. Where the registrar on 31 December in any year has not received from any person whose name is entered in a roll a fee for the retention of that person's name in that roll for the ensuing year, he must erase that name from the roll<sup>12</sup>. The registrar may restore to a roll of dental auxiliaries a name erased from that roll, other than a name erased for misconduct<sup>13</sup>, upon receipt of an application in the form provided by the Council for the purpose accompanied by the fee for restoration<sup>14</sup>, the fee for retention in the roll<sup>15</sup> and, where the name of the applicant has not been entered in the roll in any of the five years immediately preceding the date of the application, a certificate of identity and good character signed by a justice of the peace<sup>16</sup>, a minister of religion, a registered medical practitioner<sup>17</sup> or a registered dentist<sup>18</sup>.

1 For the meaning of 'the registrar' see PARA 396 note 1 ante.

2 As to the establishment of such classes see PARA 486 ante. As to the General Dental Council see PARA 389 et seq ante.

3 Dental Auxiliaries Regulations 1986, SI 1986/887, reg 2. The roll for dental hygienists is called the roll of dental hygienists (reg 21) and that for dental therapists the roll of dental therapists (reg 25). As to dental hygienists and dental therapists see PARAS 490-491 ante.

4 For the meaning of 'diploma' see PARA 424 note 3 ante.

5 Dental Auxiliaries Regulations 1986, SI 1986/887, reg 2 (amended by SI 1999/3460).

6 The fee for the first enrolment of a name is £10: Dental Auxiliaries Regulations 1986, SI 1986/887, reg 6 (amended by SI 1996/2988).

7 I.e. a certificate as specified in the Dental Auxiliaries Regulations 1986, SI 1986/887, reg 7(3): see PARA 492 ante. Where the Council is satisfied that a person who does not hold such a certificate has taken such courses of study and passed such examinations as furnish sufficient evidence of that person's possessing the requisite knowledge and skill to practise dentistry to the extent permitted by the regulations for a class of dental auxiliaries and that he holds a certificate attesting that he has taken such courses of study and possesses the requisite knowledge and skill to practise dentistry to the extent permitted by the regulations for that class and that he holds a certificate attesting that he has taken such courses of study and passed such examinations, the Council may direct that he is entitled to have his name entered in the roll for that class: reg 3(2). For the meaning of 'the practice of dentistry' see PARA 403 ante.

8 Ibid reg 3(1).

9 As to erasure from the roll see PARA 497 post.

10 The fee for the retention of a name in the roll is £68: Dental Auxiliaries Regulations 1986, SI 1986/887, reg 6 (amended by SI 2003/3105).

11 Dental Auxiliaries Regulations 1986, SI 1986/887, reg 4(1) (reg 4(1) amended, and reg 4(2) substituted, by SI 1999/3460). Not later than 1 December in every year, the registrar must send to every person whose name is entered in a roll of dental auxiliaries notice of the fee payable for retention of name on that roll and a warning that failure to pay the fee will result in erasure, but failure to receive such a notice does not itself constitute a ground for retention or restoration of a name: Dental Auxiliaries Regulations 1986, SI 1986/887, reg 4(2) (as so substituted).

12 Ibid reg 4(3). This provision does not apply, except by leave of the chairman of the dental auxiliaries committee (see PARA 495 post), to any person who is the subject of a submission by the registrar to the chairman in accordance with the provisions of reg 9(1) (see PARA 496 post): reg 4(4).

13 In accordance with the provisions of ibid Pt IV (regs 9-17): see PARAS 496-497 post.

14 Ibid reg 5(a). The fee is £10: reg 6 (amended by SI 1999/3460).

15 Dental Auxiliaries Regulations 1986, SI 1986/887, reg 5(b). As to such fee see note 10 supra.

16 As to justices of the peace see MAGISTRATES vol 29(2) (Reissue) PARA 501 et seq.

17 For the meaning of 'registered medical practitioner' see PARA 4 ante. As from a day to be appointed, this provision is amended so as to provide that for this purpose a registered medical practitioner need not hold a licence to practise: see the Dental Auxiliaries Regulations 1986, SI 1986/887, reg 5(c) (prospectively amended by SI 2002/3135). At the date at which this volume states the law no such day had been appointed. For the meaning of 'licence to practise' see PARA 130 note 3 ante.

18 Dental Auxiliaries Regulations 1986, SI 1986/887, reg 5(c). As to the prospective amendment of this provision see note 17 supra. For the meaning of 'registered dentist' see PARA 417 note 6 ante.

## **UPDATE**

### **486-498 Dental Auxiliaries**

Dentists Act 1984 Pt 5 (ss 45-48) revoked by the Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011. Dental Auxiliaries Regulations 1986, SI 1986/887, lapsed (see SI 2005/2011 art 50, Sch 7 for transitional provision). Further transitional provision is made by the Dentists Act 1984 (Amendment) Order 2005 Transitional Provisions Order of Council 2006, SI 2006/1671. The regulation of professions complementary to dentistry now corresponds to the regulation of dentists: see the 1984 Act Pt 3A (ss 36A-36Z2) (added by SI 2005/2011); and PARAS 498A-498C.

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### **(iii) The Dental Auxiliaries Committee**

#### **495. Establishment and functions of the committee.**

There is a committee of the General Dental Council<sup>1</sup> known as the dental auxiliaries committee<sup>2</sup>. When exercising its fitness to practise functions<sup>3</sup>, the membership of the committee consists of five appropriate persons<sup>4</sup>, of whom at least one must be a registered dentist<sup>5</sup>, at least one a lay person<sup>6</sup>, and at least one a dental auxiliary<sup>7</sup>. Except when exercising its fitness to practise functions, the membership of the committee consists of:

- 668 (1) until the expiry of 9 April 2006, those persons who were members of the committee immediately before 10 April 2003<sup>8</sup> and two other persons chosen by the Council, neither of whom must be a registered dentist or a dental auxiliary, although both must have knowledge and experience of activities carried on in connection with assisting in the practice of dentistry<sup>9</sup>;
- 669 (2) on and after 10 April 2006, the president of the Council<sup>10</sup>; eight members of the Council chosen by the Council from amongst its members<sup>11</sup>; seven other persons, chosen by the Council, not falling within either of the previous categories, at least two of whom must be dental auxiliaries<sup>12</sup>; and two other persons chosen by the Council, neither of whom must be a registered dentist or a dental auxiliary, although both must have knowledge and experience of activities carried on in connection with assisting in the practice of dentistry<sup>13</sup>.

In the event of a vacancy occurring, the Council must either appoint a replacement or determine that the committee do so<sup>14</sup>.

The Council must refer to the committee all matters connected with ancillary dental services<sup>15</sup>. Regulations made by the Council<sup>16</sup> may provide for entrusting to the committee the duty of enforcing standards of conduct among dental auxiliaries and for enabling the committee to withdraw from a person not conforming to those standards the right to undertake dental work as a dental auxiliary of all or any classes<sup>17</sup>.

1 As to the General Dental Council see PARA 389 et seq ante; and as to its committees see PARA 395 ante.

2 Dentists Act 1984 s 2(1); General Dental Council (Constitution of Committees) Order of Council 2003, SI 2003/1081, art 2(1)(b).

3 For the meaning of 'fitness to practise function' see PARA 444 note 6 ante.

4 For the meaning of 'appropriate person' see PARA 444 note 3 ante.

5 For the meaning of 'registered dentist' see PARA 417 note 6 ante.

6 For the meaning of 'lay person' see PARA 444 note 5 ante.

7 General Dental Council (Constitution of Committees) Order of Council 2003, SI 2003/1081, art 4(1). 'Dental auxiliary' means a person who is a member of a class of dental auxiliaries: art 1(2). As to the establishment of such classes see PARA 486 ante; and as to the classes established see PARAS 490-491 ante.

8 Ibid art 4(2)(a).

- 9 Ibid art 4(2)(b). For the meaning of 'the practice of dentistry' see PARA 403 ante.
- 10 Ibid art 4(3)(a). As to the president of the Council see PARA 394 ante.
- 11 Ibid art 4(3)(b).
- 12 Ibid art 4(3)(c).
- 13 Ibid art 4(3)(d).
- 14 Ibid art 4(4).
- 15 Dentists Act 1984 s 48(1).
- 16 Ie under ibid s 45: see PARA 486 ante.
- 17 Ibid s 48(2). As to such provisions see PARAS 496-498 post.

## **UPDATE**

### **486-498 Dental Auxiliaries**

Dentists Act 1984 Pt 5 (ss 45-48) revoked by the Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011. Dental Auxiliaries Regulations 1986, SI 1986/887, lapsed (see SI 2005/2011 art 50, Sch 7 for transitional provision). Further transitional provision is made by the Dentists Act 1984 (Amendment) Order 2005 Transitional Provisions Order of Council 2006, SI 2006/1671. The regulation of professions complementary to dentistry now corresponds to the regulation of dentists: see the 1984 Act Pt 3A (ss 36A-36Z2) (added by SI 2005/2011); and PARAS 498A-498C.

### **495-498 The Dental Auxiliaries Committee**

Dental auxiliaries committee abolished: Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011; see PARA 395.

### **495 Establishment and functions of the committee**

TEXT AND NOTES 1-14--SI 2003/1081 revoked: SI 2006/1665. See now the General Dental Council (Constitution of Committees) Rules Order of Council 2009, SI 2009/1813.

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#### **496. Submission of disciplinary matter to the committee.**

Where it is brought to the notice of the General Dental Council<sup>1</sup> that an enrolled dental auxiliary<sup>2</sup>, either before or after his name has been entered on a roll: (1) has been convicted of a criminal offence in the United Kingdom<sup>3</sup> or has been convicted elsewhere of an offence which if committed in England and Wales would constitute a criminal offence<sup>4</sup>; or (2) is alleged to have been guilty of any misconduct<sup>5</sup>, then the registrar<sup>6</sup>, after making such further inquiries as he considers necessary, must submit the matter to the chairman of the dental auxiliaries committee<sup>7</sup> who must bring it before the committee if, after consultation with the president of the Council<sup>8</sup>, he thinks fit<sup>9</sup>. Where the chairman decides to bring a case before the committee, the registrar must invite the respondent<sup>10</sup> to furnish any written statement or explanation he desires to offer<sup>11</sup>. Where a case has been brought before the committee by the chairman, the committee must, having regard to any declarations or statements or explanations received with reference to the case, decide whether or not the matter should proceed to a hearing<sup>12</sup>. If the committee decides that the matter should proceed to a hearing, the solicitor<sup>13</sup> must send to the respondent, in a registered letter or in a letter sent by recorded delivery addressed to his enrolled or last known address, a notice of inquiry specifying the matter alleged against him in the form of a charge or charges and stating the day, time and place appointed for the hearing<sup>14</sup>.

1 As to the General Dental Council see PARA 389 et seq ante.

2 As to enrolment see PARA 494 ante.

3 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

4 Dental Auxiliary Regulations 1986, SI 1986/887, reg 9(1)(a).

5 Ibid reg 9(1)(b). As to what constitutes professional misconduct see PARAS 143, 456 ante.

6 For the meaning of 'the registrar' see PARA 396 note 1 ante.

7 As to the dental auxiliaries committee see PARA 495 ante.

8 As to the president of the General Dental Council see PARA 394 ante.

9 Dental Auxiliaries Regulations 1986, SI 1986/887, reg 9(1). However, the chairman may after consultation with the president decline to proceed with the matter unless the evidence in support of the allegation (except in the case of a conviction) is supported by a statutory declaration: reg 9(1). As to statutory declarations see the Statutory Declarations Act 1835 (as amended); and CIVIL PROCEDURE vol 11 (2009) PARA 1024.

10 'The respondent' means the enrolled dental auxiliary concerned: Dental Auxiliaries Regulations 1986, SI 1986/887, reg 9(1).

11 Ibid reg 9(2).

12 Ibid reg 9(3). The committee may at any time take the advice of a solicitor appointed by the Council and may instruct him to obtain proofs of evidence in support of the allegations against the respondent: reg 9(4). As to hearings see PARA 497 post.

13 The committee may, if it thinks fit, appoint a barrister, advocate or solicitor to advise it on questions of law arising in any such proceedings: ibid reg 16.

14 Ibid reg 10. A copy of the Dental Auxiliaries Regulations 1986, SI 1986/887 (as amended) must also be sent: reg 10.

**UPDATE****486-498 Dental Auxiliaries**

Dentists Act 1984 Pt 5 (ss 45-48) revoked by the Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011. Dental Auxiliaries Regulations 1986, SI 1986/887, lapsed (see SI 2005/2011 art 50, Sch 7 for transitional provision). Further transitional provision is made by the Dentists Act 1984 (Amendment) Order 2005 Transitional Provisions Order of Council 2006, SI 2006/1671. The regulation of professions complementary to dentistry now corresponds to the regulation of dentists: see the 1984 Act Pt 3A (ss 36A-36Z2) (added by SI 2005/2011); and PARAS 498A-498C.

**495-498 The Dental Auxiliaries Committee**

Dental auxiliaries committee abolished: Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011; see PARA 395.

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#### **497. Procedure at disciplinary hearing.**

At any hearing of a disciplinary matter before the dental auxiliaries committee<sup>1</sup>, the respondent<sup>2</sup> is entitled to be represented by a friend or by counsel or a solicitor<sup>3</sup>. If the respondent does not attend, the committee may proceed if satisfied that all practicable steps have been taken to bring the notice of inquiry<sup>4</sup> to his attention and to make the substance of the allegations known to him<sup>5</sup>. At the hearing of the case, the solicitor<sup>6</sup>, or other person appointed by the committee for the purpose, first states to the committee the facts of the case and the charge alleged against the respondent and then adduces evidence in support of the charge; and the respondent or his representative is entitled to cross-examine any witness appearing against him on matters relevant to the charge<sup>7</sup>. The respondent or his representative is then invited by the chairman to address the committee and adduce evidence in answer to the charge, any witnesses called being subject to cross-examination by the solicitor or other person appointed by the committee for the purpose<sup>8</sup>. If the committee finds the charges proved either in whole or in part, the chairman may invite the solicitor or other person appointed by the committee to address the committee and to adduce evidence as to the character and previous history of the respondent<sup>9</sup>, and must then invite the respondent to address the committee by way of mitigation and to adduce similar evidence<sup>10</sup>.

At the conclusion of the case, the committee, after consideration of the relevant evidence, pronounces its decision either forthwith or at a later date in writing or at a subsequent meeting<sup>11</sup>. If it determines not to postpone its decision, it must decide whether the registrar<sup>12</sup> should be directed to erase the respondent's name from any roll in which it is entered<sup>13</sup>. As soon as the committee pronounces its decision, the registrar must communicate that decision to the respondent by registered letter or by a letter sent by the recorded delivery service<sup>14</sup>. Provision is made for appeals against decisions of the committee and as to when such decisions take effect<sup>15</sup>.

1 As to the dental auxiliaries committee see PARA 495 ante. As to the submission of disciplinary matters to the committee see PARA 496 ante.

2 For the meaning of 'respondent' see PARA 496 note 10 ante.

3 Dental Auxiliaries Regulations 1986, SI 1986/887, reg 11(1).

4 As to the notice of inquiry see PARA 496 text to note 14 ante.

5 Dental Auxiliaries Regulations 1986, SI 1986/887, reg 11(2).

6 As to the appointment by the committee of a barrister, advocate or solicitor to advise it: see *ibid* reg 16 and PARA 496 note 13 ante.

7 *Ibid* reg 12.

8 *Ibid* reg 13.

9 *Ibid* reg 14(a).

10 *Ibid* reg 14(b).

11 *Ibid* reg 15(1). The decision must in any event be pronounced within six months of the conclusion of the case: reg 15(1). If the committee postpones its decision to a later date, it may invite the respondent to furnish the registrar shortly before that date with the names and addresses of persons to whom confidential reference

may be made as to his character and conduct, and the committee may consider any information thus received: reg 15(3).

12 For the meaning of 'the registrar' see PARA 396 note 1 ante.

13 Dental Auxiliaries Regulations 1986, SI 1986/887, reg 15(2). As to the entry of a person's name in the roll, and as to rolls generally, see PARA 494 ante.

14 Ibid reg 15(4).

15 In relation to any decision of the committee under regulations made by virtue of the Dentists Act 1984 s 48(2) (see PARA 495 ante) that a person's name is to be erased from a roll or record, ss 29, 30(1), (2) (see PARAS 478-479 ante) apply, with the necessary modifications, as they apply to a determination of the professional conduct committee that a person's name be erased from the register: s 48(3). References to the committee in s 48(3) include references to a sub-committee of the committee: s 48(4). Note that under the previous provisions, now repealed, relating to the constitution of the committee there was a specific power to appoint a sub-committee; this no longer exists under the current provisions (see PARA 495 ante).

## **UPDATE**

### **486-498 Dental Auxiliaries**

Dentists Act 1984 Pt 5 (ss 45-48) revoked by the Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011. Dental Auxiliaries Regulations 1986, SI 1986/887, lapsed (see SI 2005/2011 art 50, Sch 7 for transitional provision). Further transitional provision is made by the Dentists Act 1984 (Amendment) Order 2005 Transitional Provisions Order of Council 2006, SI 2006/1671. The regulation of professions complementary to dentistry now corresponds to the regulation of dentists: see the 1984 Act Pt 3A (ss 36A-36Z2) (added by SI 2005/2011); and PARAS 498A-498C.

### **495-498 The Dental Auxiliaries Committee**

Dental auxiliaries committee abolished: Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011; see PARA 395.



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#### **498. Restoration to the roll after erasure for misconduct.**

Where the name of an enrolled dental auxiliary<sup>1</sup> has been removed from a roll after erasure for misconduct<sup>2</sup>, any application for its restoration must be made to the registrar<sup>3</sup> in writing<sup>4</sup> signed by the applicant, stating the grounds on which it is made<sup>5</sup>. The registrar must refer the application to the chairman of the dental auxiliaries committee<sup>6</sup>, who may require the applicant to support by statutory declaration any statement in the application or any further statement which he thinks necessary<sup>7</sup>. The chairman must then refer the application to the committee and must advise the applicant of his right to attend in person at the meeting at which the matter is to be considered<sup>8</sup>. The applicant must be notified of the date of the meeting<sup>9</sup>. If, having considered the application and any supporting evidence<sup>10</sup>, the committee is satisfied that the applicant's name should be restored to the roll, it may direct the registrar accordingly and, upon payment of the prescribed fee<sup>11</sup>, the name must be restored<sup>12</sup>.

1 As to classes of dental auxiliaries see PARAS 486, 490-491 ante. As to enrolment see PARA 494 ante.

2 See PARA 497 ante.

3 For the meaning of 'the registrar' see PARA 396 note 1 ante.

4 For the meaning of 'writing' see PARA 20 note 22 ante.

5 Dental Auxiliary Regulations 1986, SI 1986/887, reg 18(1). The application must contain the names and addresses of two or more persons, of whom two must be justices of the peace, ministers of religion, registered medical practitioners, registered dentists or dental auxiliaries whose names have been enrolled for five years or more, or other persons of standing, able and willing to identify the applicant and give evidence as to his character and the nature of his employment both before and since the date of the removal of his name; the registrar may invite any of these persons to furnish confidential information as to the applicant's character and conduct both before and since that date: reg 18(2). As from a day to be appointed, this provision is amended so as to provide that for this purpose a registered medical practitioner need not hold a licence to practise: see reg 18(2) (prospectively amended by SI 2002/3135). At the date at which this volume states the law no such day had been appointed. For the meaning of 'registered medical practitioner' see PARA 4 ante. For the meaning of 'licence to practise' see PARA 130 note 3 ante. For the meaning of 'registered dentist' see PARA 417 note 6 ante. As to justices of the peace see MAGISTRATES vol 29(2) (Reissue) PARA 501 et seq.

6 As to the dental auxiliaries committee see PARA 495 ante.

7 Dental Auxiliaries Regulations 1986, SI 1986/887, reg 18(3). As to statutory declarations see the Statutory Declarations Act 1835 (as amended); and CIVIL PROCEDURE vol 11 (2009) PARA 1024.

8 Dental Auxiliaries Regulations 1986, SI 1986/887, reg 18(3). The provisions of reg 16 (appointment by the committee of legal adviser: see PARA 496 note 13 ante) apply to proceedings under regs 18, 19: reg 20. The chairman must not refer to the committee, and the committee must not consider, any application made within five months after the erasure or any previous application: reg 18(4).

9 Ibid reg 18(3).

10 When considering the application the committee may take into account any information received under ibid reg 18(2) (see note 5 supra): reg 19.

11 The fee is £68: ibid reg 6 (amended by SI 2003/3105); applied by the Dental Auxiliaries Regulations 1986, SI 1986/887, reg 19.

12 Ibid reg 19.

**UPDATE****486-498 Dental Auxiliaries**

Dentists Act 1984 Pt 5 (ss 45-48) revoked by the Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011. Dental Auxiliaries Regulations 1986, SI 1986/887, lapsed (see SI 2005/2011 art 50, Sch 7 for transitional provision). Further transitional provision is made by the Dentists Act 1984 (Amendment) Order 2005 Transitional Provisions Order of Council 2006, SI 2006/1671. The regulation of professions complementary to dentistry now corresponds to the regulation of dentists: see the 1984 Act Pt 3A (ss 36A-36Z2) (added by SI 2005/2011); and PARAS 498A-498C.

**495-498 The Dental Auxiliaries Committee**

Dental auxiliaries committee abolished: Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011; see PARA 395.

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## **498A. Professions Complementary to Dentistry.**

### **1. Professions complementary to dentistry.**

A profession complementary to dentistry is a profession (1) the majority of whose members work in connection with the provision of dental care with persons receiving such care or with persons registered in the dentists register or the dental care professionals register<sup>1</sup>; and (2) in respect of which the regulatory body is not a body (other than the General Dental Council) regulated by the Council for Healthcare Regulatory Excellence<sup>2</sup>. The General Dental Council may by regulations specify a profession complementary to dentistry or a class of members of a profession complementary to dentistry<sup>3</sup>. Provision is made for the registration of visiting dental care professionals from other EEA states or Switzerland<sup>4</sup>.

1    le the register established by the Dentists Act 1984 s 36B (see PARA 498B.1).

2    le under the National Health Service Reform and Health Care Professions Act 2002 s 25 (see PARA 294); 1984 Act s 36A(1) (s 36A added by SI 2005/2011; 1984 Act s 36A(1) amended by the Health and Social Care Act 2008 Sch 10 para 8). As to the General Dental Council see PARA 389 et seq.

3    1984 Act s 36A(2). Regulations specifying a profession or class of members must also specify a title which applies to that profession or class, and regulations do not come into force until approved by order of the Privy Council: s 36A(3), (4)). Before making such regulations, the General Dental Council must consult organisations appearing to it to be representative of the professions, or classes of members of professions, specified in the proposed regulations: s 36A(5)). The 1984 Act Pt 3A (ss 36A-36Z2) apply in relation to all members of a profession complementary to dentistry except those members of a profession or class in relation to which no regulations under s 36A(2) (see PARA 498A.1) are in force: s 36A(6). See the General Dental Council (Professions Complementary to Dentistry) Regulations 2006, approved by the General Dental Council (Professions Complementary to Dentistry) Regulations Order of Council 2006, SI 2006/1440; and the General Dental Council (Professions Complementary to Dentistry) Regulations (Dental Hygienists and Dental Therapists) 2006, approved by the General Dental Council (Professions Complementary to Dentistry) (Dental Hygienists and Dental Therapists) Regulations Order of Council 2006, SI 2006/1667.

4    See the 1984 Act s 36Z3 (added by SI 2007/3101).

### **2. Use of titles and descriptions by registered dental care professionals.**

A registered dental care professional<sup>1</sup> must not take or use, or affix to or use in connection with his premises (1) any description reasonably calculated to suggest that he possesses any professional status or qualification other than a professional status or qualification which he in fact possesses and which is indicated by particulars entered in the dental care professionals register<sup>2</sup> in respect of him<sup>3</sup>; or (2) any title specified in regulations<sup>4</sup> except the title or titles under which he is registered in the register<sup>5</sup>. A person contravening this provision is liable on summary conviction to a fine<sup>6</sup>.

1    'Registered dental care professional' means a person for the time being registered in the dental care professionals register under a title or titles: Dentists Act 1984 s 53(1) (definition added by SI 2005/2011).

2    As to the dental care professionals register see PARA 498B.1.

3    1984 Act s 36K(1)(a) (s 36K added by SI 2005/2011).

4    le regulations under 1984 Act s 36A(2) (see PARA 498A.1).

5 Ibid s 36K(1)(b). See further the cases referred to in PARAS 409, 410.

6 Ibid s 36K(2). The penalty is a fine not exceeding level 3 on the standard scale: s 36K(2). As to the standard scale see PARA 185 NOTE 11.

## **UPDATE**

### **486-498 Dental Auxiliaries**

Dentists Act 1984 Pt 5 (ss 45-48) revoked by the Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011. Dental Auxiliaries Regulations 1986, SI 1986/887, lapsed (see SI 2005/2011 art 50, Sch 7 for transitional provision). Further transitional provision is made by the Dentists Act 1984 (Amendment) Order 2005 Transitional Provisions Order of Council 2006, SI 2006/1671. The regulation of professions complementary to dentistry now corresponds to the regulation of dentists: see the 1984 Act Pt 3A (ss 36A-36Z2) (added by SI 2005/2011); and PARAS 498A-498C.

### **495-498 The Dental Auxiliaries Committee**

Dental auxiliaries committee abolished: Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011; see PARA 395.

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#### **498B. The Dental Care Professionals Register, Qualification and Insurance.**

##### **1. The dental care professionals register.**

The dental care professionals register<sup>1</sup> is kept by the registrar<sup>2</sup>. Rules<sup>3</sup> may make provision relating to the form of the register and the manner in which it is to be kept<sup>4</sup>. A certificate purporting to be signed by the registrar, certifying that a person (1) is registered in the register under a particular title<sup>5</sup>, (2) is not registered in the register under a particular title<sup>6</sup>, (3) was registered in the register under a particular title at a specified date or during a specified period<sup>7</sup>, (4) was not registered in the register under a particular title at a specified date or during a specified period<sup>8</sup>, or (5) has never been registered in the register under a particular title<sup>9</sup>, is evidence of the matters certified<sup>10</sup>. The registrar must make available to members of the public in such form as he considers appropriate (a) the names of persons appearing in the register<sup>11</sup>; (b) the title or titles under which a person is registered in the register<sup>12</sup>; (c) the qualifications of persons appearing in the register<sup>13</sup>; and (d) such other details as the Council may direct<sup>14</sup>.

1 The register of members of professions complementary to dentistry, established by the Dentists Act 1984 s 36B(1) (ss 36B, 36G, 50C added by SI 2005/2011). The dental care professionals register consists of the following lists: (1) the principal list, which is to contain particulars of persons who under the 1984 Act s 36C are entitled to be registered in the dental care professionals register; and (2) the list of visiting dental care professionals from relevant European states, which is to contain particulars of persons who under s 36Z3 are entitled to be registered in the dental care professionals register: s 36B(1A)(a), (b) (added by SI 2007/3101).

2 1984 Act s 36B(2). For the meaning of 'the registrar' see PARA 396 NOTE 1. Section 14(4) and (5) (see PARA 396) apply to the register established under s 36B, and to the registrar's duties as keeper of the register, as they apply to the dentists register and to the registrar's duties in respect of the dentists register: s 36B(3).

3 As to the making of rules under the 1984 Act see PARA 390. The Privy Council is not required to approve by statutory instrument of rules made under s 36B(4): s 50C(2).

4 Ibid s 36B(4). A person may not be registered in the register except under one or more of the titles specified in regulations under s 36A(2) (see PARA 498A.1): s 36B(5).

5 Ibid s 36B(6)(a).

6 Ibid s 36B(6)(b).

7 Ibid s 36B(6)(c).

8 Ibid s 36B(6)(d).

9 Ibid s 36B(6)(e).

10 Ibid s 36B(6).

11 Ibid s 36G(1)(a)).

12 Ibid s 36G(1)(b).

13 Ibid s 36G(1)(c).

14 Ibid s 36G(1)(d). For the purposes of s 36G(1), the registrar may provide a member of the public with a copy of, or extract from, the register, and any such copy or extract is evidence of the matters mentioned in it: s 36G(2).

## 2. Qualifications for registration.

A person is entitled<sup>1</sup> to be registered under a particular title in the dental care professionals register<sup>2</sup> if he satisfies the registrar<sup>3</sup> (1) in a case where the title concerned applies to the profession pursued by clinical dental technicians, dental hygienists, dental nurses, dental technicians, dental therapists or orthodontic therapists (a) of matter A, B or C, and (b) of matter D<sup>4</sup>; and (2) in any other case (a) of matter A or C, and (b) of matter D<sup>5</sup>.

Matter A is that the person holds a qualification or qualifications approved by the General Dental Council<sup>6</sup> in relation to the profession, or class of members of a profession, to which the title applies<sup>7</sup>.

Matter B is that the person (i) an exempt person<sup>8</sup>, and (ii) is permitted to practise in the United Kingdom as a member of the profession pursued by clinical dental technicians, dental hygienists, dental nurses, dental technicians, dental therapists or orthodontic therapists, as the case may be<sup>9</sup>.

Matter C is that the person (A) holds relevant qualifications<sup>10</sup>; (B) has satisfied the Council that he has the requisite knowledge and skill to practise as a member of the profession or class to which the title applies<sup>11</sup>; and (c) has the knowledge of English which, in the interests of himself and his patients, is necessary for practising in the United Kingdom as a member of the profession or class to which the title applies<sup>12</sup>.

Matter D is (aa) the person's identity<sup>13</sup>; (bb) that he is of good character<sup>14</sup>; and (cc) that he is in good health, both physically and mentally<sup>15</sup>.

1 Ibid subject to the provisions of the Dentists Act 1984.

2 As to the dental care professionals register see PARA 498B.1.

3 Ibid s 36C(1) (s 36C added by SI 2005/2011; and amended by SI 2006/1718, SI 2007/3101). For the meaning of 'the registrar' see PARA 396 NOTE 1.

4 1984 Act s 36C(1)(a).

5 Ibid s 36C(1)(b).

6 Ibid under s 36D(2) (see PARA 498B.3). As to the General Dental Council see PARA 389 et seq.

7 Ibid s 36C(2).

8 Ibid s 36C(3)(a).

9 Ibid by virtue of the European Communities (Recognition of Professional Qualifications) Regulations 2007, SI 2007/2781: 1984 Act s 36C(3)(b).

10 Ibid a qualification or qualifications granted by an institution or institutions outside the United Kingdom relevant to the profession complementary to dentistry, or class of members of such a profession, to which the title applies: s 36C(4)(a).

11 Ibid s 36C(4)(b). For the purpose of establishing whether a person has the requisite knowledge and skill, the Council (1) in all cases (a) must take into account all that person's relevant qualifications, and all relevant knowledge or experience, wherever acquired; and (b) may determine that a person must perform to the satisfaction of the Council in any test or assessment specified in the determination; and (2) in the case of an exempt person who holds a relevant qualification which (i) was granted otherwise than in a relevant European state, and (ii) has been accepted by a relevant European state, other than the United Kingdom, as qualifying the person to practise in that state as a member of the profession or class to which the title applies, must take that acceptance into account: s 36C(5).

12 Ibid s 36C(4)(c). The requirement set out in head (c) does not apply if the person is an exempt person: s 36C(4)(c).

13 Ibid s 36C(6)(a).

14 Ibid s 36C(6)(b).

15 Ibid s 36C(6)(c).

### **3. Education and training for members of professions complementary to dentistry.**

For each regulated profession or class<sup>1</sup>, the General Dental Council<sup>2</sup> must, from time to time determine the appropriate standard of proficiency which, in their opinion, is required for a person to practise competently and safely as a member of the profession or class<sup>3</sup>, and specify the content and standard of the education and training, including practical experience, which, in its opinion, is required for imparting the knowledge and skills necessary for a person to obtain that proficiency<sup>4</sup>.

Where the Council is satisfied that (1) a qualification granted by an institution in the United Kingdom is evidence of having reached the standard of proficiency for a regulated profession or class<sup>5</sup>, (2) a qualification which such an institution proposes to grant will be such evidence, or (3) two or more qualifications granted or to be granted as mentioned in head (1) or (2) above, taken together, are or will be such evidence, the Council may approve that qualification or those qualifications in relation to that regulated profession or class<sup>6</sup>.

The Council must ensure that establishments providing or overseeing courses of education or training for persons who seek registration under a title in the dental care professionals register<sup>7</sup> are notified of (a) the matters for the time being determined or specified<sup>8</sup>; (b) the qualifications for the time being approved<sup>9</sup>.

1 'Regulated profession or class' means a profession complementary to dentistry, or class of members of such a profession, specified in regulations under the Dentists Act 1984 s 36A(2) (see PARA 498A.1): s 36D(8) (ss 36D, 50C added by SI 2005/2011).

2 As to the General Dental Council see PARA 389 et seq.

3 1984 Act s 36D(1)(a).

4 Ibid s 36D(1)(b).

5 Ie determined under ibid s 36D(1).

6 Ibid s 36D(2). The matters determined or specified under s 36D(1) and the qualifications approved under s 36D(2) must be published by the Council from time to time in such form as appears to it to be appropriate: s 36D(3). Rules must make provision for the withdrawal of approval given under s 36D(2) in such circumstances as may be specified in the rules: s 36D(5). As to the making of rules under the 1984 Act see PARA 390. See the General Dental Council (Professions Complementary to Dentistry) (Qualifications and Supervision of Dental Work) Rules 2006, approved by the General Dental Council (Professions Complementary to Dentistry) (Qualifications and Supervision of Dental Work) Rules Order of Council 2006, SI 2006/1669.

7 As to the dental care professionals register see PARA 498B.1.

8 Ie under the 1984 Act s 36D(1).

9 Ibid s 36D(4), referring to approval under s 36D(2). Rules may make provision for the appointment by the Council of persons to visit establishments which provide or oversee, or seek to provide or oversee, courses of education or training for persons referred to in s 36D(4), for the purposes of advising and reporting back to the Council on matters connected with such courses, including (1) the sufficiency of instruction provided or overseen by, or to be provided or overseen by, those establishments; (2) the suitability of a particular qualification for approval under s 36D(2); and (3) whether approval of a particular qualification ought to be withdrawn under rules under s 36D(5): s 36D(6), (7). The Privy Council is not required to approve by statutory instrument of rules made under s 36D(6), (7): s 50C(2). As to the service and sending of notifications under the 1984 Act see s 50A; and PARA 401A.

#### 4. Procedure for registration.

Rules<sup>1</sup> may make provision relating to (1) the form of an application by a person seeking registration under a title in the principal list of the dental care professionals register<sup>2</sup>; (2) the manner in which an application under head (1) above is to be made<sup>3</sup>; (3) the evidence and information which an applicant must supply in support of an application under head (1) above<sup>4</sup>; (4) the details which must be entered in the register<sup>5</sup>; and (5) the procedure for the making, alteration and deletion of entries in the register<sup>6</sup>.

The Council may by regulations prescribe a fee to be charged (a) on the entry of a person's name in the register<sup>7</sup>, (b) on the restoration of a person's name to the register<sup>8</sup>, (c) on the entry in the register of additional qualifications held by a registered dental care professional<sup>9</sup>, or (d) in respect of the retention of a person's name under a title or titles in the register for each period of 12 months<sup>10</sup>.

1 As to the making of rules under the Dentists Act 1984 see PARA 390.

2 Ibid s 36E(a) (ss 36E, 36F, 50C added by SI 2005/2011; 1984 Act s 36E amended by SI 2007/3101). As to the dental care professionals register and the principal list of that register see PARA 498B.1. As to the making of rules under the 1984 Act see PARA 390. The Privy Council is not required to approve by statutory instrument of rules made under s 36E: s 50C(2)).

3 Ibid s 36E(b).

4 Ibid s 36E(c).

5 Ibid s 36E(d).

6 Ibid s 36E(e).

7 See ibid s 36F(1)(a)(i).

8 See ibid s 36F(1)(a)(ii). For the meaning of 'registered dental care professional' see PARA 498A.2 NOTE 1.

9 Ibid s 36F(1)(a)(iii).

10 Ibid s 36F(1)(b). Regulations may provide for the payment of a fee under s 36F(1)(b) by instalments: s 36F(1)(c). The regulations may authorise the registrar to refuse to make or restore any entry until a fee prescribed by such regulations has been paid: s 36F(1)(d). For the meaning of 'the registrar' see PARA 396 NOTE 1. However, regulations under s 36F may not prescribe fees in respect of registration in the list mentioned in s 36B(1A)(b) (see PARA 498B.1 NOTE 1 head (2)): s 36F(1A). Regulations may also make provision as to notices and warnings, erasure from the register in default of payment of a fee, and subsequent restoration: see 1984 Act s 36F(2)-(4).

#### 5. Erasure of names on death or cesser of practice.

The registrar<sup>1</sup> must erase the name of a deceased person from registration under all titles under which that person is registered in the dental care professionals register<sup>2</sup>; and on registering the death of a registered dental care professional<sup>3</sup>, a registrar of births and deaths<sup>4</sup> must, without charge to the recipient, send forthwith by post<sup>5</sup> to the registrar a copy certified under his hand of the entry in the register of deaths relating to the death<sup>6</sup>.

Where a person is registered in the register under a title applying to a particular profession, or class of members of a profession, and has ceased to practise as a member of that profession or class, the registrar may, with that person's consent, erase his name from registration in the register under that title<sup>7</sup>. The registrar may send by post to a registered dental care professional a notice inquiring whether he has ceased to practise as a member of a particular profession complementary to dentistry, or class of members of such a profession, or has changed his residence and, if no answer is received to the inquiry within six months from the



posting of the notice, the registrar may erase that person's name from registration under all titles under which that person is registered in the register<sup>8</sup>. Where, in such a case, or at a person's request, a person's name has been erased from registration under a particular title, that name must be restored to the register under that title on that person's application if specified conditions are met<sup>9</sup>.

1 For the meaning of 'the registrar' see PARA 396 NOTE 1.

2 As to the dental care professionals register see PARA 498B.1.

3 For the meaning of 'registered dental care professional' see PARA 498A.2 NOTE 1.

4 As to the registration of births, deaths and marriages see REGISTRATION CONCERNING THE INDIVIDUAL vol 39(2) (Reissue) PARA 501 et seq. As to registration officers see REGISTRATION CONCERNING THE INDIVIDUAL vol 39(2) (Reissue) PARA 609 et seq.

5 As to references to service by post see PARA 20 NOTE 22.

6 Dentists Act 1984 s 36H(1) (s 36H added by SI 2005/2011).

7 1984 Act s 36H(2)).

8 Ibid s 36H(3). As to the service and sending of notifications under the 1984 Act see s 50A; and PARA 401A.

9 Ibid s 36H(4). As to the conditions, see s 36H(5).

## **6. Erasure of incorrect or fraudulent entries.**

If the registrar<sup>1</sup> is satisfied that any entry in the dental care professionals register<sup>2</sup> has been incorrectly made, he must erase that entry from the register<sup>3</sup>. If the registrar has reason to believe that any entry in the register has been fraudulently procured, he must refer the matter to the professional conduct committee<sup>4</sup> to determine the question of whether that entry has been fraudulently procured<sup>5</sup>. Where a person's name has been erased from registration under a particular title on the ground that it had been fraudulently procured, that person may apply to the General Dental Council for his name to be restored to the register under that title<sup>6</sup>. The Council must refer any such application to the professional conduct committee<sup>7</sup>.

1 For the meaning of 'the registrar' see PARA 396 NOTE 1.

2 As to the dental care professionals register see PARA 498B.1.

3 Dentists Act 1984 s 36I(1) (ss 36I, 36S, 36U added by SI 2005/2011).

4 As to the committees of the General Dental Council see PARA 395.

5 1984 Act s 36I(2). If the professional conduct committee determines that the entry in the register has been fraudulently procured, it may direct that the name of the person to whom the entry relates it to be erased from registration under all titles under which he is registered in the register: s 36I(3). As to giving a direction for the immediate erasure of a person's name, see s 36U. If the professional conduct committee gives such a direction, the person concerned may appeal to the High Court, and the registrar must forthwith serve on that person notification of the direction and of his right to appeal: see ss 36I(7), 36S. As to the service and sending of notifications under the 1984 Act see s 50A; and PARA 401A ante.

6 Ibid s 36I(4). As to the General Dental Council see PARA 389 et seq.

7 Ibid s 36I(5). The professional conduct committee must determine such an application and may decide (1) that the person's name is to be restored to the register under the title in question; (2) that the person's name is not to be restored to the register under the title in question; or (3) that the person's name is not to be restored to the register under the title in question until the end of such period as the committee specifies: s 36I(6). If the professional conduct committee refuses to restore (or to immediately restore) the name of the person

concerned to the register, he may appeal to the High Court, and the registrar must forthwith serve on that person notification of the decision and of his right to appeal: ss 36I(7), 36S.

## **7. Notification of appealable registration decisions.**

Where an appealable registration decision<sup>1</sup> is made in respect of a person, the registrar<sup>2</sup> must forthwith serve on that person written notification of the decision, the reasons for the decision, and that person's right to appeal<sup>3</sup>. Where an applicant has not been served with notification of a decision in respect of certain applications for registration or restoration of a name<sup>4</sup> within the requisite period<sup>5</sup>, that omission is to be treated as a decision not to register or, as the case may be, restore the applicant's name, which is an appealable registration decision for these purposes<sup>6</sup>.

1 The following decisions are appealable registration decisions: (1) a decision (a) not to register a person's name under a particular title in the dental care professionals register (see PARA 498B.1) under the Dentists Act 1984 s 36C (see PARA 498B.2) on the grounds that any of the requirements of that provision are not met; (b) a decision under the European Communities (Recognition of Professional Qualifications) Regulations 2007, SI 2007/2781, Pt 3 to require an exempt person to complete an adaptation period, or pass an aptitude test, in connection with becoming entitled by virtue of those provisions to practise in the United Kingdom as a member of one of the professions mentioned in the 1984 Act s 36C(3)(b); (2) a decision under s 36H(3) (see PARA 498B.5) to erase a person's name from the register; (3) a decision under s 36H(4) not to restore a person's name to the register under a particular title; (4) a decision under s 36I(1) (see PARA 498B.6) to erase an entry relating to a person from the register; (5) a decision under s 36L(9)(a), (b) or (c) not to register a person's name in the register, not to restore his name to that register, or to erase his name from registration in that register, under a particular title; (6) a decision under s 36L(10) (see PARA 498B.10) not to restore a person's name to the register under a particular title; (7) a decision under s 36Z1(2) to erase a person's name from registration in the register under a particular title; (8) a decision under s 36Z1(3) not to restore a person's name to the register under a particular title; and (9) a decision not to register a person's name under a particular title in the dental care professionals register under s 36Z3 (visiting dental care professionals from another EEA state or Switzerland): s 36J, Sch 4A para 2(1) (in force in part) (s 36J, Sch 4A added by SI 2007/3101). A decision is not an appealable registration decision for these purposes if it is a decision taken by reason only that the person failed to pay any fee prescribed by regulations made under the 1984 Act s 36F, or make an application as required under the 1984 Act or any rules made under it: Sch 4A para 2(2). As to the making of rules under the 1984 Act see PARA 390.

2 For the meaning of 'the registrar' see PARA 396 NOTE 1.

3 1984 Act Sch 4A para 3(1). The reference to a person's right to appeal is to the right to appeal under Sch 4A para 4 (see PARA 498B.8). As to the service and sending of notifications under the 1984 Act see s 50A; and PARA 401A.

4 The applications for registration or restoration of a name mentioned in NOTE 1 head (1), (3), (5), (6), or (8).

5 'The requisite period', in relation to a decision of a kind specified in NOTE (1) head (1), (3), (5), (6), or (8) means the period of four months beginning with the date when the registrar is first in possession of sufficient information to make the decision: 1984 Act Sch 4A para 1.

6 Ibid Sch 4A para 3(2) (in force in part).

## **8. Appeals from an appealable registration decision.**

A person concerned<sup>1</sup> may appeal to the General Dental Council's registration appeals committee<sup>2</sup> against (1) the appealable registration decision made in respect of him of which he was notified<sup>3</sup>; or (2) the appealable registration decision treated<sup>4</sup> as having been made in respect of him<sup>5</sup>. Such an appeal must be made by giving notice of appeal to the registrar<sup>6</sup>. In a case within head (1) above, the notice of appeal must be given before the end of the period of 28 days beginning with the date on which notification of the decision was served<sup>7</sup>, subject to any extension of time<sup>8</sup>. In a case within head (2) above, notice of appeal must be given before the end of the period of 28 days following the end of the requisite period<sup>9</sup>. In the case of an appealable registration decision which is a decision to erase a person's name from registration in the dental care professionals register<sup>10</sup> under a particular title, where no appeal is brought

against the decision within the specified period of time<sup>11</sup>, or an appeal is brought but is withdrawn or struck out for want of prosecution, that decision takes effect on the expiry of that period or, as the case may be, on the withdrawal or striking out of that appeal<sup>12</sup>.

For the purposes of considering an appeal, the registration appeals committee may make such inquiries as it considers appropriate<sup>13</sup>. In disposing of an appeal, the registration appeals committee may determine to (a) dismiss the appeal; (b) allow the appeal and quash the decision appealed against; (c) substitute for the decision appealed against any other decision which could have been made by the registrar; or (d) remit the case to the registrar to dispose of in accordance with the directions of the registration appeals committee<sup>14</sup>. In the case of an appealable registration decision which is a decision to erase a person's name from registration in the register under a particular title, where the registration appeals committee disposes of an appeal by making a determination under heads (a), (c) or (d) above, that decision takes effect (i) where no appeal is brought against the determination of the registration appeals committee<sup>15</sup> within the specified period of time<sup>16</sup>, on the expiry of that period; (ii) where an appeal is brought against the decision of the registration appeals committee but is withdrawn or struck out for want of prosecution, on the withdrawal or striking out of that appeal; or (iii) where an appeal is brought against the decision and dismissed<sup>17</sup>, on the dismissal of that appeal<sup>18</sup>.

Where the registration appeals committee makes a determination on an appeal under the above provisions, it must, as soon as reasonably practicable inform the registrar of, and serve on the person concerned notification of, the committee's determination on the appeal and of the reasons for that determination, and, if that determination is not a determination to allow the appeal under head (b) above, serve on the person concerned notification of his right of appeal<sup>19</sup>.

1 'Person concerned' means a person notified under the Dentists Act 1984 Sch 4A para 3(1) (as added) (see PARA 498B.7) of an appealable registration decision made in respect of him, or, as the case may be, an applicant in respect of whom an appealable registration decision is treated as having been made by virtue of Sch 4A para 3(2) (as added) (see PARA 498B.7); Sch 4A para 1 (Sch 4A added SI 2005/2011).

2 As to the committees of the General Dental Council see PARA 395.

3 Ie under the 1984 Act Sch 4A para 3(1).

4 Ie by virtue of ibid Sch 4A para 3(2).

5 Ibid Sch 4A para 4(1).

6 Ibid Sch 4A para 4(2). For the meaning of 'the registrar' see PARA 396 NOTE 1. As to the service and sending of notifications under the 1984 Act see s 50A; and PARA 401A.

7 Ie under ibid Sch 4A para 3(1).

8 Ibid Sch 4A para 4(3). Where (1) any notification of a decision required under Sch 4A para 3(1) to be served on a person is served by sending it to him by post; and (2) the registrar is satisfied, on the application of that person, that he did not receive the notification within the period of 14 days beginning with the day on which the decision was made, the registrar may, if he thinks fit, by authorisation in writing extend the time for giving notice of appeal under Sch 4A para 4(3): Sch 4A para 5. As to references to service by post see PARA 20 NOTE 22.

9 Ibid Sch 4A para 4(4) (as added: see NOTE 1). For the meaning of 'the requisite period' see PARA 498B.7.

10 As to the dental care professionals register see PARA 498B.1.

11 Ie the period of time specified in the 1984 Act Sch 4A para 4(3).

12 Ibid Sch 4A para 4(5).

13 Ibid Sch 4A para 4(6).

14 Ibid Sch 4A para 4(8).

15 Ie under ibid Sch 4A para 6 (see PARA 498B.9).

16 Ie specified in ibid Sch 4A para 6(1).

17 Ie under ibid Sch 4A para 6(2)(a).

18 Ibid Sch 4A para 4(9).

19 Ibid Sch 4A para 4(10). Schedule 4B (proceedings before the investigating committee, the interim orders committee and practice committees: dental care professionals) applies to proceedings under Sch 4A before the registration appeals committee with certain modifications (see Sch 4A para 4(7)). See further the General Dental Council (Registration Appeals) Rules 2006 (approved by the General Dental Council (Registration Appeals) Rules Order of Council 2006, SI 2006/1668).

## **9. Appeals from the registration appeals committee.**

Where the registration appeals committee<sup>1</sup> determine an appeal<sup>2</sup> and it does not determine<sup>3</sup> to allow the appeal and quash the decision appealed against, the person concerned may, before the end of 28 days beginning with the date on which notification of the determination was served on him<sup>4</sup>, appeal against the determination to the relevant court<sup>5</sup>.

On such an appeal from the registration appeals committee, the relevant court may (1) dismiss the appeal; (2) allow the appeal and quash the determination appealed against; (3) substitute for the determination appealed against any other determination which could have been made by the registration appeals committee; or (4) remit the case to the registration appeals committee to dispose of in accordance with the directions of the relevant court<sup>6</sup>.

1 As to the committees of the General Dental Council see PARA 395.

2 Ie under the Dentists Act 1984 Sch 4A para 4 (see PARA 498B.8).

3 Ie under ibid Sch 4A para 4(8)(b).

4 Ie under ibid Sch 4A para 4(10). As to the service and sending of notifications under the 1984 Act see s 50A and PARA 401A.

5 Ibid Sch 4A para 6(1) (Sch 4A added by SI 2005/2011). 'The relevant court' means (1) where the person concerned is registered in the dental care professionals register, and his address in the register is in Scotland, the sheriff in whose sheriffdom that address is situated; (2) where the person concerned is not registered in the register, but his address would be in Scotland if he were to be registered, the sheriff in whose sheriffdom that address is situated; and (3) in any other case, the county court: 1984 Act Sch 4A para 6(3). As to the dental care professionals register see PARA 498B.1.

6 Ibid Sch 4A para 6(2).

## **10. Professional training and development requirements.**

In relation to each profession, or class of members of a profession<sup>1</sup>, rules<sup>2</sup> must require registered dental care professionals<sup>3</sup> to undertake such professional training and development as may be specified<sup>4</sup>. Where a person is registered in the dental care professionals register<sup>5</sup> under a title applying to a particular profession, or class of members of a profession, and it appears to the registrar<sup>6</sup> that the person has failed to comply with the requirements of rules<sup>7</sup> relating to that profession or class, the registrar may erase that person's name from registration in that register under that title<sup>8</sup>. Rules must specify the procedures to be followed before the registrar may so erase a person's name from registration in the dental care professionals register under a title, or may so make a decision whether to restore a person's name to that register under a title<sup>9</sup>.

Rules must specify the requirements as to professional training and development to be met by a person who seeks the restoration of his name to the dental care professionals register under a particular title following its erasure from registration under that title<sup>10</sup>.

1   le specified in regulations under the Dentists Act 1984 s 36A(2) (see PARA 498A.1).

2   As to the making of rules under the 1984 Act see PARA 390.

3   For the meaning of 'registered dental care professional' see PARA 498A.2 NOTE 1.

4   1984 Act s 36Z1(1) (ss 36Z1, 36Z2 added by SI 2005/2011). See further the 1984 Act s 36Z4 (added by SI 2007/3101). See the General Dental Council (Continuing Professional Development) (Professions Complementary to Dentistry) Rules 2008, set out in the Schedule to the General Dental Council (Continuing Professional Development) (Professions Complementary to Dentistry) Rules Order of Council 2008, SI 2008/1823.

5   As to the dental care professionals register see PARA 498B.1.

6   For the meaning of 'the registrar' see PARA 396 NOTE 1.

7   le under the 1984 Act s 36Z1(1).

8   Ibid s 36Z1(2). Where a person's name has been so erased from registration under a particular title, that name must be restored to the dental care professionals register under that title on that person's application if he satisfies the registrar (1) of matter D within the meaning of s 36C (see PARA 498B.2); and (2) that he meets the requirements of s 36L (see PARA 498B.11) and any rules made under s 36Z2 which apply to his case: s 36(3).

9   Ibid s 36Z1(4). See SI 2008/1823 Schedule rr 7-12. Where, in the course of proceedings under the 1984 Act Pt 3A (ss 36A-36Z2), it appears to the investigating committee, a practice committee or the interim orders committee that a person to whose registration the proceedings relate may be failing to meet the requirements of rules made under s 36Z1(1), that committee may refer the question of whether he is failing to meet them to the registrar: s 36Z1(5).

10   le erasure under any provision of ibid Pt 3A (ss 36A-36Z2): s 36Z2(1). Rules under s 36Z2 must not require a person to do anything which amounts to the practice of dentistry: s 36Z(2).

## **11. Insurance.**

The following provisions are not yet in force.

A registered dental care professional<sup>1</sup> must, in relation to each title under which he is registered in the dental care professionals register<sup>2</sup>, be covered by adequate and appropriate insurance<sup>3</sup> throughout the period during which he is registered under that title<sup>4</sup>. A registered dental care professional seeking the retention of his name in the register under a particular title must, before the commencement of the period for which he is seeking the retention of his name in the register under that title, supply the registrar with evidence that he is covered by adequate and appropriate insurance in relation to that title<sup>5</sup>. A person seeking the restoration of his name to the register under a particular title (whether or not he is already so registered under any other title or titles) must supply the registrar with evidence that, if his name were to be so restored to the register, he would be covered by adequate and appropriate insurance commencing, at the latest, on the date on which his name was so restored<sup>6</sup>.

If a person fails to comply with the insurance requirements<sup>7</sup>, the registrar may (1) refuse to register his name in the register under that title<sup>8</sup>; (2) refuse to restore his name to the register under that title<sup>9</sup>; (3) erase his name from the register under that title<sup>10</sup>; or (4) refer the matter to the investigating committee<sup>11</sup>.

1   For the meaning of 'registered dental care professional' see PARA 498A.2 NOTE 1.

2   As to the dental care professionals register see PARA 498B.1.

3 'Adequate and appropriate insurance', in relation to a title specified in regulations under the Dentists Act 1984 s 36A(2) (see PARA 498A.1), means insurance of a type and amount which rules under s 36L specify as adequate and appropriate in relation to that title: s 36L(2) (s 36L added by SI 2005/2011). As to the making of rules under the 1984 Act see PARA 390. 'Insurance' means (1) a contract of insurance providing cover for liabilities which may be incurred in carrying out work as a member of a profession complementary to dentistry; or (2) an arrangement made for the purpose of indemnifying a person against such liabilities: s 36L(11).

4 Ibid s 36L(1). A person seeking registration in the register under a particular title (whether or not he is already so registered under any other title or titles) must supply the registrar with evidence that, if his name were to be so entered in the register, he would be covered by adequate and appropriate insurance in relation to that title commencing, at the latest, on the date on which his name was so entered: s 36L(3)). The registrar may at any other time require a registered dental care professional to supply him with evidence that he is covered by such adequate and appropriate insurance, and a registered dental care professional must comply with such a requirement as soon as reasonably practicable: s 36L(6). For the meaning of 'the registrar' see PARA 396 NOTE 1.

5 Ibid s 36L(4). A registered dental care professional must inform the registrar forthwith if he is no longer covered by adequate and appropriate insurance in relation to any title under which he is registered: s 36L(7). A person seeking registration in, or restoration of his name to, the dental care professionals register must inform the registrar forthwith if arrangements under which he would be covered by adequate and appropriate insurance in relation to any title under which he is seeking to be registered or restored are no longer in place: s 36L(8).

6 Ibid s 36L(5).

7 Ie under ibid s 36L in relation to any title in the register.

8 Ibid s 36L(9)(a).

9 Ibid s 36L(9)(b).

10 Ibid s 36L(9)(c). Where a person's name has been erased from the registration under a particular title under s 36L(9)(c), that name must be restored to the register under that title on that person's application if he satisfies the registrar that he meets the requirements of matter D in s 36C (see PARA 498B.2), and any rules made under s 36Z2 which apply to his case: s 36L(10).

11 Ie under ibid s 36N(5)(a) (see PARA 498C.2): see s 36L(9)(d). As to the committees of the General Dental Council see PARA 395.

## **UPDATE**

### **486-498 Dental Auxiliaries**

Dentists Act 1984 Pt 5 (ss 45-48) revoked by the Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011. Dental Auxiliaries Regulations 1986, SI 1986/887, lapsed (see SI 2005/2011 art 50, Sch 7 for transitional provision). Further transitional provision is made by the Dentists Act 1984 (Amendment) Order 2005 Transitional Provisions Order of Council 2006, SI 2006/1671. The regulation of professions complementary to dentistry now corresponds to the regulation of dentists: see the 1984 Act Pt 3A (ss 36A-36Z2) (added by SI 2005/2011); and PARAS 498A-498C.

### **495-498 The Dental Auxiliaries Committee**

Dental auxiliaries committee abolished: Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011; see PARA 395.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/3. THE PROFESSION OF DENTISTRY AND DENTAL PRACTICE/(7) DENTAL AUXILIARIES/(iii) The Dental Auxiliaries Committee/498C. Professional Conduct and Fitness to Practise.

## **498C. Professional Conduct and Fitness to Practise.**

### **1. Guidance.**

The General Dental Council<sup>1</sup> must prepare and from time to time issue guidance as to the standards of conduct, performance and practice expected of registered dental care professionals<sup>2</sup>. The Council must keep such guidance under review and may vary or withdraw it whenever it considers it appropriate to do so<sup>3</sup>, and from time to time must publish such guidance<sup>4</sup>. Before issuing, varying or withdrawing such guidance, the Council is required to consult with representatives from those in the dental profession and users of dental services<sup>5</sup>, primary care trusts in England and local health boards in Wales<sup>6</sup>, and other bodies which make arrangements for the provision of dental services<sup>7</sup>. The Council may charge such fee as it considers reasonable for the provision of a copy of the guidance to any person<sup>8</sup>.

1 As to the General Dental Council see PARA 389 et seq.

2 Dentists Act 1984 s 36M(1) (s 36M added by SI 2005/2011). Such guidance may make different provision in relation to different cases or classes of case, and in particular in relation to different descriptions of registered dental care professionals: 1984 Act s 36M(2). For the meaning of 'registered dental care professional' see PARA 498A.2 NOTE 1.

3 Ibid s 36M(3).

4 Ibid s 36M(4). Such guidance may be published in such form and manner as the Council considers appropriate, including in electronic form: s 50B(1) (added by SI 2005/2011).

5 See 1984 Act s 36M(5)-(7)).

6 See ibid s 36M(5), (8).

7 See ibid s 36M(5), (9).

8 Ibid s 36M(10).

### **2. Allegations of impaired fitness to practise**

Where an allegation is made to the General Dental Council<sup>1</sup> against a registered dental care professional<sup>2</sup> that his fitness to practise as a member of a profession complementary to dentistry is impaired<sup>3</sup>, the registrar<sup>4</sup> must refer the allegation to the investigating committee<sup>5</sup>, and may also, if he considers it appropriate, refer the allegation to the interim orders committee<sup>6</sup>. A person's fitness to practise as a member of a profession complementary to dentistry is to be regarded as 'impaired' by reason only of (1) misconduct; (2) deficient professional performance; (3) adverse physical or mental health; (4) a conviction or caution in the United Kingdom for a criminal offence, or a conviction elsewhere for an offence which, if committed in England and Wales, would constitute a criminal offence; (5) the person having agreed to pay a penalty as alternative to prosecution<sup>7</sup>; (6) the person having been given an absolute discharge in respect of an offence which the court considered the person to have committed<sup>8</sup>; (7) a determination by a body in the United Kingdom responsible under any enactment<sup>9</sup> for the regulation of a health or social care profession to the effect that the person's fitness to practise as a member of that profession is impaired, or a determination by a regulatory body<sup>10</sup> elsewhere to the same effect; or (8) the Independent Barring Board including

the person in a barred list<sup>11</sup> (within the meaning of Safeguarding Vulnerable Groups Act 2006)

<sup>12</sup>.

1 As to the General Dental Council see PARA 389 et seq.

2 For the meaning of 'registered dental care professional' see PARA 498A.2 NOTE 1.

3 Dentists Act 1984 s 36N(1) (s 36N added by SI 2005/2011; and amended by SI 2009/1182) (in force on the coming into force of the Safeguarding Vulnerable Groups Act 2006 s 44(1) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 704)).

4 For the meaning of 'the registrar' see PARA 396 NOTE 1.

5 As to the committees of the General Dental Council see PARA 395.

6 1984 Act s 36N(5). The registrar must investigate the allegation for the purpose of exercising his functions under s 36N(6)).

7 ie under the Social Security Administration Act 1992 s 115A or the Criminal Procedure (Scotland) Act 1995 s 302.

8 ie in a case where the person has been the subject of an order under the Criminal Procedure (Scotland) Act 1995 s 246(2) or (3) discharging him absolutely.

9 'Enactment' includes a provision of, or an instrument made under, an Act of the Scottish Parliament, a provision of, or an instrument made under, Northern Ireland legislation, and a provision of subordinate legislation: see 1984 Act s 36N(7)(a).

10 'Regulatory body' means a regulatory body which has the function of authorising persons to practise as members of a health or social care profession: *ibid* s 36N(7)(b).

11 As to the barred list see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 681.

12 1984 Act s 36N(2). It does not matter whether the allegation is based on a matter alleged to have occurred outside the United Kingdom or at a time when the person was not registered in the dental care professionals register: s 36N(3). As to the dental care professionals register see PARA 498B.1. Section 36N also applies in a case where it comes to the attention of the Council that a member of a dental care professional's fitness to practise as a member of a profession complementary to dentistry may be impaired on one or more of the grounds mentioned in s 36N(2), but no allegation to that effect has been made to the Council against that person (in which case the 1984 Act applies as if an allegation or allegations to the effect that the person's fitness to practise as a member of a profession complementary to dentistry is impaired on the ground or grounds in question had been made to the Council against that person): s 36N(4).

### 3. Investigation of allegations

Where the registrar<sup>1</sup> refers an allegation to the investigating committee<sup>2</sup>, it must investigate the allegation and determine whether the allegation ought to be considered by a practice committee<sup>3</sup>. If the investigating committee determines that the allegation ought to be considered by a practice committee, it must refer the allegation to either the professional performance committee, the health committee or the professional conduct committee, and may also refer the allegation to the interim orders committee<sup>4</sup>. On such a reference, the practice committee must either investigate the allegation and determine whether the person's fitness to practise as a member of a profession complementary to dentistry is impaired, or refer the allegation back to the investigating committee<sup>5</sup>.

1 For the meaning of 'the registrar' see PARA 396 NOTE 1.

2 As to the committees of the General Dental Council see PARA 395.

3 See Dentists Act 1984 s 36O(1)-(3), (7)-(10) (ss 36O, 36P added by SI 2005/2011).

4 1984 Act s 36O(4)-(6)).



5 Ibid s 36P(1)-(5). See further s 36Y (ss 36Y, 36Z, Sch 4B added by SI 2005/2011) (General Dental Council's power to require disclosure of information), 1984 Act s 36Z (notification and disclosure by the Council), and Sch 4B (proceedings before investigating committee, interim orders committee and practice committees). See also the General Dental Council have made the General Dental Council (Fitness to Practise) Rules 2006 (approved by the General Dental Council (Fitness to Practise) Rules Order of Council 2006, SI 2006/1663 (see PARA 456)).

#### **4. Erasure and suspension from, and restoration to, the register**

If the practice committee<sup>1</sup> determines, in relation to a title under which a person is registered in the dental care professionals register<sup>2</sup>, his fitness to practise as a member of the profession, or class of members of a profession, to which that title applies is impaired, it may direct erasure of his name from the register under that title, suspension of his registration, that his registration under that title become conditional, or that he be reprimanded<sup>3</sup>. The practice committee must review any decision it has made to suspend a person's registration or to make his registration subject to conditions at least every two years<sup>4</sup>. A person whose name has been erased from the register may apply to the registrar<sup>5</sup> for his name to be restored<sup>6</sup>. Provision has been made as to the taking effect of a direction relating to erasure, suspension or conditional registration<sup>7</sup>, and as to interim orders for suspension or conditional registration<sup>8</sup>.

1 As to the committees of the General Dental Council see PARA 395.

2 As to the dental care professionals register see PARA 498B.1.

3 See Dentists Act 1984 s 36P(6)-(11) (ss 36P-36X added by SI 2005/2011). The person concerned may appeal to the High Court against a direction for erasure, suspension or relating to conditional registration: see the 1984 Act s 36S. As to orders for the immediate erasure or suspension of a person's name, see s 36U.

4 See ibid s 36Q. See also s 36U, NOTE 3. The person concerned may appeal to the High Court against a decision under s 36Q or 36R: see s 36S.

5 For the meaning of 'the registrar' see PARA 396 NOTE 1.

6 See the 1984 Act s 36R. See also s 36U, NOTE 3. As to appeal against an adverse decision under s 36R see s 36S, NOTE 4.

7 See ibid s 36T. See further s 36W (treatment of persons suspended or whose registration is subject to conditions), and s 36X (recording of suspension and conditional registration).

8 See ibid s 36V.

### **UPDATE**

#### **486-498 Dental Auxiliaries**

Dentists Act 1984 Pt 5 (ss 45-48) revoked by the Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011. Dental Auxiliaries Regulations 1986, SI 1986/887, lapsed (see SI 2005/2011 art 50, Sch 7 for transitional provision). Further transitional provision is made by the Dentists Act 1984 (Amendment) Order 2005 Transitional Provisions Order of Council 2006, SI 2006/1671. The regulation of professions complementary to dentistry now corresponds to the regulation of dentists: see the 1984 Act Pt 3A (ss 36A-36Z2) (added by SI 2005/2011); and PARAS 498A-498C.

#### **495-498 The Dental Auxiliaries Committee**

Dental auxiliaries committee abolished: Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011; see PARA 395.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/4. OSTEOPATHS/(1) THE GENERAL OSTEOPATHIC COUNCIL/(i) Constitution/499. The General Osteopathic Council.

## **4. OSTEOPATHS**

### **(1) THE GENERAL OSTEOPATHIC COUNCIL**

#### **(i) Constitution**

##### **499. The General Osteopathic Council.**

The General Osteopathic Council ('the General Council'<sup>1</sup>) is a body corporate<sup>2</sup>. It is the duty of the General Council to develop, promote and regulate the profession of osteopathy<sup>3</sup>, and the General Council has such other functions as are conferred on it by the Osteopaths Act 1993<sup>4</sup>. The General Council has four committees<sup>5</sup>, known as the education committee<sup>6</sup>, the investigating committee<sup>7</sup>, the professional conduct committee<sup>8</sup>, and the health committee<sup>9</sup>; and it may establish such other committees as it considers appropriate in connection with the discharge of its functions<sup>10</sup>. At the request of the General Council, Her Majesty may by Order in Council<sup>11</sup> make such provision with respect to the constitution of the General Council and with respect to the statutory committees<sup>12</sup> as Her Majesty considers appropriate in consultation with the General Council<sup>13</sup>.

1 'The General Council' means the General Osteopathic Council: Osteopaths Act 1993 s 41.

2 Ibid s 1(1). As to bodies corporate see generally COMPANIES; CORPORATIONS.

3 Ibid s 1(2).

4 Ibid s 1(3).

5 The four committees are referred to in the Osteopaths Act 1993 as 'the statutory committees': ss 1(6), 41. Each of the statutory committees has the functions conferred on it by or under the Act: s 1(7). As to the appointment of members to the statutory committees, and as to the procedure of those committees, see PARAS 509-515 post.

6 As to the education committee see PARA 512 post.

7 As to the investigating committee see PARA 513 post.

8 As to the professional conduct committee see PARA 514 post.

9 Osteopaths Act 1993 s 1(5). As to the health committee see PARA 515 post.

10 Ibid s 1(8).

11 As to Orders in Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 907.

12 Ie with respect to those matters dealt with by the Schedule to the Osteopaths Act 1993. As to those matters in relation to the General Council see PARAS 500-505 post; and as to those matters in relation to the statutory committees see PARAS 509-515 post.

13 Ibid s 1(10). Any such provision may be made either in substitution for, or as an addition to, that made by any provision of the Schedule: s 1(12). Any such Order in Council is subject to annulment in pursuance of a resolution of either House of Parliament: s 1(11). As to the annulment of statutory instruments see STATUTES vol 44(1) (Reissue) PARA 1516.

**UPDATE****499-504 Constitution**

Provision as to membership, the chair and proceedings of the General Council is made by the Osteopaths Act 1993 s 1(4), Schedule paras 1A, 1B (s 1(4) substituted, Schedule paras 1A-1D substituted for Schedule paras 1-14, by SI 2008/1774)); and the General Osteopathic Council (Constitution) Order 2009, SI 2009/263. The General Council must establish and maintain a system for the declaration and registration of private interests of its members: see Osteopaths Act 1993 Schedule para 1C. In exercising its functions, the General Council must consider the interests of patients and registered osteopaths, and must co-operate with public bodies and others concerned with the employment, education, training and regulation of osteopaths: see Schedule para 1D. 'Training' includes continuing professional development: s 41 (definition added by SI 2008/1774).

**499 The General Osteopathic Council**

TEXT AND NOTE 3--Osteopaths Act 1993 s 1(2) amended: SI 2008/1774.

TEXT AND NOTES 11-13--Osteopaths Act 1993 s 1(10)-(12) repealed: SI 2008/1774.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/4. OSTEOPATHS/(1) THE GENERAL OSTEOPATHIC COUNCIL/(i) Constitution/500. Membership of the General Council.

### **500. Membership of the General Council.**

The General Council<sup>1</sup> consists of 12 members elected by fully registered osteopaths<sup>2</sup>, eight members appointed by the Privy Council<sup>3</sup>, three members appointed by the education committee<sup>4</sup>, and one member appointed by the Secretary of State<sup>5</sup>. The quorum of the General Council is 12<sup>6</sup>. No person is prevented from being elected or from being appointed merely because he has previously been a member of the General Council<sup>7</sup>.

Subject to the following provisions<sup>8</sup>, each member's term of office is for a period of five years<sup>9</sup>. Where a member fails to complete his full term of office<sup>10</sup>, then: (1) in such circumstances as may be prescribed<sup>11</sup>, if the unexpired term<sup>12</sup> is less than the prescribed period<sup>13</sup>, the vacancy need not be filled before the end of that term<sup>14</sup>; (2) if the member's successor is elected or (as the case may be) appointed during the unexpired term, the successor's term of office is, subject to his resignation, retirement or removal<sup>15</sup>, for the residue of the unexpired term<sup>16</sup>. Any member may at any time resign by notice in writing addressed to the registrar<sup>17</sup>, and every member must retire on reaching the age of 70<sup>18</sup>. The General Council must by rules<sup>19</sup> make provision as to the grounds (such as repeated absence from meetings or unacceptable professional conduct<sup>20</sup>) on which any member may be removed from office and the procedure involved<sup>21</sup>.

1 For the meaning of 'the General Council' see PARA 499 note 1 ante. As to the transitional provisions relating to the initial membership of the Council see the Osteopaths Act 1993 Schedule Pt III paras 42-48.

2 Ibid s 1(4), Schedule para 1(a). As to the election of such members see PARA 502 post. For the meaning of 'fully registered osteopath' see PARA 520 note 3 post.

3 Ibid Schedule para 1(b). As to the appointment of such members see PARA 503 post. As to the exercise of the powers of the Privy Council under the Osteopaths Act 1993 generally see PARA 517 post. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

4 Ibid Schedule para 1(c). As to the appointment of such members see PARA 503 post. As to the education committee see PARA 512 post.

5 Ibid Schedule 1(d). The member appointed by the Secretary of State must be a person appearing to him to be qualified to advise the General Council on matters relating to professional education: Schedule para 13. As to the Secretary of State see PARA 5 ante.

6 Ibid Schedule para 2.

7 Ibid Schedule para 8.

8 Ie subject to the provisions of ibid Schedule paras 4-7: see the text to notes 10-21 infra.

9 Ibid Schedule para 3.

10 Ibid Schedule para 4(1).

11 'Prescribed' means prescribed by rules made by the General Council: ibid s 41. As to the rules that have been made see the General Osteopathic Council (Constitution and Procedure) Rules 1998, approved by the General Osteopathic Council (Constitution and Procedure) Rules Order of Council 1998, SI 1998/1019.

12 'The unexpired term' means the period beginning with the date on which the member ceased to be a member and ending with the date on which his full term of office would have expired: Osteopaths Act 1993 Schedule para 4(5).

13 Rules made by the General Council under *ibid* Schedule para 4(2) must not prescribe a period of more than 12 months: Schedule para 4(4).

14 *Ibid* Schedule para 4(2). Where a member fails to complete his term of office less than six months before the end of the term of office of one or more other members, the prescribed period for these purposes is six months: General Osteopathic Council (Constitution and Procedure) Rules Order of Council 1998, SI 1998/1019, r 2.

15 *Ie* under the Osteopaths Act 1993 Schedule paras 5-7: see the text to notes 17-21 *infra*.

16 *Ibid* Schedule para 4(3).

17 *Ibid* Schedule para 5. As to the registrar see PARA 519 *post*.

18 *Ibid* Schedule para 6. For the meaning of 'writing' see PARA 20 note 22 *ante*.

19 As to the making of rules see PARA 506 *post*; and as to the effect of competition orders on rules see PARA 518 *post*.

20 For the meaning of 'unacceptable professional conduct' see PARA 545 note 2 *post*.

21 Osteopaths Act 1993 Schedule para 7. As to the rules that have been made under this provision see the General Osteopathic Council (Constitution and Procedure) Rules 1998, approved by the General Osteopathic Council (Constitution and Procedure) Rules Order of Council 1998, SI 1998/1019. See note 11 *supra*. As to the removal of members from office see PARA 501 *post*.

## **UPDATE**

### **499-504 Constitution**

Provision as to membership, the chair and proceedings of the General Council is made by the Osteopaths Act 1993 s 1(4), Schedule paras 1A, 1B (s 1(4) substituted, Schedule paras 1A-1D substituted for Schedule paras 1-14, by SI 2008/1774)); and the General Osteopathic Council (Constitution) Order 2009, SI 2009/263. The General Council must establish and maintain a system for the declaration and registration of private interests of its members: see Osteopaths Act 1993 Schedule para 1C. In exercising its functions, the General Council must consider the interests of patients and registered osteopaths, and must co-operate with public bodies and others concerned with the employment, education, training and regulation of osteopaths: see Schedule para 1D. 'Training' includes continuing professional development: s 41 (definition added by SI 2008/1774).

### **500 Membership of the General Council**

NOTES 11, 14, 21--General Osteopathic Council (Constitution and Procedure) Rules 1998 and SI 1998/1019 revoked: SI 2008/1744.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/4. OSTEOPATHS/(1) THE GENERAL OSTEOPATHIC COUNCIL/(i) Constitution/501. Removal of members from office.

### **501. Removal of members from office.**

Any member<sup>1</sup> may be removed from office<sup>2</sup> if at any time it is determined by a majority of the other members present at a meeting of the Council<sup>3</sup> that he:

- 670 (1) has failed to attend three consecutive meetings of the Council and the other members are not satisfied that such failure was occasioned by reasonable cause<sup>4</sup>; or
- 671 (2) has without the prior consent of the Council disclosed to any person who is not a member any information or matter which is known to him in confidence by reason of his membership of the Council, and should in consequence be removed from office<sup>5</sup>; or
- 672 (3) has brought the Council into disrepute or has otherwise acted contrary to the best interests of the Council, and should in consequence be removed from office<sup>6</sup>; or
- 673 (4) has at any time been found guilty in a court of law of a criminal offence, and should in consequence be removed from office<sup>7</sup>; or
- 674 (5) has been declared bankrupt or has made an arrangement or composition with his creditors or has had a receiver appointed of his property, and should in consequence be removed from office<sup>8</sup>; or
- 675 (6) has since becoming a member been found by the professional conduct committee<sup>9</sup> to have been guilty either of conduct which falls short of the standard required of a registered osteopath or of professional incompetence<sup>10</sup>; or
- 676 (7) not being an osteopath<sup>11</sup>, has since becoming a member been found guilty of misconduct by any other professional or regulatory body, and should in consequence be removed from office<sup>12</sup>.

No member is to be removed from office unless the chairman<sup>13</sup> has first sent to him a written statement giving him: (a) particulars of the grounds on which one or more of the matters set out in heads (1) to (7) above is or are considered to apply to him<sup>14</sup>; (b) not less than 14 days' notice of the date, time and place of a meeting of the Council at which it is proposed that any determination of the matter is to be made<sup>15</sup>; and (c) the opportunity to submit written representations to the Council or the right to attend at the meeting of the Council and be heard before any such determination is made<sup>16</sup>. In addition, at any meeting of the Council at which such a determination is made, the number of other members present must be not less than 12<sup>17</sup>.

The removal of a member under these provisions has effect from the date of the determination or such later date as may be determined by the meeting at which it is made<sup>18</sup>.

1 'Member' means a member of the Council: General Osteopathic Council (Constitution and Procedure) Rules Order of Council 1998, SI 1998/1019, r 1(2)(i). As to the Council see note 3 infra.

2 Removal is to be in accordance with the provisions of *ibid* r 3(2): see the text to notes 13-17 infra.

3 For these purposes, 'the Council' means the General Osteopathic Council: *ibid* r 1(2)(e). As to the General Osteopathic Council see *PARA* 499 ante.

4 *Ibid* r 3(1)(a).

5 Ibid r 3(1)(b).

6 Ibid r 3(1)(c).

7 Ibid r 3(1)(d). As to the application of the Rehabilitation of Offenders Act 1974 to osteopaths see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 687.

8 General Osteopathic Council (Constitution and Procedure) Rules Order of Council 1998, SI 1998/1019, r 3(1)(e). As to bankruptcy and arrangements and compositions with creditors see BANKRUPTCY AND INDIVIDUAL INSOLVENCY; and as to receivers see RECEIVERS.

9 'The professional conduct committee' means the committee of that name of the Council established by virtue of the Osteopaths Act 1993 s 1(5), Schedule para 34: General Osteopathic Council (Constitution and Procedure) Rules Order of Council 1998, SI 1998/1019, r 1(2)(k). As to the professional conduct committee see PARA 514 post.

10 Ibid r 3(1)(f).

11 'Osteopath' means any person whose name is on the register of osteopaths; and 'the register' means the professional register of osteopaths maintained by the registrar of the Council under the Osteopaths Act 1993 s 2 (see PARA 519 post): General Osteopathic Council (Constitution and Procedure) Rules Order of Council 1998, SI 1998/1019, r 1(2)(j), (l).

12 Ibid r 3(1)(g).

13 'The chairman' means the chairman of the Council or, as the case may be, any person acting on behalf of the chairman in accordance with ibid r 4 (see PARA 504 note 10 post): r 1(2)(d). As to the election of the chairman or of a person acting on his behalf see PARA 504 post.

14 Ibid r 3(2)(a)(i).

15 Ibid r 3(2)(a)(ii).

16 Ibid r 3(2)(a)(iii).

17 Ibid r 3(2)(b).

18 Ibid r 3(3).

## **UPDATE**

### **499-504 Constitution**

Provision as to membership, the chair and proceedings of the General Council is made by the Osteopaths Act 1993 s 1(4), Schedule paras 1A, 1B (s 1(4) substituted, Schedule paras 1A-1D substituted for Schedule paras 1-14, by SI 2008/1774)); and the General Osteopathic Council (Constitution) Order 2009, SI 2009/263. The General Council must establish and maintain a system for the declaration and registration of private interests of its members: see Osteopaths Act 1993 Schedule para 1C. In exercising its functions, the General Council must consider the interests of patients and registered osteopaths, and must co-operate with public bodies and others concerned with the employment, education, training and regulation of osteopaths: see Schedule para 1D. 'Training' includes continuing professional development: s 41 (definition added by SI 2008/1774).

### **501 Removal of members from office**

TEXT AND NOTES--General Osteopathic Council (Constitution and Procedure) Rules 1998 and SI 1998/1019 revoked: SI 2008/1744.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/4. OSTEOPATHS/(1) THE GENERAL OSTEOPATHIC COUNCIL/(i) Constitution/502. Members elected by fully registered osteopaths.

## **502. Members elected by fully registered osteopaths.**

The provisions described below apply in relation to the 12 members of the General Council<sup>1</sup> elected by fully registered osteopaths<sup>2</sup>.

Each member must be a fully registered osteopath at the time of his election<sup>3</sup>, and may be a registered medical practitioner<sup>4</sup>. One member must be expressly elected as a member who is both a fully registered osteopath and a registered medical practitioner at the time of his election<sup>5</sup>. Of the other 11 members, eight must be elected by fully registered osteopaths whose registered addresses are in England<sup>6</sup>, and one each must be elected by fully registered osteopaths whose registered addresses are in Wales<sup>7</sup>, Scotland<sup>8</sup> and Northern Ireland<sup>9</sup> respectively.

The General Council must make further provision by rules<sup>10</sup> in relation to the election of the 12 members and as to by-elections<sup>11</sup>.

1 For the meaning of 'the General Council' see PARA 499 note 1 ante. As to the membership of the General Council see PARA 500 ante.

2 Osteopaths Act 1993 s 1(4), Schedule para 9(1). For the meaning of 'fully registered osteopath' see PARA 520 note 3 post.

3 Ibid Schedule para 9(2)(a).

4 Ibid Schedule para 9(2)(b). For the meaning of 'registered medical practitioner' see PARA 4 ante.

5 Ibid Schedule para 9(3). This member must be elected by fully registered osteopaths whose registered addresses are in the United Kingdom: Schedule para 9(4). For the meaning of 'registered address' see PARA 524 note 7 post. As to the entry of an osteopath's address in the register see PARA 525 post. For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

6 Ibid Schedule para 9(5)(a).

7 Ibid Schedule para 9(5)(b).

8 Ibid Schedule para 9(5)(c).

9 Ibid Schedule para 9(5)(d).

10 As to the making of rules see PARA 506 post; and as to the effect of competition orders on rules see PARA 518 post.

11 Osteopaths Act 1993 Schedule para 10. As to the rules that have been made see the General Osteopathic Council (Election of Members and Chairman of Council) Rules 2002, approved by the General Osteopathic Council (Election of Members and Chairman of Council) Rules Order of Council 2002, SI 2002/827.

## **UPDATE**

### **499-504 Constitution**

Provision as to membership, the chair and proceedings of the General Council is made by the Osteopaths Act 1993 s 1(4), Schedule paras 1A, 1B (s 1(4) substituted, Schedule paras 1A-1D substituted for Schedule paras 1-14, by SI 2008/1774)); and the General Osteopathic Council (Constitution) Order 2009, SI 2009/263. The General Council must

establish and maintain a system for the declaration and registration of private interests of its members: see Osteopaths Act 1993 Schedule para 1C. In exercising its functions, the General Council must consider the interests of patients and registered osteopaths, and must co-operate with public bodies and others concerned with the employment, education, training and regulation of osteopaths: see Schedule para 1D. 'Training' includes continuing professional development: s 41 (definition added by SI 2008/1774).

## **502 Members elected by fully registered osteopaths**

NOTE 11--General Osteopathic Council (Election of Members and Chairman of Council)  
Rules 2002 and SI 2002/827 revoked: SI 2008/1744.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/4. OSTEOPATHS/(1) THE GENERAL OSTEOPATHIC COUNCIL/(i) Constitution/503. Members appointed by the Privy Council and the education committee.

### **503. Members appointed by the Privy Council and the education committee.**

Of the eight members appointed by the Privy Council<sup>1</sup> one must be a registered medical practitioner<sup>2</sup> at the time of his appointment and must be appointed after consultation with the Conference of Medical Royal Colleges and their Faculties in the United Kingdom<sup>3</sup>. The other seven members must be persons who are not registered osteopaths<sup>4</sup> at the time of their appointment<sup>5</sup>.

The three members appointed by the education committee<sup>6</sup> must be persons appearing to the committee to be qualified to advise the General Council on matters relating to education and training in osteopathy<sup>7</sup>. Before making any such appointment, the committee must consult those institutions in the United Kingdom by which or under whose direction any relevant course of study<sup>8</sup> is given<sup>9</sup>, and such other bodies, if any, as the committee considers appropriate<sup>10</sup>.

1 As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

2 For the meaning of 'registered medical practitioner' see PARA 4 ante.

3 Osteopaths Act 1993 s 1(4), Schedule para 11(1)(a). The member appointed under this provision must not be a registered osteopath (see note 4 infra): Schedule para 11(3). If the Conference of Medical Royal Colleges and their Faculties in the United Kingdom ceases to exist, the Privy Council must appoint the member in question after consultation with such other representative body or bodies as it thinks fit: Schedule para 11(2). For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

4 'Registered osteopath' means a person who is registered as a fully registered osteopath, as a conditionally registered osteopath or as a provisionally registered osteopath: *ibid* s 41. For the meaning of 'fully registered osteopath' see PARA 520 note 3 post. For the meaning of 'conditionally registered osteopath' see PARA 522 note 4 post; and for the meaning of 'provisionally registered osteopath' see PARA 523 note 10 post. For the meaning of 'registered' see PARA 524 note 3 post.

5 *Ibid* Schedule para 11(1)(b). Any of these other members may be a registered medical practitioner: Schedule para 11(4).

If, under the Health and Social Care (Community Health and Standards) Act 2003 s 187, the Secretary of State has given a direction to a special health authority to exercise any function of a Minister of the Crown relating to the making of appointments to a body mentioned in s 187, the Privy Council may direct the special health authority to exercise, to the extent specified in the direction, its functions under the Osteopaths Act 1993 Schedule paras 1, 11 in relation to the appointment of members of the General Council: Osteopaths Act 1993 Schedule para 11A(1), (2) (added by the Health and Social Care (Community Health and Standards) Act 2003 s 187(8), Sch 12, PARA 5). As to special health authorities see HEALTH SERVICES vol 54 (2008) PARA 136 et seq. As to the Secretary of State see PARA 5 ante. For the meaning of 'the General Council' see PARA 499 note 1 ante.

6 As to the education committee see PARA 512 post.

7 Osteopaths Act 1993 Schedule para 12(1).

8 'Relevant course of study' has the same meaning as in *ibid* s 12(2) (see PARA 536 note 2 post): Schedule para 12(3).

9 *Ibid* Schedule para 12(2)(a).

10 *Ibid* Schedule para 12(2)(b).

## **UPDATE**

### **499-504 Constitution**

Provision as to membership, the chair and proceedings of the General Council is made by the Osteopaths Act 1993 s 1(4), Schedule paras 1A, 1B (s 1(4) substituted, Schedule paras 1A-1D substituted for Schedule paras 1-14, by SI 2008/1774)); and the General Osteopathic Council (Constitution) Order 2009, SI 2009/263. The General Council must establish and maintain a system for the declaration and registration of private interests of its members: see Osteopaths Act 1993 Schedule para 1C. In exercising its functions, the General Council must consider the interests of patients and registered osteopaths, and must co-operate with public bodies and others concerned with the employment, education, training and regulation of osteopaths: see Schedule para 1D. 'Training' includes continuing professional development: s 41 (definition added by SI 2008/1774).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/4.  
OSTEOPATHS/(1) THE GENERAL OSTEOPATHIC COUNCIL/(i) Constitution/504. The chairman.

#### **504. The chairman.**

The members of the General Council<sup>1</sup> must elect a chairman from among themselves<sup>2</sup>. The chairman holds office until: (1) he resigns as chairman<sup>3</sup>; (2) he ceases to be a member of the General Council<sup>4</sup>; (3) he is removed by a majority vote of the other members of the General Council<sup>5</sup>; or (4) a period of seven years, beginning with his assuming office as chairman, has elapsed and no other person has been elected (and has served) as chairman during that time<sup>6</sup>. A person is not prevented from being elected as chairman merely because he has previously been chairman, but if he has ceased to hold office by virtue of head (4) above he may not be elected as chairman until some other person has served as the elected chairman<sup>7</sup>.

The General Council must by rules<sup>8</sup> make further provision in relation to the election of a chairman<sup>9</sup>, and make provision for the appointment of an acting chairman in the event of a vacancy in the office of chairman or in such other circumstances as may be prescribed<sup>10</sup>.

An election to the office of chairman<sup>11</sup> must be held at a meeting of the Council<sup>12</sup>, and notice of the election must be given in the programme of business<sup>13</sup>. If a vacancy occurs or is due to occur in the office of chairman or the chairman gives notice that he intends to resign as chairman or as a member of the Council on a stated date, the registrar must notify other members forthwith and an election to the office of chairman must be held at the next meeting of the Council after the expiration of two months from the notification to members of the vacancy, prospective vacancy or intended resignation<sup>14</sup>. A person who has been elected to the office of chairman may, prior to the date of commencement of his term of office, attend as an observer at meetings of committees and sub-committees of which he is not already a member<sup>15</sup>.

1 For the meaning of 'the General Council' see PARA 499 note 1 ante.

2 Osteopaths Act 1993 s 1(4), Schedule para 14(1).

3 Ibid Schedule para 14(3)(a). The chairman may resign the office of chairman at any time by notice in writing addressed to the registrar: Schedule para 14(2). As to the registrar see PARA 519 post. For the meaning of 'writing' see PARA 20 note 22 ante.

4 Ibid Schedule para 14(3)(b).

5 Ibid Schedule para 14(3)(c).

6 Ibid Schedule para 14(3)(d).

7 Ibid Schedule para 14(4).

8 As to the making of rules see PARA 506 post; and as to the effect of competition orders on rules see PARA 518 post.

9 Osteopaths Act 1993 Schedule para 14(5)(a). As to the rules that have been made see the General Osteopathic Council (Election of Members and Chairman of Council) Rules 2002, approved by the General Osteopathic Council (Election of Members and Chairman of Council) Rules Order of Council 2002, SI 2002/827.

10 Osteopaths Act 1993 Schedule para 14(5)(b). For the meaning of 'prescribed' see PARA 500 note 11 ante. The members of the General Council must from time to time, and not less than once in every 12 months, appoint from among themselves a person to act as the chairman in the event of any vacancy in the office of chairman or if the chairman is unable to act, and such person may be re-appointed: General Osteopathic Council (Constitution and Procedure) Rules Order of Council 1998, SI 1998/1019, r 4.

11 'The chairman' means the chairman of the Council (see note 12 *infra*) or, as the case may be, any person acting on behalf of the chairman in accordance with the General Osteopathic Council (Constitution and Procedure) Rules 1998, SI 1998/1019, r 4 (see note 10 *supra*) but does not include any person appointed under the Osteopaths Act 1993 Schedule para 48 (transitional provisions; now expired): General Osteopathic Council (Election of Members and Chairman of Council) Rules Order of Council 2002, SI 2002/827, r 1(3)(b), (c).

12 For these purposes, 'Council' means the General Osteopathic Council (see PARA 499 *ante*): *ibid* r 1(3)(d).

13 *Ibid* r 3(1). An election to the office of chairman must be held in accordance with the rules set out in the General Osteopathic Council (Election of Members and Chairman of Council) Rules, SI 2002/827, Sch 2: r 3(3).

14 *Ibid* r 3(2).

15 *Ibid* r 3(4). As to the committees of the Council see PARA 499 *ante*.

## **UPDATE**

### **499-504 Constitution**

Provision as to membership, the chair and proceedings of the General Council is made by the Osteopaths Act 1993 s 1(4), Schedule paras 1A, 1B (s 1(4) substituted, Schedule paras 1A-1D substituted for Schedule paras 1-14, by SI 2008/1774)); and the General Osteopathic Council (Constitution) Order 2009, SI 2009/263. The General Council must establish and maintain a system for the declaration and registration of private interests of its members: see Osteopaths Act 1993 Schedule para 1C. In exercising its functions, the General Council must consider the interests of patients and registered osteopaths, and must co-operate with public bodies and others concerned with the employment, education, training and regulation of osteopaths: see Schedule para 1D. 'Training' includes continuing professional development: s 41 (definition added by SI 2008/1774).

### **504 The chairman**

TEXT AND NOTES 9-15--General Osteopathic Council (Constitution and Procedure) Rules 1998 and SI 1998/1019, and General Osteopathic Council (Election of Members and Chairman of Council) Rules 2002 and SI 2002/827 revoked: SI 2008/1744.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/4.  
OSTEOPATHS/(1) THE GENERAL OSTEOPATHIC COUNCIL/(ii) General Powers and Finance/505.  
Powers of the General Council.

## **(ii) General Powers and Finance**

### **505. Powers of the General Council.**

Subject to any provision made by or under the Osteopaths Act 1993, the General Council<sup>1</sup> has power to do anything which is calculated to facilitate the discharge of its functions or which is incidental or conducive to the discharge of its functions<sup>2</sup>. In particular, the General Council has power to borrow<sup>3</sup>; to appoint such staff as it may determine<sup>4</sup>; to pay its staff such salaries as it may determine<sup>5</sup>; to pay its staff, and the members of its committees<sup>6</sup> and any of their sub-committees, such allowances and expenses as it may determine<sup>7</sup>; to make such provision for the payment of such pensions, allowances or gratuities, or such contributions or payments towards provision for such pensions, allowances or gratuities, to or in respect of its staff as it may determine<sup>8</sup>; to pay its members<sup>9</sup> such allowances and expenses as it may determine<sup>10</sup>; to establish such sub-committees of any of its committees as it may determine<sup>11</sup>; subject to any provision made by or under the Act, to regulate the procedure of any of its committees or their sub-committees<sup>12</sup>; to abolish any of its committees, other than a statutory committee<sup>13</sup>, or any sub-committee of any of its committees<sup>14</sup>; and to delegate to any of its committees any functions of the General Council other than any power to make rules<sup>15</sup>. Subject to any provision made by or under the Act, the General Council may regulate its own procedure<sup>16</sup>.

The powers of the General Council may be exercised even though there is a vacancy among its members<sup>17</sup>, and no proceedings of the General Council are invalidated by any defect in the election or appointment of a member<sup>18</sup>.

1 For the meaning of 'the General Council' see PARA 499 note 1 ante.

2 Osteopaths Act 1993 s 1(4), Schedule para 15(1).

3 Ibid Schedule para 15(2)(a).

4 Ibid Schedule para 15(2)(b). As to the appointment of the registrar of osteopaths and his remuneration see PARA 519 post.

5 Ibid Schedule para 15(2)(c). The General Council may treat a person appointed as a visitor as a member of its staff for the purposes of Schedule para 15(2)(c)-(e): s 12(10)(b). As to the appointment of visitors see PARA 536 post.

6 As to the committees of the General Council see PARA 499 ante. As to the appointment of members of committees see PARAS 509-515 post.

7 Osteopaths Act 1993 Schedule para 15(2)(d). See also note 5 supra.

8 Ibid Schedule para 15(2)(e). See also note 5 supra.

9 As to the membership of the General Council see PARA 500 ante.

10 Osteopaths Act 1993 Schedule para 15(2)(ee) (added by the Chiropractors Act 1994 s 42, Sch 2 para 10(2), (4)). This provision was added with retrospective effect.

11 Osteopaths Act 1993 Schedule para 15(2)(f).

12 Ibid Schedule para 15(2)(g).

13 As to the statutory committees see PARA 499 note 5 ante.

- 14 Osteopaths Act 1993 Schedule para 15(2)(h).
- 15 Ibid Schedule para 15(2)(i).
- 16 Ibid Schedule para 15(5).
- 17 Ibid Schedule para 15(3).
- 18 Ibid Schedule para 15(4).

## **UPDATE**

### **505-508 General Powers and Finance**

The General Osteopathic Council must publish an annual report that includes a description of the arrangements that it has in place to ensure that it adheres to good practice in relation to equality and diversity, a statistical report relating to its fitness to practice functions, and a strategic plan: see the Osteopaths Act 1993 s 40A (added by SI 2008/1774).

### **505 Powers of the General Council**

TEXT AND NOTES--Standing orders of the General Council may make provision with regard to the provisional suspension of a member of the General Council from office, pending the taking of a decision about the suspension or removal from office of the member in accordance with the provisions of an order under the Osteopaths Act 1993 s 1(4): Schedule para 15(2A) (added by SI 2008/1774).

TEXT AND NOTES 17, 18--Osteopaths Act 1993 Schedule para 15(3), (4) repealed: SI 2008/1774.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/4. OSTEOPATHS/(1) THE GENERAL OSTEOPATHIC COUNCIL/(ii) General Powers and Finance/506. Rules.

## **506. Rules.**

The approval of the Privy Council<sup>1</sup> is required for any exercise by the General Council<sup>2</sup> of a power to make rules under the Osteopaths Act 1993<sup>3</sup>. Any rules made by the General Council or by Order in Council<sup>4</sup> may make different provision with respect to different cases, or classes of case, and, in particular, may make different provision with respect to different categories of osteopath or registered osteopath<sup>5</sup>. Nothing in any rules made under the Act is to be taken to oblige or entitle any person to act in breach of the law relating to confidentiality<sup>6</sup>.

1 As to the giving of approval by the Privy Council see PARA 517 post. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

2 For the meaning of 'the General Council' see PARA 499 note 1 ante.

3 Osteopaths Act 1993 s 35(1).

4 As to Orders in Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 907.

5 Osteopaths Act 1993 s 35(2). For the meaning of 'registered osteopath' see PARA 503 note 4 ante.

6 Ibid s 35(4). As to the law relating to confidentiality see CONFIDENCE AND DATA PROTECTION.

## **UPDATE**

### **505-508 General Powers and Finance**

The General Osteopathic Council must publish an annual report that includes a description of the arrangements that it has in place to ensure that it adheres to good practice in relation to equality and diversity, a statistical report relating to its fitness to practice functions, and a strategic plan: see the Osteopaths Act 1993 s 40A (added by SI 2008/1774).

## **506 Rules**

TEXT AND NOTES 4, 5--Osteopaths Act 1993 s 35(2) amended: SI 2008/1774.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/4. OSTEOPATHS/(1) THE GENERAL OSTEOPATHIC COUNCIL/(ii) General Powers and Finance/507. Financial provisions.

### **507. Financial provisions.**

The General Council<sup>1</sup> must keep proper accounts of all sums received or paid by it and proper records in relation to those accounts<sup>2</sup>. The accounts for each financial year of the General Council must be audited by persons appointed by it<sup>3</sup>. As soon as is reasonably practicable after the accounts of the General Council have been audited, it must cause them to be published, together with any report on them made by the auditors<sup>4</sup>; and it must send a copy of the accounts and of any such report to the Privy Council<sup>5</sup>. The Privy Council must lay any such copy sent to it before each House of Parliament<sup>6</sup>.

1 For the meaning of 'the General Council' see PARA 499 note 1 ante.

2 Osteopaths Act 1993 s 40(1).

3 Ibid s 40(2). No person may be appointed as an auditor unless he is eligible for appointment as a company auditor under the Companies Act 1989 s 25 (see COMPANIES vol 15 (2009) PARA 969) or the Companies (Northern Ireland) Order 1990, SI 1990/593 (NI 5), art 28: Osteopaths Act 1993 s 40(3).

4 Ibid s 40(4)(a).

5 Ibid s 40(4)(b). As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

6 Ibid s 40(5). As to the laying of documents before Parliament see PARLIAMENT vol 34 (Reissue) PARA 941.

### **UPDATE**

#### **505-508 General Powers and Finance**

The General Osteopathic Council must publish an annual report that includes a description of the arrangements that it has in place to ensure that it adheres to good practice in relation to equality and diversity, a statistical report relating to its fitness to practice functions, and a strategic plan: see the Osteopaths Act 1993 s 40A (added by SI 2008/1774).

### **507 Financial provisions**

NOTE 3--1993 Act s 40(3) amended: SI 2008/948.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/4.  
OSTEOPATHS/(1) THE GENERAL OSTEOPATHIC COUNCIL/(ii) General Powers and Finance/508.  
Professional indemnity insurance.

### **508. Professional indemnity insurance.**

The General Council<sup>1</sup> may by rules<sup>2</sup> make provision requiring registered osteopaths<sup>3</sup> who are practising as osteopaths<sup>4</sup>, or prescribed<sup>5</sup> categories of registered osteopaths who are practising as osteopaths<sup>6</sup>, to secure that they are properly insured against liability to, or in relation to, their patients<sup>7</sup>. The rules may, in particular: (1) prescribe risks, or descriptions of risk, with respect to which insurance is required<sup>8</sup>; (2) prescribe the amount of insurance that is required either generally or with respect to prescribed risks<sup>9</sup>; (3) make such provision as the General Council considers appropriate for the purpose of securing, so far as is reasonably practicable, that the requirements of the rules are complied with<sup>10</sup>; (4) make provision with respect to failure to comply with their requirements, including provision for treating any failure as constituting unacceptable professional conduct<sup>11</sup>.

1 For the meaning of 'the General Council' see PARA 499 note 1 ante.

2 As to the making of rules see PARA 506 ante; and as to the effect of competition orders on rules see PARA 518 post.

3 For the meaning of 'registered osteopath' see PARA 503 note 4 ante.

4 Osteopaths Act 1993 s 37(1)(a).

5 For the meaning of 'prescribed' see PARA 500 note 11 ante.

6 Osteopaths Act 1993 s 37(1)(b).

7 Ibid s 37(1). As to the rules that have been made see the General Osteopathic Council (Professional Indemnity Insurance) Rules 1998, approved by the General Osteopathic Council (Professional Indemnity Insurance) Rules Order in Council 1998, SI 1998/1329. As to the liability of osteopaths to their patients see PARA 589 post.

8 Osteopaths Act 1993 s 37(2)(a).

9 Ibid s 37(2)(b).

10 Ibid s 37(2)(c).

11 Ibid s 37(2)(d). For the meaning of 'unacceptable professional conduct' see PARA 545 note 2 post.

### **UPDATE**

### **505-508 General Powers and Finance**

The General Osteopathic Council must publish an annual report that includes a description of the arrangements that it has in place to ensure that it adheres to good practice in relation to equality and diversity, a statistical report relating to its fitness to practice functions, and a strategic plan: see the Osteopaths Act 1993 s 40A (added by SI 2008/1774).

### **508 Professional indemnity insurance**

NOTE 3--In the Osteopaths Act 1993 s 37(1), 'registered osteopath' does not include a temporarily registered osteopath: s 37(1A) (added by SI 2007/3101).

NOTE 7--SI 1998/1329 amended: SI 2007/3101.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/4.  
OSTEOPATHS/(1) THE GENERAL OSTEOPATHIC COUNCIL/(iii) The Statutory Committees/509.  
Appointment of members.

### **(iii) The Statutory Committees**

#### **509. Appointment of members.**

The General Council<sup>1</sup> must establish and maintain the four statutory committees referred to in the Osteopaths Act 1993, namely the education committee, the investigating committee, the professional conduct committee, and the health committee<sup>2</sup>. The members of the statutory committees, other than co-opted members<sup>3</sup>, must be appointed by the General Council from among its members<sup>4</sup>. The General Council must make provision by rules<sup>5</sup> as to the procedure for such appointments<sup>6</sup>. A person is not prevented from being a member of a statutory committee merely because he has previously been a member of that committee<sup>7</sup>. Any member of a statutory committee, other than a co-opted member, holds office until he ceases to be a member of the General Council or, where he is a member of the committee by virtue of being chairman of the General Council<sup>8</sup>, until he ceases to be chairman of the General Council<sup>9</sup>. A person may be a member of more than one statutory committee<sup>10</sup>, but no member of the professional conduct committee or the health committee may take part in dealing with an allegation referred to either committee by another committee if he is also a member of the committee which referred the allegation<sup>11</sup>.

The following provisions apply to the appointment of the members of the statutory committees<sup>12</sup>. Provision was made for the registrar<sup>13</sup>, prior to the establishment of the statutory committees, and after consultation with the chairman and members of the General Council, to recommend members for appointment as members of the committees<sup>14</sup>. Prior to the appointment of any successor to the initial members of any of the statutory committees, the chairman of the committee in question must, after consultation with the chairman and members of the General Council, propose the name of any person who he recommends should be appointed to be a member of the committee; and the registrar must send details to every member of the General Council<sup>15</sup>. Any member of the General Council may send or hand to the registrar, at any time before the appointment of the member or members of the committee is made, written particulars of any further nomination he wishes to make, signed by the proposer and a seconder<sup>16</sup>.

At the meeting of the General Council when any such recommendation or nomination is to be considered, the new member or members of the committee: (1) will, if there has been no additional nomination, be the person or persons recommended by the chairman of the committee<sup>17</sup>; and (2) where any additional nomination to a committee has been made, will be determined by a ballot of members present at the meeting from among all members duly nominated<sup>18</sup>.

1 For the meaning of 'the General Council' see PARA 499 note 1 ante.

2 I.e. the committees referred to in the Osteopaths Act 1993 s 1(6) (see PARA 499 ante): General Osteopathic Council (Constitution and Procedure) Rules Order of Council 1998, SI 1998/1019, r 5(1). As to the statutory committees see PARA 499 note 5 ante. As to the education committee see PARA 512 post. As to the investigating committee see PARA 513 post. As to the professional conduct committee see PARA 514 post. As to the health committee see PARA 515 post.

3 As to co-opted members see PARA 510 post.

4 Osteopaths Act 1993 s 1(9), Schedule para 16(1). As to the membership of the General Council see PARAS 500-503 ante.

5 As to the making of rules see PARA 506 ante; and as to the effect of competition orders on rules see PARA 518 post.

6 Osteopaths Act 1993 Schedule para 16(2). As to the rules that have been made see the General Osteopathic Council (Constitution and Procedure) Rules 1998, approved by the General Osteopathic Council (Constitution and Procedure) Rules Order of Council 1998, SI 1998/1019.

7 Osteopaths Act 1993 Schedule para 18.

8 As to the chairman of the General Council see PARA 504 ante.

9 Osteopaths Act 1993 Schedule para 19. Save as otherwise provided in the Schedule to the Osteopaths Act 1993 or in the General Osteopathic Council (Constitution and Procedure) Rules 1998, SI 1998/1019, r 7 (see PARA 510 post), no person may be a member of any statutory committee or sub-committee of such a committee who is not at the same time a member of the General Council; and a person who ceases to be a member of the General Council must at the same time cease to be a member of every statutory committee and sub-committee of such a committee: r 5(2).

10 Osteopaths Act 1993 Schedule para 24(1).

11 Ibid Schedule para 24(2).

12 General Osteopathic Council (Constitution and Procedure) Rules Order of Council 1998, SI 1998/1019, r 6(1).

13 As to the registrar see PARA 519 post.

14 See the General Osteopathic Council (Constitution and Procedure) Rules Order of Council 1998, SI 1998/1019, r 6(2).

15 Ibid r 6(3).

16 Ibid r 6(4).

17 Ibid r 6(5)(a). In the case of the initial members, the person or persons recommended by the registrar were to be appointed if there were no additional nominations: see r 6(5)(a).

18 Ibid r 6(5)(b). This rule is expressed to be subject to the constitution of the committee complying with the provisions of the Osteopaths Act 1993 and the General Osteopathic Council (Constitution and Procedure) Rules. In the event of a tie in any voting, the chairman has an additional casting vote: General Osteopathic Council (Constitution and Procedure) Rules Order of Council 1998, SI 1998/1019, r 6(5)(b).

## UPDATE

### 509 Appointment of members

TEXT AND NOTES--SI 1998/1019 revoked: SI 2008/1774.

TEXT AND NOTES 3-6--Osteopaths Act 1993 Schedule para 16(1), (2) amended, Schedule para 16(3) added: SI 2008/1774.

TEXT AND NOTES 8, 9--Osteopaths Act 1993 Schedule para 19 repealed: SI 2008/1774.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/4.  
OSTEOPATHS/(1) THE GENERAL OSTEOPATHIC COUNCIL/(iii) The Statutory Committees/510.  
Co-opted members.

### **510. Co-opted members.**

The co-option of any person to any of the statutory committees<sup>1</sup> is subject to the approval of the General Council<sup>2</sup>. A co-opted member of any of the statutory committees may also be a member of the General Council<sup>3</sup>. The term of office of a co-opted member must not exceed the period of three years beginning with the date of his co-option<sup>4</sup>. The General Council must make further provision by rules<sup>5</sup> in relation to co-option, including provision as to the procedure involved<sup>6</sup>.

The chairman<sup>7</sup> must maintain a list of persons, who may include members of the General Council<sup>8</sup>, whom he considers suitable, by reason of their experience or qualifications, to serve as co-opted members of the statutory committees<sup>9</sup>. If any statutory committee considers it appropriate to increase its membership or the membership of any sub-committee of such committee by co-opting one or more persons, the chairman must, after consulting the chairman of the committee or sub-committee concerned, give not less than 14 days' written notice to members of the General Council that the proposal will be considered at the next meeting of the General Council<sup>10</sup>. Where any such proposal is approved by the General Council, the person concerned serves as a co-opted member of the committee or sub-committee in question for a term not exceeding three years beginning with the date of his co-option<sup>11</sup>.

1 As to the statutory committees see PARA 499 note 5 ante.

2 Osteopaths Act 1993 s 1(9), Schedule para 17(1). For the meaning of 'the General Council' see PARA 499 note 1 ante.

3 Ibid Schedule para 17(2).

4 Ibid Schedule para 17(3).

5 As to the making of rules see PARA 506 ante; and as to the effect of competition orders on rules see PARA 518 post.

6 Osteopaths Act 1993 Schedule para 17(4). As to the rules that have been made see the General Osteopathic Council (Constitution and Procedure) Rules 1998, approved by the General Osteopathic Council (Constitution and Procedure) Rules Order of Council 1998, SI 1998/1019.

7 For the meaning of 'the chairman' see PARA 501 note 13 ante. As to the election of the chairman see PARA 504 ante.

8 As to membership of the General Council see PARA 500 ante.

9 General Osteopathic Council (Constitution and Procedure) Rules Order of Council 1998, SI 1998/1019, r 7(1).

10 Ibid r 7(2). This rule is expressed to be subject to the provisions of the Osteopaths Act 1993 and of the General Osteopathic Council (Constitution and Procedure) Rules.

11 General Osteopathic Council (Constitution and Procedure) Rules Order of Council 1998, SI 1998/1019, r 7(3).

## **UPDATE**

### **510 Co-opted members**

TEXT AND NOTES--General Osteopathic Council (Constitution and Procedure) Rules 1998 and SI 1998/1019 revoked: SI 2008/1744.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/4.  
OSTEOPATHS/(1) THE GENERAL OSTEOPATHIC COUNCIL/(iii) The Statutory Committees/511.  
Procedure and exercise of functions.

### **511. Procedure and exercise of functions.**

The General Council<sup>1</sup> must make rules<sup>2</sup> regulating the procedure of the statutory committees<sup>3</sup> and their sub-committees (if any) including, in particular, provision as to rules of evidence to be observed in proceedings before any such committee or sub-committee<sup>4</sup>. Subject to any provision made by or under the Osteopaths Act 1993, each statutory committee and any sub-committee of such a committee may regulate its own procedure<sup>5</sup>. The powers of any statutory committee may be exercised even though there is a vacancy among its members<sup>6</sup>. No proceedings of a statutory committee are invalidated by any defect in the appointment of a member<sup>7</sup>.

The General Council may by rules make provision with respect to any sub-committee of a statutory committee including, in particular, provision as to the functions and powers to be conferred on the sub-committee, its composition and its relationship with the statutory committee<sup>8</sup>.

If it appears to the General Council that any statutory committee is failing to perform its functions adequately, the General Council may give a direction as to the proper performance of those functions<sup>9</sup>. Where the General Council, having given a such direction, is satisfied that the committee has failed to comply with the direction, it may exercise any power of that committee or do any act or other thing authorised to be done by that committee<sup>10</sup>.

1 For the meaning of 'the General Council' see PARA 499 note 1 ante.

2 As to the making of rules see PARA 506 ante; and as to the effect of competition orders on rules see PARA 518 post.

3 As to the statutory committees see PARA 499 note 5 ante.

4 Osteopaths Act 1993 s 1(9), Schedule para 21(1). The following rules have been made partly under this provision: the General Osteopathic Council (Fraud or Error and Appeals) Rules 1999, approved under the General Osteopathic Council (Fraud or Error and Appeals) Rules Order in Council 1999, SI 1999/1846 (see PARAS 534, 582-583 post); the General Osteopathic Council (Investigating of Complaints) (Procedure) Rules 1999, approved under the General Osteopathic Council (Investigating of Complaints) (Procedure) Rules Order in Council 1999, SI 1999/1847 (see PARAS 546-549 post); and the General Osteopathic Council (Health Committee) (Procedure) Rules 2000, approved under the General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000, SI 2000/242 (see PARAS 568-572 post).

5 Osteopaths Act 1993 Schedule para 21(2).

6 Ibid Schedule para 23(1).

7 Ibid Schedule para 23(2). As to the appointment of committee members see PARAS 509-510 ante.

8 Ibid Schedule para 20. The General Osteopathic Council (Constitution and Procedure) Rules 1998, approved by the General Osteopathic Council (Constitution and Procedure) Rules Order of Council 1998, SI 1998/1019, have been made partly under this provision. For the provisions relevant to sub-committees see PARA 505 ante.

9 Osteopaths Act 1993 Schedule para 22(1) (amended by the Chiropractors Act 1994 s 42, Sch 2 para 10(3)).

10 Osteopaths Act 1993 Schedule para 22(2).

### **UPDATE**

## **511 Procedure and exercise of functions**

TEXT AND NOTES 1-5--Osteopaths Act 1993 Schedule para 21(1), (2) amended: SI 2008/1774.

NOTE 8--General Osteopathic Council (Constitution and Procedure) Rules 1998 and SI 1998/1019 revoked: SI 2008/1744.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/4.  
OSTEOPATHS/(1) THE GENERAL OSTEOPATHIC COUNCIL/(iii) The Statutory Committees/512.  
The education committee.

## **512. The education committee.**

The education committee<sup>1</sup> consists of six of the members of the General Council<sup>2</sup> elected by fully registered osteopaths<sup>3</sup>, three of the members of the General Council appointed by the Privy Council<sup>4</sup>, the three members of the General Council appointed by the education committee<sup>5</sup>, and the member of the General Council appointed by the Secretary of State<sup>6</sup>. The three members appointed to the General Council by the committee are not entitled to take part in the appointment of any of their successors<sup>7</sup>, and the member appointed to the General Council by the Secretary of State is also not entitled to take part in the appointment of any of the successors to those three members<sup>8</sup>. In appointing the members of the committee, the General Council must secure<sup>9</sup> that its chairman is a member of the committee<sup>10</sup>. The committee may co-opt up to eight further members<sup>11</sup>.

The members of the committee must elect a chairman from among themselves<sup>12</sup>, but the chairman must not be the chairman of the General Council or a co-opted member of the committee<sup>13</sup>. In the event of a tie in any voting, the chairman of the committee has an additional casting vote<sup>14</sup>. The quorum of the committee is seven, of whom at least four must be members of the General Council<sup>15</sup>.

1 As to the general duty of the education committee in relation to the promotion of high standards of education and training see PARA 535 post.

2 For the meaning of 'the General Council' see PARA 499 note 1 ante.

3 Osteopaths Act 1993 s 1(9), Schedule para 25(1)(a). As to the members of the General Council elected by fully registered osteopaths see PARA 502 ante. For the meaning of 'fully registered osteopath' see PARA 520 note 3 post.

4 Ibid Schedule para 25(1)(b). As to the members of the General Council appointed by the Privy Council see PARA 503 ante. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

5 Ibid Schedule para 25(1)(c). As to the members of the General Council appointed by the education committee see PARA 503 ante.

6 Ibid Schedule para 25(1)(d). As to the member of the General Council appointed by the Secretary of State see PARA 500 note 5 ante. As to the Secretary of State see PARA 5 ante.

7 Ibid Schedule para 29(1). Where the chairman of the committee is prevented by Schedule para 29(1) or (2) from taking part in an appointment, the appointment must be made in accordance with rules made by the General Council: Schedule para 29(3). At the date at which this volume states the law no such rules had been made.

8 Ibid Schedule para 29(2). See also note 7 supra.

9 In so far as is compatible with the provisions of ibid Schedule para 25(1): see the text to notes 1-6 supra.

10 Ibid Schedule para 25(2). As to the chairman of the General Council see PARA 504 ante.

11 Ibid Schedule para 26. As to the co-option of members see PARA 510 ante.

12 Ibid Schedule para 27(1).

13 Ibid Schedule para 27(2).

14 Ibid Schedule para 27(3).

15 Ibid Schedule para 28.

## **UPDATE**

### **512-515 The education committee ... The health committee**

See the General Osteopathic Council (Constitution of the Statutory Committees) Rules Order of Council 2009, SI 2009/468, which relates to the Appointments Commission (see HEALTH SERVICES vol 54 (2008) PARA 805 et seq) (r 2); approval and terms of office of co-opted members of statutory committees (r 3); composition and quorum of the Education Committee (r 4); chairing of the Education Committee (r 5); composition and quorum of the Investigating Committee (r 6); chairing of the Investigating Committee (r 7); composition and quorum of the Professional Conduct Committee (r 8); chairing of the Professional Conduct Committee (r 9); composition and quorum of the Health Committee (r 10); chairing of the Health Committee (r 11); disqualification from appointment (r 12); termination of appointment of members of the statutory committees (r 13); suspension of members of the statutory committees (r 14); effect of vacancies etc on the validity of proceedings (r 15); and transitional arrangements (r 16).

### **512 The education committee**

TEXT AND NOTES 1-6, 9, 10--Osteopaths Act 1993 Schedule para 25 substituted: SI 2008/1774.

NOTE 1--For the meaning of 'training' see PARA 503.

TEXT AND NOTES 7, 8--Osteopaths Act 1993 Schedule para 29 repealed: SI 2008/1774.

TEXT AND NOTES 11-15--Osteopaths Act 1993 Schedule paras 26-28 repealed: SI 2008/1774.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/4.  
OSTEOPATHS/(1) THE GENERAL OSTEOPATHIC COUNCIL/(iii) The Statutory Committees/513.  
The investigating committee.

### **513. The investigating committee.**

The investigating committee consists of at least eight members of the General Council<sup>1</sup>, of whom at least two must be members of the General Council appointed by the Privy Council<sup>2</sup>. The committee may co-opt up to eight further members<sup>3</sup>. The members of the committee must elect a chairman from among themselves<sup>4</sup>, but the chairman must not be the chairman of the General Council<sup>5</sup> or a co-opted member of the committee<sup>6</sup>. In the event of a tie in any voting, the chairman of the committee has an additional casting vote<sup>7</sup>. The quorum of the committee is seven, of whom at least four must be members of the General Council<sup>8</sup>.

1 For the meaning of 'the General Council' see PARA 499 note 1 ante.

2 Osteopaths Act 1993 s 1(9), Schedule para 30. As to the members of the General Council appointed by the Privy Council see PARA 503 ante. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

3 Ibid Schedule para 31. As to the co-option of members see PARA 510 ante.

4 Ibid Schedule para 32(1).

5 As to the chairman of the General Council see PARA 504 ante.

6 Osteopaths Act 1993 Schedule para 32(2).

7 Ibid Schedule para 32(3). In the event of a tie in voting in respect of a decision under s 20(9)(c) (see PARA 545 post) or s 21(2) (see PARA 549 post), the chairman must cast his additional vote in favour of the osteopath concerned: Schedule para 32(4).

8 Ibid Schedule para 33.

## **UPDATE**

### **512-515 The education committee ... The health committee**

See the General Osteopathic Council (Constitution of the Statutory Committees) Rules Order of Council 2009, SI 2009/468, which relates to the Appointments Commission (see HEALTH SERVICES vol 54 (2008) PARA 805 et seq) (r 2); approval and terms of office of co-opted members of statutory committees (r 3); composition and quorum of the Education Committee (r 4); chairing of the Education Committee (r 5); composition and quorum of the Investigating Committee (r 6); chairing of the Investigating Committee (r 7); composition and quorum of the Professional Conduct Committee (r 8); chairing of the Professional Conduct Committee (r 9); composition and quorum of the Health Committee (r 10); chairing of the Health Committee (r 11); disqualification from appointment (r 12); termination of appointment of members of the statutory committees (r 13); suspension of members of the statutory committees (r 14); effect of vacancies etc on the validity of proceedings (r 15); and transitional arrangements (r 16).

### **513 The investigating committee**

TEXT AND NOTES--Osteopaths Act 1993 Schedule para 30 substituted, Schedule paras 31-33 repealed: SI 2008/1774. 1993 Act Schedule para 30A added: SI 2009/1182.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/4.  
OSTEOPATHS/(1) THE GENERAL OSTEOPATHIC COUNCIL/(iii) The Statutory Committees/514.  
The professional conduct committee.

#### **514. The professional conduct committee.**

The professional conduct committee consists of at least six members of the General Council<sup>1</sup>, of whom at least two must be members of the General Council appointed by the Privy Council<sup>2</sup>. The committee may co-opt up to four further members<sup>3</sup>. If the chairman of the General Council<sup>4</sup> is a member of the committee, he must be chairman of the committee<sup>5</sup>. If he is not a member of the committee, the members must elect a chairman from among those members who are not co-opted members<sup>6</sup>. In the event of a tie in any voting, the chairman of the committee has an additional casting vote<sup>7</sup>. The quorum of the committee is five, of whom at least three must be members of the General Council<sup>8</sup>.

1 For the meaning of 'the General Council' see PARA 499 note 1 ante.

2 Osteopaths Act 1993 s 1(9), Schedule para 34. As to the members of the General Council appointed by the Privy Council see PARA 503 ante. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

3 Ibid Schedule para 35. As to the co-option of members see PARA 510 ante.

4 As to the chairman of the General Council see PARA 504 ante.

5 Osteopaths Act 1993 Schedule para 36(1).

6 Ibid Schedule para 36(2).

7 Ibid Schedule para 36(3). In the event of a tie in voting in respect of a decision under s 22 (as amended) (see PARA 550 post) or s 24 (see PARA 553 post), the chairman must cast his additional vote in favour of the osteopath concerned: Schedule para 36(4).

8 Ibid Schedule para 37.

#### **UPDATE**

#### **512-515 The education committee ... The health committee**

See the General Osteopathic Council (Constitution of the Statutory Committees) Rules Order of Council 2009, SI 2009/468, which relates to the Appointments Commission (see HEALTH SERVICES vol 54 (2008) PARA 805 et seq) (r 2); approval and terms of office of co-opted members of statutory committees (r 3); composition and quorum of the Education Committee (r 4); chairing of the Education Committee (r 5); composition and quorum of the Investigating Committee (r 6); chairing of the Investigating Committee (r 7); composition and quorum of the Professional Conduct Committee (r 8); chairing of the Professional Conduct Committee (r 9); composition and quorum of the Health Committee (r 10); chairing of the Health Committee (r 11); disqualification from appointment (r 12); termination of appointment of members of the statutory committees (r 13); suspension of members of the statutory committees (r 14); effect of vacancies etc on the validity of proceedings (r 15); and transitional arrangements (r 16).

#### **514 The professional conduct committee**

TEXT AND NOTES--Osteopaths Act 1993 Schedule para 34 substituted, Schedule paras 35-37 repealed: SI 2008/1774. 1993 Act Schedule para 34A added: SI 2009/1182.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/4.  
OSTEOPATHS/(1) THE GENERAL OSTEOPATHIC COUNCIL/(iii) The Statutory Committees/515.  
The health committee.

### **515. The health committee.**

The health committee consists of at least six members of the General Council<sup>1</sup>, of whom at least two must be members of the General Council appointed by the Privy Council<sup>2</sup>, and at least one must be a registered medical practitioner<sup>3</sup> at the time of his appointment<sup>4</sup>. The committee may co-opt up to four further members<sup>5</sup>. If the chairman of the General Council<sup>6</sup> is a member of the committee, he must be chairman of the committee<sup>7</sup>. If he is not a member of the committee, the members must elect a chairman from among those members who are not co-opted members<sup>8</sup>. In the event of a tie in any voting, the chairman of the committee has an additional casting vote<sup>9</sup>. The quorum of the committee is five, none of whom need be registered medical practitioners but at least three of whom must be members of the General Council<sup>10</sup>.

1 For the meaning of 'the General Council' see PARA 499 note 1 ante.

2 Osteopaths Act 1993 s 1(9), Schedule para 38(1). As to the members of the General Council appointed by the Privy Council see PARA 503 ante. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

3 For the meaning of 'registered medical practitioner' see PARA 4 ante.

4 Osteopaths Act 1993 Schedule para 38(2).

5 Ibid Schedule para 39. As to the co-option of members see PARA 510 ante.

6 As to the chairman of the General Council see PARA 504 ante.

7 Osteopaths Act 1993 Schedule para 40(1).

8 Ibid Schedule para 40(2).

9 Ibid Schedule para 40(3). In the event of a tie in voting in respect of a decision under s 23 (as amended) (see PARA 552 post) or s 24 (see PARA 553 post), the chairman must cast his additional vote in favour of the osteopath concerned: Schedule para 40(4).

10 Ibid Schedule para 41.

### **UPDATE**

#### **512-515 The education committee ... The health committee**

See the General Osteopathic Council (Constitution of the Statutory Committees) Rules Order of Council 2009, SI 2009/468, which relates to the Appointments Commission (see HEALTH SERVICES vol 54 (2008) PARA 805 et seq) (r 2); approval and terms of office of co-opted members of statutory committees (r 3); composition and quorum of the Education Committee (r 4); chairing of the Education Committee (r 5); composition and quorum of the Investigating Committee (r 6); chairing of the Investigating Committee (r 7); composition and quorum of the Professional Conduct Committee (r 8); chairing of the Professional Conduct Committee (r 9); composition and quorum of the Health Committee (r 10); chairing of the Health Committee (r 11); disqualification from appointment (r 12); termination of appointment of members of the statutory committees (r 13); suspension of members of the statutory committees (r 14); effect of

vacancies etc on the validity of proceedings (r 15); and transitional arrangements (r 16).

### **515 The health committee**

TEXT AND NOTES--Osteopaths Act 1993 Schedule para 38 substituted, Schedule paras 39-41 repealed: SI 2008/1774. 1993 Act Schedule para 38A added: SI 2009/1182.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/4.  
 OSTEOPATHS/(1) THE GENERAL OSTEOPATHIC COUNCIL/ (iv) Powers of the Privy Council/516.  
 Default powers of the Privy Council.

#### **(iv) Powers of the Privy Council**

##### **516. Default powers of the Privy Council.**

If it appears to the Privy Council<sup>1</sup> that the General Council<sup>2</sup> has failed to perform any functions<sup>3</sup> which, in the opinion of the Privy Council, should have been performed, the Privy Council may give the General Council such direction as the Privy Council considers appropriate<sup>4</sup>. If the General Council fails to comply with any such direction, the Privy Council may itself give effect to the direction<sup>5</sup>. For the purpose of enabling it to give effect to a direction, the Privy Council may: (1) exercise any power of the General Council or do any act or other thing authorised to be done by the General Council<sup>6</sup>; and (2) do, of its own motion, any act or other thing which it is otherwise authorised to do under the Osteopaths Act 1993 on the instigation of the General Council<sup>7</sup>.

1 As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

2 For the meaning of 'the General Council' see PARA 499 note 1 ante.

3 As to the functions of the General Council see PARA 499 ante.

4 Osteopaths Act 1993 s 34(1). As to the appointment of members of the General Council by the Privy Council see PARA 503 ante.

5 Ibid s 34(2).

6 Ibid s 34(3)(a).

7 Ibid s 34(3)(b).

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 OSTEOPATHS/(1) THE GENERAL OSTEOPATHIC COUNCIL/ (iv) Powers of the Privy Council/517.  
 Exercise of powers of the Privy Council.

### **517. Exercise of powers of the Privy Council.**

Where the approval of the Privy Council<sup>1</sup> is required by the Osteopaths Act 1993 in respect of the making of any rules by the General Council<sup>2</sup>, it must be given by an order made by the Privy Council<sup>3</sup>. Any power of the Privy Council under the Act to make an order is exercisable by statutory instrument<sup>4</sup>. For the purposes of exercising any powers conferred by the Act, other than the power of hearing appeals<sup>5</sup>, the quorum of the Privy Council is two<sup>6</sup>. Any act of the Privy Council under the Act is sufficiently signified by an instrument signed by the clerk of the Privy Council<sup>7</sup>.

1 As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

2 As to the requirement for such approval see PARA 506 ante. For the meaning of 'the General Council' see PARA 499 note 1 ante.

3 Osteopaths Act 1993 s 36(1).

4 Ibid s 36(2). Any order approving rules made under s 5 (see PARA 523 post), s 8(8) (see PARA 531 post), s 17 (see PARA 543 post) or s 30 (see PARA 584 post) is subject to annulment in pursuance of a resolution of either House of Parliament: s 36(3). As to the annulment of statutory instruments see STATUTES vol 44(1) (Reissue) PARA 1516.

5 All powers of the Privy Council to hear appeals under the Osteopaths Act 1993 have been repealed by the National Health Service Reform and Health Care Professions Act 2002 ss 33, 37, Sch 9.

6 Osteopaths Act 1993 s 36(4).

7 Ibid s 36(5). Any document purporting to be an instrument made by the Privy Council under the Act, and signed by the clerk of the Privy Council, is evidence of the fact that the instrument was so made and of its terms: s 36(6).

### **UPDATE**

### **517 Exercise of powers of the Privy Council**

NOTE 4--Osteopaths Act 1993 s 36(3) amended: SI 2008/1774.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/4. OSTEOPATHS/(1) THE GENERAL OSTEOPATHIC COUNCIL/ (v) External Regulation of the Profession of Osteopaths/518. External regulation of the profession.

## **(v) External Regulation of the Profession of Osteopaths**

### **518. External regulation of the profession.**

The General Osteopathic Council<sup>1</sup> is subject to the oversight of the Council for the Regulation of Health Care Professionals<sup>2</sup> and must in the exercise of its functions co-operate with that Council<sup>3</sup>. The Council for the Regulation of Health Care Professionals has powers to refer certain decisions of the professional conduct committee<sup>4</sup> and the General Osteopathic Council<sup>5</sup> to the High Court where it considers the decision to be unduly lenient, or that it should not have been made, and that it would be desirable for the protection of members of the public<sup>6</sup>.

Her Majesty may by Order in Council<sup>7</sup> make provision modifying the regulation of the profession of osteopaths so far as appears to Her to be necessary or expedient for the purpose of securing or improving the regulation of the profession or the services which the profession provides or to which it contributes<sup>8</sup>, and modifying, as respects the General Osteopathic Council, the range of functions of that body in relation to which the Council for the Regulation of Health Care Professionals performs its functions<sup>9</sup>.

The provisions of the Competition Act 1998 prohibiting agreements which have as their object the prevention, restriction or distortion of competition within the United Kingdom apply to rules made by professional bodies<sup>10</sup>. The Enterprise Act 2002<sup>11</sup>, for the purposes of an enforcement order<sup>12</sup>, has effect in relation to a regulatory provision<sup>13</sup> as it has effect in relation to an agreement, but with the necessary modifications<sup>14</sup>. An enforcement order may be made so as to have effect in relation to a regulatory provision even though that provision was properly made in exercise of functions conferred by the Osteopaths Act 1993<sup>15</sup>.

1 As to the General Osteopathic Council see PARA 499 et seq ante.

2 See the National Health Service Reform and Health Care Professions Act 2002 s 25(3)(d); and PARA 294 note 8 ante. As to the Council for the Regulation of Health Care Professionals, its duties and powers see PARA 294 et seq ante.

3 See *ibid* s 27(1); and PARA 304 ante. As to the power of the Council for the Regulation of Health Care Professionals to give directions requiring the General Osteopathic Council to make rules where it considers that it would be desirable to do so for the protection of members of the public see PARA 304 ante. As to the power of the Secretary of State to make provision in regulations about the investigation by the Council for the Regulation of Health Care Professionals of complaints made to it about the way in which the General Osteopathic Council has exercised any of its functions see PARA 305 ante.

4 *Ie* any step taken by the committee under the Osteopaths Act 1993 s 22 (as amended) (see PARA 550 post) including a final decision not to take any disciplinary measure under that provision: see the National Health Service Reform and Health Care Professions Act 2002 s 29(1), (2); and PARA 306 ante. As to the professional conduct committee see PARA 514 ante.

5 *Ie* a decision of the General Osteopathic Council, or one of its committees or officers, to restore a person to the register following his removal from it in accordance with the Osteopaths Act 1993 s 22 (as amended) (see PARA 550 post): see the National Health Service Reform and Health Care Professions Act 2002 s 29 (2)(c); and PARA 306 ante.

6 See *ibid* s 29; and PARA 306 ante.

7 As to Orders in Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 907.

8 See the Health Act 1999 s 60(1)(a), (2); and PARA 291 ante.

9 See *ibid* s 60(1)(e); and PARA 291 ante. As to the scope of such orders and the procedure for making them see PARAS 292-293 ante.

10 See the Competition Act 1998 Ch 1 (ss 1-11); and COMPETITION vol 18 (2009) PARA 116 et seq.

11 In the Enterprise Act 2002 Sch 8 (provision that may be contained in enforcement orders). As to the Enterprise Act 2002 see COMPETITION vol 18 (2009) PARA 171 et seq.

12 'An enforcement order' means an order under either the Enterprise Act 2002 s 160 (orders following failure to fulfil final undertakings), or s 161 (final orders following market investigation reports): Osteopaths Act 1993 s 33(4) (substituted by the Enterprise Act 2002 s 278(1), Sch 25 para 29(1), (5)). For the purposes of an enforcement order, the Enterprise Act 2002 s 86(3) as applied by s 164(2)(a) (power to apply orders to existing agreements) has effect in relation to a regulatory provision as it has effect in relation to an agreement: Osteopaths Act 1993 s 33(5) (substituted by the Enterprise Act 2002 Sch 25 para 29(1), (6)).

13 'Regulatory provision' means: (1) any rule made by the General Council; (2) any provision of the code of practice issued by the General Council under the Osteopaths Act 1993 s 19 (see PARA 544 post); and (3) any other advice or guidance given by the Council, any of its committees or any sub-committee of such a committee: s 33(1). For the meaning of 'the General Council' see PARA 499 note 1 ante.

14 *Ibid* s 33(2) (amended by the Enterprise Act 2002 Sch 25 para 29(1), (2)(a), (b)). The references to anything permitted by the Enterprise Act 2002 Sch 8 in ss 160(4)(a), 161(3)(a) and 164(1) are to be construed accordingly: Osteopaths Act 1993 s 33(2A) (added by the Enterprise Act 2002 Sch 25 para 29(1), (3)).

15 Osteopaths Act 1993 s 33(3) (amended by the Enterprise Act 2002 Sch 25 para 29(1), (4)).

## **UPDATE**

### **518 External regulation of the profession**

TEXT AND NOTES--Council for the Regulation of Health Care Professionals renamed Council for Healthcare Regulatory Excellence: see the Health and Social Care Act 2008 s 113(1).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/4.  
OSTEOPATHS/ (2) REGISTRATION/(i) The Registrar/519. The registrar of osteopaths.

## **(2) REGISTRATION**

### **(i) The Registrar**

#### **519. The registrar of osteopaths.**

The General Council<sup>1</sup> must appoint a person to be the registrar for the purposes of the Osteopaths Act 1993<sup>2</sup>. The person appointed is known as the 'registrar of osteopaths' and holds office for such period and on such terms as the General Council may determine<sup>3</sup>. It is the duty of the registrar to establish and maintain a register of osteopaths in accordance with the provisions of the Act<sup>4</sup>, and the registrar has such other functions as the General Council may direct<sup>5</sup>. Where the terms on which the registrar holds office include provision for the payment to him of any allowances or expenses, the rate at which those allowances or expenses are paid is to be determined by the General Council<sup>6</sup>. The terms on which the registrar holds office may, in addition to providing for his remuneration, include provision for the payment of such pensions, allowances or gratuities to or in respect of him, or such contributions or payments towards provision for such pensions, allowances or gratuities, as may be determined by the General Council<sup>7</sup>.

1 For the meaning of 'the General Council' see PARA 499 note 1 ante.

2 Osteopaths Act 1993 s 2(1). As to the powers of the General Council to appoint staff generally see PARA 505 ante.

3 Ibid s 2(2).

4 Ibid s 2(3). As to registration see PARA 520 et seq post.

5 Ibid s 2(4).

6 Ibid s 2(5). As to the powers of the General Council to make payments generally see PARA 505 ante.

7 Ibid s 2(6).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/4.  
OSTEOPATHS/ (2) REGISTRATION/(ii) Registration and the Register/520. Full registration.

## **(ii) Registration and the Register**

### **520. Full registration.**

Subject to the provisions of the Osteopaths Act 1993, any person who satisfies the following conditions<sup>1</sup> is entitled to be registered<sup>2</sup> as a fully registered osteopath<sup>3</sup>. The conditions are that the application is made in the prescribed<sup>4</sup> form and manner<sup>5</sup> and that the applicant<sup>6</sup>:

- 677 (1) has paid the prescribed fee<sup>7</sup>;
- 678 (2) satisfies the registrar<sup>8</sup> that he is of good character<sup>9</sup>;
- 679 (3) satisfies the registrar that he is in good health, both physically and mentally<sup>10</sup>;  
and
- 680 (4) has a recognised qualification<sup>11</sup>.

The General Council may by rules<sup>12</sup> provide for treating a person who: (a) has obtained a qualification in osteopathy outside the United Kingdom<sup>13</sup>; (b) does not hold a recognised qualification<sup>14</sup>; but (c) satisfies the registrar that he has reached the required standard of proficiency<sup>15</sup>, as holding a recognised qualification for the purposes of the Act<sup>16</sup>.

1    Ie those mentioned in the Osteopaths Act 1993 s 3(2): see the text to notes 4-11 infra.

2    For the meaning of 'registered' see PARA 524 note 3 post.

3    Osteopaths Act 1993 s 3(1). 'Fully registered osteopath' means a person who is registered with full registration: s 41. As to fraud or error in relation to registration see PARA 533 post.

4    For the meaning of 'prescribed' see PARA 500 note 11 ante.

5    The General Osteopathic Council (Application for Registration and Fees) Rules, approved by the General Osteopathic Council (Application for Registration and Fees) Rules Order of Council 2000, SI 2000/1038, have been made partly under this provision. As to the form and manner of making applications see PARA 521 post.

6    Osteopaths Act 1993 s 3(2).

7    Ibid s 3(2)(a). As to the prescribed fees see the General Osteopathic Council (Application for Registration and Fees) Rules Order of Council 2000, SI 2000/1038; and PARAS 527-529 post. As to the making of rules in relation to fees see PARA 524 post.

8    As to the registrar see PARA 519 ante.

9    Osteopaths Act 1993 s 3(2)(b). As to the manner in which the registrar is to satisfy himself as to good character and the procedure for doing so see the General Osteopathic Council (Application for Registration and Fees) Rules Order of Council 2000, SI 2000/1038, r 5(1); and PARA 521 post.

10   Osteopaths Act 1993 s 3(2)(c). As to the manner in which the registrar is to satisfy himself as to a person's physical and mental health and the procedure for doing so see the General Osteopathic Council (Application for Registration and Fees) Rules Order of Council 2000, SI 2000/1038, r 5(2); and PARA 521 post.

11   Osteopaths Act 1993 s 3(2)(d). For the meaning of 'recognised qualification' see PARA 538 post. As to the recognition of qualifications see PARAS 538-541 post. As to the transitional provisions governing applications for registration made during a period of two years from the opening of the register ('the transitional period') by persons in practice as an osteopath at any time before that date see s 3(3)-(5), (7). 'Opening of the register' means the date on which s 3 comes into force: s 41. Section 3 was brought into force for certain purposes on 1 April 1998 and for the remaining purposes on 9 May 1998: see the Osteopaths Act 1993 (Commencement No 2)



Order 1998, SI 1998/872; and the Osteopaths Act 1993 (Commencement No 3) Order 1998, SI 1998/1138. For the meaning of 'the register' see PARA 524 note 1 post.

12 As to the making of rules see PARA 506 ante; and as to the effect of competition orders on rules see PARA 518 ante.

13 Osteopaths Act 1993 s 3(6)(a). For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

14 Ibid s 3(6)(b).

15 Ibid s 3(6)(c). For the meaning of 'required standard of proficiency' see PARA 537 note 2 post.

16 Ibid s 3(6). A person who: (1) has obtained a qualification in osteopathy outside the United Kingdom; (2) does not hold a recognised qualification; but (3) satisfies the registrar that he has reached the required standard of proficiency, must be treated as holding a recognised qualification: General Osteopathic Council (Recognition of Qualifications) Rules Order of Council 2000, SI 2000/1281, r 4.

## UPDATE

### 520-524 Full registration ... Registration: supplemental

A person who is lawfully established as an osteopath in another EEA state or Switzerland is entitled to be registered as a temporarily registered osteopath: see the Osteopaths Act 1993 s 5A (added by SI 2007/3101).

### 520 Full registration

TEXT AND NOTES--Subject to the General Osteopathic Council (Registration of Osteopaths with United Kingdom Qualifications that are not Recognised Qualifications) Rules Order of Council 2009, SI 2009/1993, r 3(2), the Registrar must, in considering an application by an applicant who appears to have a relevant unrecognised United Kingdom qualification, treat the applicant as having a recognised qualification on being satisfied that the applicant (1) obtained a qualification in osteopathy in the United Kingdom before 9 May 2000; (2) practised as an osteopath before 9 May 2000; (3) has not practised as an osteopath in the United Kingdom on or after 9 May 2000; (4) has a good reason for not having made a successful application for registration during the transitional period; and (5) is capable of the competent and safe practice of osteopathy: r 2(1). For the purpose of determining whether an applicant is capable of the competent and safe practice of osteopathy, in order to be satisfied as required by head (5) above, the Registrar may require the applicant to take a test of competence: r 2(2). The test of competence must be conducted by assessors appointed by the General Council: r 2(3). 'Applicant' means an applicant for registration as a fully registered osteopath; and 'relevant unrecognised United Kingdom qualification' means a qualification in osteopathy granted by an institution in the United Kingdom before 9 May 2000 which is not a recognised qualification: r 1(2). SI 2000/1038 applies to an application for registration to which SI 2009/1993 r 2 relates, except that (a) the applicant is required to provide, additionally, evidence of a relevant unrecognised United Kingdom qualification and such additional information relating to that qualification as the Registrar may specify; and (b) SI 2000/1038 r 6(2) (which relates to a possible reduction in the standard entry fee; see PARA 527) does not apply in relation to such an application: SI 2009/1993 r 3(1). Any application to which r 2 relates which is made on or after 1 January 2011 must be refused: r 3(2). Where a person is registered as a fully registered osteopath by virtue of SI 2009/1993, the register may contain a note to that effect: r 4.

NOTE 16--SI 2000/1281 r 4 amended: SI 2007/3101.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/4. OSTEOPATHS/ (2) REGISTRATION/(ii) Registration and the Register/521. Application for registration as a fully registered osteopath.

## **521. Application for registration as a fully registered osteopath.**

An application for registration as a fully registered osteopath<sup>1</sup> must be in writing<sup>2</sup>, on the form approved by the General Council<sup>3</sup> for the purpose<sup>4</sup>, completed and signed by the applicant<sup>5</sup> and given or sent to the registrar<sup>6</sup>. The applicant must provide in connection with the application for registration a character reference<sup>7</sup>; unless he is unable to do so in the terms required<sup>8</sup>, a health reference<sup>9</sup>; the document conferring or evidencing the possession by the applicant of a relevant qualification<sup>10</sup>; and such other information and documents as the registrar may reasonably require for the purpose of determining the application<sup>11</sup>.

For the purpose of satisfying himself as to the good character of the applicant, the registrar must have regard to: (1) the character reference<sup>12</sup>; (2) any criminal offence of which the applicant has been convicted<sup>13</sup>; (3) such other matters as appear to him to be relevant<sup>14</sup>, and for this purpose the registrar may seek information additional to that provided with the application for registration from the applicant and from any other person or source<sup>15</sup>.

For the purpose of satisfying himself as to the physical and mental health of the applicant, the registrar must have regard to: (a) the health reference<sup>16</sup>; (b) such other matters as appear to him to be relevant<sup>17</sup>, and for this purpose the registrar may seek information additional to that provided with the application for registration from the applicant and from any other person or source, and may require the applicant to be examined by a doctor nominated by the registrar<sup>18</sup>.

1 For the meaning of 'fully registered osteopath' see PARA 520 note 3 ante.

2 General Osteopathic Council (Application for Registration and Fees) Rules Order of Council 2000, SI 2000/1038, r 4(1)(a). For the meaning of 'writing' see PARA 20 note 22 ante.

3 For the meaning of 'the General Council' see PARA 499 note 1 ante.

4 General Osteopathic Council (Application for Registration and Fees) Rules Order of Council 2000, SI 2000/1038, r 4(1)(b). The form must require the applicant to provide the following information: (1) the applicant's personal details, including his full name, title, sex, age, date of birth, practice or principal practice address or, if not practising, the address to be shown in the register, telephone and fax numbers, details of any criminal convictions and state of health (r 4(1)(b)(i)); (2) the applicant's professional details, including the name and address of the osteopathic institution he attended and the qualification gained, the outcome of any civil or negligence claims, membership of any other professional body and the outcome of any disciplinary proceedings (r 4(1)(b)(ii)); and (3) such other information as the General Council may reasonably require (r 4(1)(b)(iii)).

5 Ibid r 4(1)(c). 'Applicant' means a person applying to be registered as a registered osteopath: r 2(1).

6 Ibid r 4(1)(d). As to the registrar see PARA 519 ante. As to fraud or error in relation to registration see PARA 533 post.

7 Ibid r 4(2)(a). A character reference is a reference as to the good character of the applicant given on the form specified in Part 1 of the Schedule to the General Osteopathic Council (Application for Registration and Fees) Rules 2000 by a person who: (1) is not a relative of the applicant; (2) is a person of standing in the community which includes a registered osteopath, solicitor, accountant, bank manager, justice of the peace, principal of the institution which granted the applicant a relevant qualification or a person authorised by the principal of that institution, minister of the church, rabbi, imam or other religious official acceptable to the registrar; and (3) has known the applicant for a period of at least four years: General Osteopathic Council (Application for Registration and Fees) Rules Order of Council 2000, SI 2000/1038, r 4(2)(a). 'Relative', in relation to any person, means any of the following: (a) his spouse; (b) any lineal ancestor, lineal descendant, brother, sister, aunt, uncle, nephew, niece or first cousin of his or his spouse; (c) the spouse of any relative within head (b) supra, and for the purposes of deducing any such relationship spouse includes a former spouse, a partner to whom the person is not married, and a partner of the same sex: r 2(1). 'Relevant qualification'

means a recognised qualification or a qualification treated as a recognised qualification by rules made under the Osteopaths Act 1993 s 3(6) (see PARA 520 ante): General Osteopathic Council (Application for Registration and Fees) Rules Order of Council 2000, SI 2000/1038, r 2(1).

8 Where the registrar is satisfied that the applicant cannot provide a health reference in the terms provided by *ibid* r 4(2)(b) (see note 9 *infra*) for whatever reason, the registrar may satisfy himself as to the physical and mental health of the applicant in any of the following ways: (1) by a reference given by a doctor who, in giving the reference, relies on the medical records of the applicant made by a doctor of whom the applicant was a patient for a period of at least four years or the records of a doctor who has practised in partnership with such a doctor; (2) by an examination by a doctor nominated by the registrar; or (3) by such other manner as the registrar considers appropriate in a particular case: r 4(3). For these purposes, 'doctor' means a registered medical practitioner: r 2(1). For the meaning of 'registered medical practitioner' see PARA 4 ante.

9 *Ibid* r 4(2)(b). A health reference is a reference as to the physical and mental health of the applicant given on the form specified in Part II of the Schedule to the General Osteopathic Council (Application for Registration and Fees) Rules 2000 by the applicant's doctor provided he is not a relative of the applicant, and he has known the applicant for a period of at least four years: General Osteopathic Council (Application for Registration and Fees) Rules Order of Council 2000, SI 2000/1038, r 4(2)(b).

10 *Ibid* r 4(2)(c).

11 *Ibid* r 4(2)(d).

12 *Ie* the character reference referred to in *ibid* r 4(2)(a) (see the text and note 7 *supra*): r 5(1)(a).

13 *Ibid* r 5(1)(b). As to the application of the Rehabilitation of Offenders Act 1974 to osteopaths see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 687.

14 General Osteopathic Council (Application for Registration and Fees) Rules Order of Council 2000, SI 2000/1038, r 5(1)(c).

15 *Ibid* r 5(1).

16 *Ie* the health reference referred to in *ibid* r 4(2)(b) (see the text and note 9 *supra*): r 5(2)(a).

17 *Ibid* r 5(2)(b).

18 *Ibid* r 5(2).

## UPDATE

### 520-524 Full registration ... Registration: supplemental

A person who is lawfully established as an osteopath in another EEA state or Switzerland is entitled to be registered as a temporarily registered osteopath: see the Osteopaths Act 1993 s 5A (added by SI 2007/3101).

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## 522. Conditional registration.

Subject to the provisions of the Osteopaths Act 1993, any person who satisfied certain conditions<sup>1</sup> and who made application during the transitional period<sup>2</sup> was entitled to be registered<sup>3</sup> as a conditionally registered osteopath<sup>4</sup>. The General Council<sup>5</sup> may by rules<sup>6</sup> provide for the conversion, in prescribed<sup>7</sup> circumstances and subject to the osteopath concerned complying with such conditions, if any, as may be prescribed, of conditional registration into full registration<sup>8</sup>. Unless it was converted into full registration in accordance with the rules, any conditional registration ceased to have effect either at the end of the period of five years beginning with the opening of the register<sup>9</sup>, or where a shorter period had been specified by the registrar<sup>10</sup> in relation to the osteopath in question, at the end of that shorter period<sup>11</sup>.

The registration of a conditionally registered osteopath must be converted from conditional registration to full registration if he has applied to the registrar in writing for such conversion and the specified circumstances<sup>12</sup> apply<sup>13</sup>. The circumstances are that:

- 681 (1) where the osteopath concerned has given an undertaking<sup>14</sup>:
- 134
191. (a) to complete additional training specified by the registrar, he has completed that training<sup>15</sup>;
192. (b) to acquire additional experience specified by the registrar, he has acquired that experience<sup>16</sup>;
193. (c) to comply with conditions imposed on him by the registrar, he has complied with those conditions<sup>17</sup>; or
- 135
- 682 (2) the registrar has not required the osteopath concerned to complete additional training or acquire additional experience and has not imposed conditions on the osteopath concerned<sup>18</sup>.

1 As to the conditions which had to be satisfied see the Osteopaths Act 1993 s 4(2), (3), (6)-(11); and the General Osteopathic Council (Conditional Registration) Rules, approved by the General Osteopathic Council (Conditional Registration) Rules Order of Council 1998, SI 1998/1020.

2 For these purposes, 'transitional period' means the period of two years beginning with the opening of the register: Osteopaths Act 1993 s 4(10). For the meaning of 'opening of the register' see PARA 520 note 11 ante.

3 For the meaning of 'registered' see PARA 524 note 3 post.

4 Osteopaths Act 1993 s 4(1). 'Conditionally registered osteopath' means a person who is registered with conditional registration: s 41. As to fraud or error in relation to registration see PARA 533 post.

5 For the meaning of 'the General Council' see PARA 499 note 1 ante.

6 As to the making of rules see PARA 506 ante; and as to the effect of competition orders on rules see PARA 518 ante.

7 For the meaning of 'prescribed' see PARA 500 note 11 ante.

8 Osteopaths Act 1993 s 4(4). As to the rules that have been made see the General Osteopathic Council (Registration) Rules, approved by the General Osteopathic Council (Registration) Rules Order of Council 1998, SI 1998/1328. See further the text to notes 12-18 infra. As to full registration see PARA 520 ante.

9 Osteopaths Act 1993 s 4(5)(a).

10    Ie in accordance with *ibid* s 4(10). The conditions to be fulfilled for conditional registration included the giving of the required undertaking (see s 4(2)(f); and note 1 *supra*), which is defined by s 4(10). 'Required undertaking' means an undertaking that the person giving it will, before the end of the period of five years beginning with the opening of the register or such shorter period as the registrar may specify in relation to the applicant: (1) complete such additional training and acquire such experience as may be specified by the registrar in accordance with rules made by the General Council; and (2) comply with such other conditions (if any) as may be imposed on him by the registrar in accordance with such rules: s 4(10). As to the rules made under this provision see note 1 *supra*. As to the registrar see *PARA* 519 *ante*.

11    *Ibid* s 4(5)(b).

12    Ie the circumstances specified in the General Osteopathic Council (Registration) Rules Order of Council 1998, SI 1998/1328, r 5(2) or (3) apply: see the text to notes 14-18 *infra*.

13    *Ibid* r 5(1). For the meaning of 'writing' see *PARA* 20 note 22 *ante*.

14    Ie an undertaking pursuant to the Osteopaths Act 1993 s 4(2)(f) (see notes 1, 10 *supra*). As to such undertakings see note 10 *supra*.

15    General Osteopathic Council (Registration) Rules Order of Council 1998, SI 1998/1328, r 5(2)(a).

16    *Ibid* r 5(2)(b).

17    *Ibid* r 5(2)(c).

18    *Ibid* r 5(3). The circumstances specified in r 5(3) only apply if the osteopath concerned satisfies the registrar that, during the period starting with his application for registration and ending on the day the registrar is considering his application under r 5, he has practised osteopathy lawfully, safely and competently: r 5(4). 'Application for registration' means an application made in accordance with the General Osteopathic Council (Transitional Period) (Application for Registration and Fees) Rules Order of Council 1998, SI 1998/1018, r 3 (revoked): General Osteopathic Council (Registration) Rules Order of Council 1998, SI 1998/1328, r 5(5). As to the making of applications for the amendment of particulars of registration in the register see the General Osteopathic Council (Registration) Rules Order of Council 1998, SI 1998/1328, r 4(5), (6); and *PARA* 526 *post*.

## UPDATE

### 520-524 Full registration ... Registration: supplemental

A person who is lawfully established as an osteopath in another EEA state or Switzerland is entitled to be registered as a temporarily registered osteopath: see the Osteopaths Act 1993 s 5A (added by SI 2007/3101).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/4. OSTEOPATHS/ (2) REGISTRATION/(ii) Registration and the Register/523. Provisional registration.

### **523. Provisional registration.**

The General Council<sup>1</sup> may make rules<sup>2</sup> providing for all applicants for registration who are entitled to be registered<sup>3</sup> with full registration<sup>4</sup>, or all such applicants falling within a prescribed<sup>5</sup> class, to be registered initially with provisional registration<sup>6</sup>. Before making any such rules, the General Council must take such steps as are reasonably practicable to consult those who are registered osteopaths<sup>7</sup>. The General Council may by rules provide for the conversion, in prescribed circumstances and subject to the osteopath concerned complying with such conditions, if any, as may be prescribed, of provisional registration into full registration<sup>8</sup>. Unless it is converted into full registration in accordance with the rules, any provisional registration ceases to have effect at the end of the period of one year beginning with the date on which it is entered in the register<sup>9</sup>. A provisionally registered osteopath<sup>10</sup> must not practise osteopathy except under the supervision of a fully registered osteopath<sup>11</sup> who is approved by the General Council for this purpose<sup>12</sup>.

1 For the meaning of 'the General Council' see PARA 499 note 1 ante.

2 As to the making of rules see PARA 506 ante; and as to the effect of competition orders on rules see PARA 518 ante.

3 For the meaning of 'registered' see PARA 524 note 3 post.

4 As to full registration see PARA 520 ante.

5 For the meaning of 'prescribed' see PARA 500 note 11 ante.

6 Osteopaths Act 1993 s 5(1). No such rules may be made before the end of the period of two years beginning with the opening of the register: s 5(2). For the meaning of 'opening of the register' see PARA 520 note 11 ante. At the date at which this volume states the law no such rules had been made. As to fraud or error in relation to registration see PARA 533 post.

7 Ibid s 5(3). For the meaning of 'registered osteopath' see PARA 503 note 4 ante.

8 Ibid s 5(4).

9 Ibid s 5(5). For the meaning of 'the register' see PARA 524 note 1 post.

10 'Provisionally registered osteopath' means a person who is registered with provisional registration: s 41.

11 For the meaning of 'fully registered osteopath' see PARA 520 note 3 ante.

12 Osteopaths Act 1993 s 5(6). The General Council must maintain a list of those fully registered osteopaths who are for the time being approved by the Council for the purposes of s 5(6): s 5(7).

### **UPDATE**

#### **520-524 Full registration ... Registration: supplemental**

A person who is lawfully established as an osteopath in another EEA state or Switzerland is entitled to be registered as a temporarily registered osteopath: see the Osteopaths Act 1993 s 5A (added by SI 2007/3101).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/4. OSTEOPATHS/ (2) REGISTRATION/(ii) Registration and the Register/524. Registration: supplemental.

#### **524. Registration: supplemental.**

The register<sup>1</sup> must show, in relation to each registered osteopath<sup>2</sup> whether he is registered<sup>3</sup> with full<sup>4</sup>, conditional<sup>5</sup> or provisional registration<sup>6</sup>, and the address at which he has his practice or principal practice or, if he is not practising, such address as may be prescribed<sup>7</sup>. The General Council<sup>8</sup> may make rules<sup>9</sup> in connection with registration and the register and as to the payment of fees<sup>10</sup>. The rules may, in particular, make provision as to:

- 683 (1) the form and keeping of the register<sup>11</sup>;
- 684 (2) the form and manner in which applications for registration are to be made<sup>12</sup>;
- 685 (3) the documentary and other evidence which is to accompany applications for registration;<sup>13</sup>
- 686 (4) the manner in which the registrar is to satisfy himself as to the good character and competence of any person applying for registration and the procedure for so doing<sup>14</sup>;
- 687 (5) the manner in which the registrar is to satisfy himself as to the physical and mental health of any person applying for registration and the procedure for so doing<sup>15</sup>;
- 688 (6) the description of persons from whom references are to be provided for persons applying for registration<sup>16</sup>;
- 689 (7) in the case of an application for conditional registration, the conditions or kinds of condition which may be imposed on the osteopath concerned<sup>17</sup>;
- 690 (8) the making, periodic renewal and removal of entries in the register<sup>18</sup>;
- 691 (9) the giving of reasons for any removal of, or refusal to renew, an entry in the register<sup>19</sup>;
- 692 (10) any failure on the part of a registered osteopath to comply with any conditions subject to which his registration has effect, including provision for the registrar to refuse to renew his registration or for the removal of his name from the register<sup>20</sup>;
- 693 (11) the issue and form of certificates<sup>21</sup>;
- 694 (12) the content, assessment and conduct of any test of competence<sup>22</sup>;
- 695 (13) the meaning of 'principal practice'<sup>23</sup>.

The rules may also make provision: (a) prescribing the fee to be charged for making an entry in the register or restoring such an entry<sup>24</sup>; (b) prescribing the fee to be charged in respect of the retention in the register of any entry in any year following the year in which the entry was first made<sup>25</sup>; (c) providing for the entry in the register of qualifications, whether or not they are recognised qualifications<sup>26</sup>, possessed by registered osteopaths<sup>27</sup> and the removal of such an entry<sup>28</sup>; (d) prescribing the fee to be charged in respect of the making or removal of any entry of a kind mentioned in head (c) above<sup>29</sup>; (e) authorising the registrar to refuse to make an entry in the register, or restore such an entry, until the prescribed fee has been paid<sup>30</sup>, and to remove from the register any entry relating to a person who, after the prescribed notice has been given, fails to pay the fee prescribed in respect of the retention of the entry<sup>31</sup>.

A person who has failed to renew his registration as an osteopath is entitled to have his entry restored to the register on payment of the prescribed fee<sup>32</sup>.



1 'The register' means the register of osteopaths maintained by the registrar under the Osteopaths Act 1993  
s 2: s 41. As to the registrar see PARA 519 ante. As to the register and the keeping of the register see PARAS 525-  
526 post.

2 For the meaning of 'registered osteopath' see PARA 503 note 4 ante.

3 'Registered' means registered in the register: Osteopaths Act 1993 s 41.

4 As to full registration see PARA 520 ante.

5 As to conditional registration see PARA 522 ante.

6 Osteopaths Act 1993 s 6(1)(a). As to provisional registration see PARA 523 ante.

7 Ibid s 6(1)(b). For the meaning of 'prescribed' see PARA 500 note 11 ante. As to the provisions prescribed  
see PARA 525 post. 'Registered address' means the address which is entered in the register, in relation to the  
osteopath in question, in accordance with the requirements of s 6(1) and does not include any other address  
which may be entered in the register, in relation to him, by virtue of rules made under s 6(2) (see the text to  
note 10 infra): s 41.

8 For the meaning of 'the General Council' see PARA 499 note 1 ante.

9 As to the making of rules see PARA 506 ante; and as to the effect of competition orders on rules see PARA  
518 ante.

10 Osteopaths Act 1993 s 6(2). As to the rules made see the General Osteopathic Council (Registration)  
Rules 1998, approved by the General Osteopathic Council (Registration) Rules Order of Council 1998, SI  
1998/1328 (see PARAS 525-526 post); and the General Osteopathic Council (Application for Registration and  
Fees) Rules 2000, approved by the General Osteopathic Council (Application for Registration and Fees) Rules  
Order of Council 2000, SI 2000/1038 (see PARAS 521 ante, 527-528 post).

11 Osteopaths Act 1993 s 6(3)(a).

12 Ibid s 6(3)(b).

13 Ibid s 6(3)(c).

14 Ibid s 6(3)(d).

15 Ibid s 6(3)(e).

16 Ibid s 6(3)(f).

17 Ibid s 6(3)(g).

18 Ibid s 6(3)(h).

19 Ibid s 6(3)(i).

20 Ibid s 6(3)(j).

21 Ibid s 6(3)(k).

22 Ie imposed under ibid s 4 (see PARA 522 ante): s 6(3)(l).

23 Ie for the purposes of ibid s 6(1) (see the text to notes 1-7 supra): s 6(3)(m).

24 Ibid s 6(4)(a).

25 Ibid s 6(4)(b).

26 For the meaning of 'recognised qualification' see PARA 538 post.

27 For the meaning of 'registered osteopath' see PARA 503 note 4 ante.

28 Osteopaths Act 1993 s 6(4)(c).

29 Ibid s 6(4)(d).

30 Ibid s 6(4)(e)(i).

31 Ibid s 6(4)(e)(ii).

32 Ibid s 6(5). See PARA 528 post. An entry which has been restored to the register under s 6(5) may be treated for the purposes of s 10 (see PARA 533 post) as having been fraudulently procured or incorrectly made if any previous entry from which the restored entry is derived was fraudulently procured or incorrectly made: s 10(2).

## **UPDATE**

### **520-524 Full registration ... Registration: supplemental**

A person who is lawfully established as an osteopath in another EEA state or Switzerland is entitled to be registered as a temporarily registered osteopath: see the Osteopaths Act 1993 s 5A (added by SI 2007/3101).

### **524 Registration: supplemental**

NOTES--Osteopaths Act 1993 s 6 amended: SI 2007/3101.

NOTE 10--See also the General Osteopathic Council (Continuing Professional Development) Rules 2006, approved by the General Osteopathic Council (Continuing Professional Development) Rules Order of Council 2006, SI 2006/3511; and PARA 453.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/4. OSTEOPATHS/ (2) REGISTRATION/(ii) Registration and the Register/525. The register and certificates of registration.

## **525. The register and certificates of registration.**

The register must contain a separate list of persons falling within each of the following categories: (1) persons resident in the United Kingdom<sup>1</sup> or other European Economic Area state<sup>2</sup>, the Channel Islands or the Isle of Man ('the Principal List')<sup>3</sup>; (2) persons resident outside the United Kingdom or other European Economic Area state or the Channel Islands or the Isle of Man ('the Overseas List')<sup>4</sup>. The names of persons entered in both the Principal List and the Overseas List must be in alphabetical order<sup>5</sup>. The registrar<sup>6</sup> must enter the name of a person entitled to be registered in the list appropriate to his place of residence and allocate to each person registered a unique identifying reference ('unique reference')<sup>7</sup>. The register must, in respect of each person whose name is entered in the register, contain, in addition to his name, the following information:

- 696 (a) the address:
  - 136 194. (i) at which he has his practice<sup>8</sup>; or
  - 195. (ii) if he practises at more than one place, at which he has his principal practice<sup>9</sup>; or
  - 196. (iii) if he is a non-practising osteopath, which he has informed the registrar is the address to be shown in the register in relation to his name<sup>10</sup>;
- 137 697 (b) the date on which he was fully registered<sup>11</sup> or conditionally registered<sup>12</sup>, as the case may be<sup>13</sup>;
- 698 (c) his unique reference<sup>14</sup>;
- 699 (d) the word 'full' or 'conditional' depending on the status of the osteopath<sup>15</sup>;
- 700 (e) where the entry was first made:
  - 138 197. (i) during the transitional period<sup>16</sup>, the qualification in osteopathy (if any) that he possessed on the date of entry, the institution from which he obtained the qualification and the date on which he obtained it and, where the qualification is a recognised qualification<sup>17</sup>, an indication that it is such a qualification<sup>18</sup>;
  - 198. (ii) after the transitional period, his recognised qualification, the institution from which he obtained the qualification and the date on which he obtained it<sup>19</sup>;
- 139 701 (f) such other qualifications as the General Council<sup>20</sup> has determined may be entered in the register<sup>21</sup>;
- 702 (g) in the case of a person who is a man the letter 'M' and in the case of a person who is a woman the letter 'W' and also, if a woman so requests, the title 'Miss', or 'Mrs' or 'Ms'<sup>22</sup>.

Where the registrar enters the name of an osteopath in the register, he must issue to that osteopath a certificate of registration complying with the following requirements<sup>23</sup>. A certificate of registration must be in the form determined by the General Council and must: (A) state the name of the osteopath concerned<sup>24</sup>, his unique reference<sup>25</sup>, the date on which he was registered<sup>26</sup>, and whether the osteopath concerned is registered as a fully registered osteopath or a conditionally registered osteopath<sup>27</sup>; and (B) be signed by the registrar<sup>28</sup>.

Where the registrar removes an entry in the register, except where the removal is pursuant to an order to do so<sup>29</sup>, or refuses to renew an entry, he must give the osteopath concerned reasons in writing for the removal or the refusal as the case may be<sup>30</sup>.

- 1 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.
- 2 For these purposes, 'European Economic Area state' means a member state, Norway, Liechtenstein, Iceland or Switzerland: General Osteopathic Council (Registration) Rules Order of Council 1998, SI 1998/1328, r 3(4)(b) (substituted by SI 2004/1947). For the meaning of 'member state' see the Interpretation Act 1978 s 5, Sch 1; and the European Communities Act 1972 s 1(2), Sch 1 Pt II.
- 3 General Osteopathic Council (Registration) Rules Order of Council 1998, SI 1998/1328, r 3(1)(a).
- 4 Ibid r 3(1)(b). As to fraud or error in relation to registration see PARA 533 post.
- 5 Ibid r 3(1).
- 6 As to the registrar see PARA 519 ante.
- 7 General Osteopathic Council (Registration) Rules Order of Council 1998, SI 1998/1328, r 3(2).
- 8 Ibid r 3(3)(a)(i).
- 9 Ibid r 3(3)(a)(ii). The address at which a registered osteopath has his principal practice is the address which he has informed the registrar is the address to be shown as such in the register in relation to his name: r 2(3).
- 10 Ibid r 3(3)(a)(iii).
- 11 As to full registration see PARA 520 ante.
- 12 As to conditional registration see PARA 522 ante.
- 13 General Osteopathic Council (Registration) Rules Order of Council 1998, SI 1998/1328, r 3(3)(b).
- 14 Ibid r 3(3)(c).
- 15 Ibid r 3(3)(d).
- 16 'Transitional period' means the period of two years beginning with the opening of the register: ibid r 3(4)(a). For the meaning of 'opening of the register' see PARA 520 note 11 ante.
- 17 As to the recognition of qualifications see PARAS 538-541 post.
- 18 General Osteopathic Council (Registration) Rules Order of Council 1998, SI 1998/1328, r 3(3)(e)(i).
- 19 Ibid r 3(3)(e)(ii).
- 20 As to the General Council see PARA 499 ante.
- 21 General Osteopathic Council (Registration) Rules Order of Council 1998, SI 1998/1328, r 3(3)(f).
- 22 Ibid r 3(3)(g).
- 23 Ibid r 7(1).
- 24 Ibid r 7(2)(a)(i).
- 25 Ibid r 7(2)(a)(ii).
- 26 Ibid r 7(2)(a)(iii).
- 27 Ibid r 7(2)(a)(iv).
- 28 Ibid r 7(2)(b).

29     le an order under the Osteopaths Act 1993 s 22(4)(d): see PARA 550 post.

30     General Osteopathic Council (Registration) Rules Order of Council 1998, SI 1998/1328, r 6. For the meaning of 'writing' see PARA 20 note 22 ante.

## **UPDATE**

### **525 The register and certificates of registration**

TEXT AND NOTES 2, 13, 15, 27--SI 1998/1328 rr 3(1), (3)(b), (d), 7(2)(a)(iv) amended, r 3(4)(b) revoked: SI 2007/3101.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/4. OSTEOPATHS/ (2) REGISTRATION/(ii) Registration and the Register/526. The keeping of the register.

## **526. The keeping of the register.**

The register<sup>1</sup> must be kept secure in a manner which guards against falsification and to this end the registrar<sup>2</sup> must ensure that only he and such persons as have been authorised by him in writing for the purpose have access to the register<sup>3</sup>. The register must indicate whether a person whose name is in the register is a non-practising osteopath<sup>4</sup>. Where a conditions of practice order or a suspension order<sup>5</sup> has been made in respect of a registered osteopath, the registrar must enter the particulars of the order against the name of the osteopath in the register<sup>6</sup>. Where such an order ceases to have effect, is revoked or is replaced by another such order, the registrar must remove the entry relating to it in the register and, where the order is replaced by another order, enter the particulars of that order in the register<sup>7</sup>. The registrar may, on the application in writing of a registered osteopath, amend the particulars entered in the register in relation to his name and in particular may, where the registration of a conditionally registered osteopath has been converted to full registration<sup>8</sup>, amend the register accordingly<sup>9</sup>.

1 As to the register see PARA 525 ante.

2 As to the registrar see PARA 519 ante.

3 General Osteopathic Council (Registration) Rules Order of Council 1998, SI 1998/1328, r 4(1). For the meaning of 'writing' see PARA 20 note 22 ante. As to public access to the register see PARA 532 post.

4 Ibid r 4(4). For this purpose, 'non-practising osteopath' means a person who pays a reduced entry fee in accordance with the General Osteopathic Council (Application for Registration and Fees) Rules 1998 r 10(1)(a) (revoked): General Osteopathic Council (Registration) Rules Order of Council 1998, SI 1998/1328, r 4(7). As to fees payable see now the General Osteopathic Council (Application for Registration and Fees) Rules Order of Council 2000, SI 2000/1038; and PARA 527 post.

5 Ie under either the Osteopaths Act 1993 s 22 (as amended) (see PARAS 550-551 post) or s 23 (as amended) (see PARA 552 post).

6 General Osteopathic Council (Registration) Rules Order of Council 1998, SI 1998/1328, r 4(2).

7 Ibid r 4(3).

8 Ie in accordance with ibid r 5: see PARA 522 ante.

9 Ibid r 4(5). Before amending the register in accordance with such an application, the registrar must satisfy himself as to the accuracy of the information to be entered in the register and may require the registered osteopath making the application to produce a statutory declaration, a marriage certificate or such other documentary evidence as the registrar considers appropriate in any case: r 4(6).

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OSTEOPATHS/ (2) REGISTRATION/(ii) Registration and the Register/527. Entry fees.

## 527. Entry fees.

A fee, known as 'the entry fee', is charged for making an entry in the register<sup>1</sup> in respect of a person who: (1) has made an application for registration as a registered osteopath<sup>2</sup> after the end of the transitional period<sup>3</sup>; or (2) has made such an application during the transitional period but whose name has not been entered in the register when that period comes to an end<sup>4</sup>. The entry fee may only be paid by instalments with the agreement of both the applicant<sup>5</sup> and the registrar<sup>6</sup>, and where the registrar has sent the applicant a notice<sup>7</sup> in writing specifying the date by which each instalment is to be paid to the registrar and its amount<sup>8</sup>. Where it has been agreed that the entry fee will be paid by instalments, the registrar must not enter the applicant's name in the register until the first instalment has been paid<sup>9</sup>.

Where it has been agreed that the entry fee will be paid by instalments and the osteopath concerned fails to pay an instalment on the date on which it is due<sup>10</sup>, the registrar must send the osteopath a notice in writing stating that, if the instalment is not paid within the period of 28 days beginning with the date on which the notice is sent, the registrar will remove the osteopath's entry from the register unless the osteopath satisfies him that removal from the register would cause him undue hardship<sup>11</sup>. If the instalment is not paid within the 28 day period, the registrar must remove the osteopath's entry from the register unless he is satisfied that removal would cause the osteopath concerned undue hardship<sup>12</sup>.

1 For the meaning of 'the register' see PARA 524 note 1 ante. As to entries in the register see PARA 525 ante.

2 For the meaning of 'registered osteopath' see PARA 503 note 4 ante.

3 General Osteopathic Council (Application for Registration and Fees) Rules Order of Council 2000, SI 2000/1038, r 6(1)(a). The fee is £750 or, where the fee is to be paid by instalments, £795: r 6(1)(a). For the meaning of 'transitional period' see PARA 520 note 11.

4 Ibid r 6(1)(b). The fee payable is £1750 or, where the fee is to be paid by instalments, £1855: r 6(1)(b). Where one or more of the following circumstances apply:

133 (1) the applicant does not intend to practise for at least three months during the 12 month period beginning with the date on which he either: (a) delivers the entry fee to the registrar personally; or (b) sends the entry fee by registered post service or by a postal service in which delivery or receipt is recorded to the registrar at the address of any office of the General Council;

134 (2) the applicant resides outside the United Kingdom or other European Economic Area state, or the Channel Islands or the Isle of Man;

135 (3) the application for registration is the first successful application made by the applicant,

the entry fee is £375 or, where the fee is to be paid by instalments, £397: r 6(2). For the meaning of 'the General Council' see PARA 499 note 1 ante. For the meaning of 'United Kingdom' see PARA 1 note 3 ante. For these purposes, 'European Economic Area state' means a member state, Norway, Liechtenstein, Iceland or Switzerland: r 2(1) (definition substituted by SI 2004/1947). For the meaning of 'member state' see the Interpretation Act 1978 s 5, Sch 1; and the European Communities Act 1972 s 1(2), Sch 1 Pt II.

5 For the meaning of 'applicant' see PARA 521 note 5 ante.

6 As to the registrar see PARA 519 ante.

7 Any reference to the sending of a notice to an applicant or a registered osteopath is a reference to the sending of the notice by registered post service or by a postal service in which delivery or receipt is recorded to the address at which he has his practice or his principal practice or, if he is not practising, the address which he has informed the registrar in writing is the address to be shown in the register in relation to his name: General

Osteopathic Council (Application for Registration and Fees) Rules Order of Council 2000, SI 2000/1038, r 3(1)(a). Where any notice or document is sent to an applicant or a registered osteopath, it is to be treated as having been sent on the day that it was posted: r 3(1)(b). As to the address at which a person has his principal practice see PARA 525 note 9 ante.

8 Ibid r 6(3). For the meaning of 'writing' see PARA 20 note 22 ante.

9 Ibid r 6(4).

10 A reference to the date on which an instalment is due is a reference to a date which, in accordance with ibid r 6(3) (see the text to note 8 supra), the registrar has notified the applicant is a date by which an instalment of the entry fee is payable: r 7(3).

11 Ibid r 7(1).

12 Ibid r 7(2).

## **UPDATE**

### **527 Entry fees**

TEXT AND NOTE 4--SI 2000/1038 r 6(1)(b) substituted: SI 2009/1993.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/4. OSTEOPATHS/ (2) REGISTRATION/(ii) Registration and the Register/528. Retention and restoration fees.

## **528. Retention and restoration fees.**

A fee, known as 'the retention fee', is charged in respect of the retention in the register<sup>1</sup> of any entry in any year following the year in which the entry was first made<sup>2</sup>. The retention fee may only be paid by instalments with the agreement of both the osteopath and the registrar<sup>3</sup>, and where the registrar has sent the osteopath a notice<sup>4</sup> in writing specifying the date by which each instalment is to be paid to the registrar and its amount<sup>5</sup>. Except where it has been agreed that the retention fee will be paid by instalments, the registrar must remove from the register any entry relating to a registered osteopath<sup>6</sup> who, after the appropriate notices<sup>7</sup> have been sent, fails to pay the retention fee, unless the registrar is satisfied that the removal would cause the osteopath undue hardship<sup>8</sup>. Where it has been agreed that the retention fee will be paid by instalments and the osteopath has failed to pay an instalment on the date when it is due<sup>9</sup>, the registrar must send the osteopath a notice in writing stating that, if the instalment is not paid within the period of 14 days beginning with the day on which the notice is sent, the registrar will remove the osteopath's entry from the register unless the osteopath satisfies him that removal from the register would cause him undue hardship<sup>10</sup>. If the instalment is not paid within the 14 day period, the registrar must remove the osteopath's entry from the register unless he is satisfied that the removal would cause the osteopath concerned undue hardship<sup>11</sup>.

A fee, known as 'the restoration fee', is charged for restoring an entry in the register<sup>12</sup>.

1 For the meaning of 'the register' see PARA 524 note 1 ante.

2 General Osteopathic Council (Application for Registration and Fees) Rules Order of Council 2000, SI 2000/1038, r 8(1). The fee is £750 or, where the fee is to be paid by instalments, £795: r 8(1). Where:

136 (1) the osteopath is not, on the date on which the retention fee is due, practising as an osteopath and does not intend to practise as an osteopath for at least three months during the 12 month period beginning with the date on which the retention fee is due; or

137 (2) the osteopath resides outside the United Kingdom or other European Economic Area state, the Channel Islands or the Isle of Man,

the retention fee is £375 or, where the fee is to be paid by instalments, £395: r 8(2). For the meaning of 'United Kingdom' see PARA 1 note 3 ante. For the meaning of 'European Economic Area state' see PARA 527 note 4 ante. Any reference to the date on which the retention fee is due is a reference to: (a) where the entry in the register was first made during the transitional period, the first 9 May following the end of that period and 9 May in every subsequent year; (b) where the entry in the register was first made after the end of the transitional period, the anniversary of the date on which the entry was first made in the register and on that date in every subsequent year and if the entry was first made on 29 February it is treated as having been made on 1 March; (c) where an entry in the register has been removed and is subsequently restored, the anniversary of the date on which restoration was made and on that date in every subsequent year and if restoration was made on 29 February it is treated as having been made on 1 March: r 2(2). For the meaning of 'transitional period' see PARA 520 note 11 ante.

Where an osteopath satisfies the following conditions: (i) the osteopath is paying a retention fee for the first time; (ii) he has been granted a qualification in osteopathy, whether or not it is a relevant qualification, during the period of one year immediately preceding the date on which he was first registered; and (iii) he has not been practising as an osteopath for longer than a period of 18 months ending with the date on which he was first registered, the retention fee is £500 or, where the fee is to be paid by instalments, £530: r 8(3). For the meaning of 'relevant qualification' see PARA 521 note 7 ante.

Where the provisions of r 8(2) and r 8(3) apply, the retention fee is £250 or, where the fee is to be paid by instalments, £275: r 8(4).

3 As to the registrar see PARA 519 ante.

4 As to the service of notices see PARA 527 note 7 ante.

5 General Osteopathic Council (Application for Registration and Fees) Rules Order of Council 2000, SI 2000/1038, r 8(5). For the meaning of 'writing' see PARA 20 note 22 ante.

6 For the meaning of 'registered osteopath' see PARA 503 note 4 ante.

7 le the notices specified in the General Osteopathic Council (Application for Registration and Fees) Rules Order of Council 2000, SI 2000/1038, r 9(2) or (3): see note 8 infra.

8 Ibid r 9(1). Where a registered osteopath has not given the registrar a bank authority, the registrar must: (1) send the osteopath a notice in writing not less than 28 days before the date on which the retention fee is due which states that the retention fee is due and the date on which it is due; and (2) if the retention fee has not been paid by the date on which it is due, send a further notice ('the second notice') in writing stating that if the retention fee is not paid within the period of 14 days beginning with the day on which the second notice is sent, the registrar will remove the osteopath's entry from the register unless the osteopath satisfies him that removal from the register would cause him undue hardship: r 9(2). Where a registered osteopath has given the registrar a bank authority and the retention fee has not been paid in accordance with that authority by the date on which that fee is due, the registrar must send the osteopath a notice in writing stating that, if the retention fee is not paid within the period of 28 days beginning with the day on which the notice is sent, the registrar will remove the osteopath's entry from the register unless the osteopath satisfies him that removal from the register would cause him undue hardship: r 9(3). 'Bank authority' means any form of authority which a person may give to his bank including a letter of authority, banker's order, standing order or variable direct debit: r 2(1).

9 A reference to the date on which an instalment of a retention fee is due is a reference to a date which the registrar has notified the osteopath concerned under *ibid* r 8(5) (see the text to note 5 *supra*) is a date on which an instalment is payable: r 9(6).

10 Ibid r 9(4).

11 Ibid r 9(5).

12 Ibid r 10(1). The fee is £750: r 10(1). Where:

138 (1) the person applying for restoration to the register does not intend to practise for at least three months during the 12 month period beginning with the date on which he either:

3. (a) delivers the restoration fee to the registrar; or  
3

4. (b) sends the restoration fee by registered post service or by a postal service in which delivery or receipt is recorded to the registrar at the address of any office of the General Council; or  
4

139 (2) the osteopath resides outside the United Kingdom or other European Economic Area state, the Channel Islands or the Isle of Man,

the restoration fee is £375: r 10(2). For the meaning of 'the General Council' see PARA 499 note 1 ante.

Where the osteopath applying for restoration to the register has never paid a retention fee, the restoration fee is £500: r 10(3).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/4. OSTEOPATHS/ (2) REGISTRATION/(ii) Registration and the Register/529. Refusal of registration until payment of fees.

**529. Refusal of registration until payment of fees.**

The registrar<sup>1</sup> must refuse to make an entry in the register<sup>2</sup> in respect of a person who has made an application for registration<sup>3</sup> as a registered osteopath<sup>4</sup> unless the entry and retention fees<sup>5</sup> have been paid; and he must refuse to restore an entry to the register unless the restoration fee<sup>6</sup> has been paid<sup>7</sup>.

1 As to the registrar see PARA 519 ante.

2 For the meaning of 'the register' see PARA 524 note 1 ante.

3 As to applications for registration see PARAS 521-522 ante.

4 For the meaning of 'registered osteopath' see PARA 503 note 4 ante.

5 Ie the fees specified in the General Osteopathic Council (Application for Registration and Fees) Rules Order of Council 2000, SI 2000/1038, rr 6, 8: see PARAS 527-528 ante.

6 Ie the fee specified in *ibid* r 10: see PARA 528 ante.

7 *Ibid* r 11.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/4. OSTEOPATHS/ (2) REGISTRATION/(ii) Registration and the Register/530. Suspension of registration.

### **530. Suspension of registration.**

Where the registrar<sup>1</sup> suspends the registration of an osteopath in accordance with any provision of the Osteopaths Act 1993<sup>2</sup>, he must enter in the register<sup>3</sup> a note of: (1) the suspension<sup>4</sup>; (2) the period of the suspension<sup>5</sup>; and (3) the provision under which the suspension was made<sup>6</sup>. Where the period of the suspension is extended, the registrar must note the extension in the register<sup>7</sup>. Any osteopath whose registration has been suspended ceases, for the period of his suspension, to be a registered osteopath<sup>8</sup> for the purposes of the provisions relating to the unlawful use of descriptions<sup>9</sup>.

1 As to the registrar see PARA 519 ante.

2 For the powers of suspension see s 10(3) (see PARA 533 post), s 21(2) (see PARA 549 post), s 22(4)(c) (see PARA 550 post), s 23(2)(b), (4)(b) (see PARA 552 post), s 24(2) (see PARA 553 post), s 30(11)(c), (12) (see PARA 584 post), s 31(8)(c) (see PARA 588 post).

3 For the meaning of 'the register' see PARA 524 note 1 ante.

4 Osteopaths Act 1993 s 7(1)(a).

5 Ibid s 7(1)(b).

6 Ibid s 7(1)(c).

7 Ibid s 7(2).

8 For the meaning of 'registered osteopath' see PARA 503 note 4 ante.

9 Ie under the Osteopaths Act 1993 s 32(1) (see PARA 590 post): s 7(3).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/4. OSTEOPATHS/ (2) REGISTRATION/(ii) Registration and the Register/531. Restoration to the register of osteopaths who have been struck off.

### **531. Restoration to the register of osteopaths who have been struck off.**

Where a person who has had his entry as a fully registered osteopath<sup>1</sup> removed from the register<sup>2</sup> as the result of an order for removal<sup>3</sup> wishes to have his entry restored to the register, he must make an application for registration to the registrar<sup>4</sup>. No such application may be made before the end of the period of ten months<sup>5</sup> beginning with the date on which the order for removal was made<sup>6</sup>. Any such application for registration, known as an 'application for restoration', must be referred by the registrar to the professional conduct committee<sup>7</sup> for determination by that committee<sup>8</sup>. The committee must not grant an application for restoration unless it is satisfied that the applicant not only satisfies the statutory requirements<sup>9</sup> but, having regard in particular to the circumstances which led to the making of the order for removal, is also a fit and proper person to practise the profession of osteopathy<sup>10</sup>. On granting an application for restoration, the committee must direct the registrar to register the applicant as a fully registered osteopath<sup>11</sup>, and may make a conditions of practice order with respect to him<sup>12</sup>.

The General Council<sup>13</sup> may by rules<sup>14</sup> make provision in relation to the restoration to the register of conditionally registered osteopaths<sup>15</sup> or provisionally registered osteopaths<sup>16</sup>, and any such rules may provide for restoration, in prescribed<sup>17</sup> circumstances, as a fully registered osteopath<sup>18</sup>.

Where a person who has had his entry as a conditionally registered osteopath removed from the register as a result of an order for removal wishes to have his entry restored to the register, he may make an application for registration in writing to the registrar<sup>19</sup>. Any such application for registration must be referred by the registrar to the professional conduct committee for determination by that committee<sup>20</sup>. When determining an application for restoration, the committee must in particular satisfy itself that the applicant: (1) has paid the restoration fee<sup>21</sup>; (2) is in good health both physically and mentally<sup>22</sup>; (3) has been of good character since the date on which his entry in the register was removed<sup>23</sup>; and (4) having regard to the circumstances which led to the making of the order for removal, is a fit and proper person to practise the profession of osteopathy<sup>24</sup>. On granting an application for restoration, the committee must, except as specified<sup>25</sup>, direct the registrar to register the applicant as a conditionally registered osteopath<sup>26</sup>, and may make a conditions of practice order with respect to him<sup>27</sup>. Where the committee is satisfied that the applicant: (a) satisfies the conditions set out in heads (1) to (4) above<sup>28</sup>; and (b) has fulfilled the required undertaking given by him<sup>29</sup> as a condition of registration as a conditionally registered osteopath<sup>30</sup>, it must direct the registrar to register the applicant as a fully registered osteopath<sup>31</sup>.

1 For the meaning of 'fully registered osteopath' see PARA 520 note 3 ante.

2 For the meaning of 'the register' see PARA 524 note 1 ante.

3 ie an order under the Osteopaths Act 1993 s 22(4)(d): see PARA 550 post.

4 Ibid s 8(1). As to the registrar see PARA 519 ante.

5 For the meaning of 'month' see PARA 13 note 14 ante.

6 Osteopaths Act 1993 s 8(2).

7 As to the professional conduct committee see PARA 514 ante.

8 Osteopaths Act 1993 s 8(3). For the purposes of determining an application for restoration, the committee exercises the registrar's functions under s 3 (see PARA 520 ante); and s 3(2) has effect as if s 3(2)(d) were omitted: s 8(4)(a), (b). As to appeals against a decision of the committee under s 8 see s 31; and PARA 588 post.

9 le the requirements of *ibid* s 3 as modified: see note 8 *supra*.

10 *Ibid* s 8(5). As to the power of the Council for the Regulation of Health Care Professionals to refer to the court a decision to restore a person to the register see PARA 306 ante.

11 *Ibid* s 8(6)(a).

12 *Ibid* s 8(6)(b). The provisions of s 22 (as amended) (see PARA 550 post) have effect in relation to a conditions of practice order made by virtue of s 8(6) as they have effect in relation to one made by virtue of s 22(4)(b): s 8(7). An entry which has been restored to the register under s 8, or under rules made by virtue of s 8(8) (see the text to notes 13-18 *infra*), may be treated for the purposes of s 10 (see PARA 533 post) as having been fraudulently procured or incorrectly made if any previous entry from which the restored entry is derived was fraudulently procured or incorrectly made: s 10(2).

13 For the meaning of 'the General Council' see PARA 499 note 1 ante.

14 As to the making of rules see PARA 506 ante; and as to the effect of competition orders on rules see PARA 518 ante.

15 For the meaning of 'conditionally registered osteopath' see PARA 522 note 4 ante.

16 For the meaning of 'provisionally registered osteopath' see PARA 523 note 10 ante.

17 For the meaning of 'prescribed' see PARA 500 note 11 ante.

18 Osteopaths Act 1993 s 8(8). See also note 12 *supra*. As to the rules that have been made see the General Osteopathic Council (Restoration to the Register of Conditionally Registered Osteopaths) Rules 2000, approved by the General Osteopathic Council (Restoration to the Register of Conditionally Registered Osteopaths) Rules Order of Council 2000, SI 2000/1037; and the text to notes 19-31 *infra*.

19 *Ibid* r 3(1). No such application may be made before the end of the period of ten months beginning with the date on which the order for removal was made: r 3(2). For the meaning of 'writing' see PARA 20 note 22 ante.

20 *Ibid* r 3(3).

21 le the fee prescribed in the General Osteopathic Council (Application for Registration and Fees) Rules Order of Council 2000, SI 2000/1038, r 10 (see PARA 528 text and note 12 ante): General Osteopathic Council (Restoration to the Register of Conditionally Registered Osteopaths) Rules Order of Council 2000, SI 2000/1037, r 3(4)(a).

22 *Ibid* r 3(4)(b).

23 *Ibid* r 3(4)(c).

24 *Ibid* r 3(4)(d).

25 le as specified in *ibid* r 4: see the text to notes 28-31 *infra*.

26 *Ibid* r 3(5)(a).

27 *Ibid* r 3(5)(b). The provisions of the Osteopaths Act 1993 s 22 (as amended) (see PARA 550 post) have effect in relation to such a conditions of practice order as they have effect in relation to one made by virtue of s 22(4)(b): General Osteopathic Council (Restoration to the Register of Conditionally Registered Osteopaths) Rules Order of Council 2000, SI 2000/1037, r 3(6).

28 *Ibid* r 4(a).

29 le under the Osteopaths Act 1993 s 4(2)(f): see PARA 522 ante.

30 General Osteopathic Council (Restoration to the Register of Conditionally Registered Osteopaths) Rules Order of Council 2000, SI 2000/1037, r 4(b).

31 Ibid r 4.

**UPDATE**

**531 Restoration to the register of osteopaths who have been struck off**

NOTE 18--Osteopaths Act 1993 s 8(8) amended: SI 2007/3101.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/4. OSTEOPATHS/ (2) REGISTRATION/(ii) Registration and the Register/532. Access to the register; the register as evidence.

### **532. Access to the register; the register as evidence.**

The General Council<sup>1</sup> must make the register<sup>2</sup> available for inspection by members of the public at all reasonable times<sup>3</sup>. The General Council must before the end of the period of 12 months<sup>4</sup> which begins on the date on which the register is opened<sup>5</sup>, and at least once in every subsequent period of 12 months which begins on the anniversary of that date<sup>6</sup>, publish a list, known as 'the published register', giving the names and registered addresses<sup>7</sup> of those who, at the date of publication, are registered osteopaths<sup>8</sup>. The published register must also contain, in respect of each registered osteopath, such other information, derived from the register, as may, by rules<sup>9</sup> made by the General Council, be determined to be appropriate for publication<sup>10</sup>. Any person who asks the General Council for a copy of the most recently published register is entitled to have one on payment of such reasonable fee as the General Council may determine<sup>11</sup>.

Any copy of, or extract from, the published register is evidence of the matters mentioned in it<sup>12</sup>. A certificate purporting to be signed by the registrar<sup>13</sup>, certifying that a person:

- 703 (1) is registered in a specified category<sup>14</sup>;
- 704 (2) is not registered<sup>15</sup>;
- 705 (3) was registered in a specified category at a specified date or during a specified period<sup>16</sup>;
- 706 (4) was not registered in a specified category, or in any category, at a specified date or during a specified period<sup>17</sup>; or
- 707 (5) has never been registered<sup>18</sup>,

is evidence of the matters certified<sup>19</sup>.

1 For the meaning of 'the General Council' see PARA 499 note 1 ante.

2 For the meaning of 'the register' see PARA 524 note 1 ante.

3 Osteopaths Act 1993 s 9(1)(a).

4 For the meaning of 'month' see PARA 13 note 14 ante.

5 Osteopaths Act 1993 s 9(1A)(a) (s 9(1A)-(1C) added by the Chiropractors Act 1994 s 42, Sch 2 para 1(2)). For the meaning of 'opening of the register' see PARA 520 note 11 ante.

6 Osteopaths Act 1993 s 9(1A)(b) (as added: see note 5 supra).

7 For the meaning of 'registered address' see PARA 524 note 7 ante.

8 Osteopaths Act 1993 s 9(1A) (as added: see note 5 supra). Any osteopath whose registration has been suspended ceases, for the period of his suspension, to be a registered osteopath for the purposes of s 9(1A), (1B) (as added): s 9(1C) (as so added). For the meaning of 'registered osteopath' see PARA 503 note 4 ante. As to the suspension of registration see PARA 530 ante.

9 As to the making of rules see PARA 506 ante; and as to the effect of competition orders on rules see PARA 518 ante.

10 Osteopaths Act 1993 s 9(1B) (as added: see note 5 supra). See also note 8 supra. At the date at which this volume states the law no such rules had been made.



11 Ibid s 9(2). This provision is not be taken as preventing the General Council from providing copies of the published register free of charge whenever it considers it appropriate: s 9(3) (amended by the Chiropractors Act 1994 Sch 2 para 1(3)).

12 Osteopaths Act 1993 s 9(4).

13 As to the registrar see PARA 519 ante.

14 Osteopaths Act 1993 s 9(5)(a).

15 Ibid s 9(5)(b).

16 Ibid s 9(5)(c).

17 Ibid s 9(5)(d).

18 Ibid s 9(5)(e).

19 Ibid s 9(5). As to the evidential effect of certificates admissible by statute see CIVIL PROCEDURE vol 11 (2009) PARA 897.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/4. OSTEOPATHS/ (2) REGISTRATION/(ii) Registration and the Register/533. Fraud or error in relation to registration.

### **533. Fraud or error in relation to registration.**

The registrar<sup>1</sup> must investigate any allegation that an entry in the register<sup>2</sup> has been fraudulently procured or incorrectly made, and must report on the result of his investigation to the General Council<sup>3</sup>. The registrar may, at any time during his investigation, suspend the registration<sup>4</sup> in question if he is satisfied that it is necessary to do so in order to protect members of the public<sup>5</sup>. The General Council must by rules<sup>6</sup> make provision, in relation to any case where the registrar proposes to suspend an osteopath's registration<sup>7</sup>: (1) giving the osteopath concerned an opportunity to appear before the investigating committee<sup>8</sup> and argue his case against suspension<sup>9</sup>; (2) allowing him to be legally represented<sup>10</sup>; and (3) for the registrar to be made a party to the proceedings<sup>11</sup>.

If, having considered any report of the registrar, the General Council is satisfied that the entry in question has been fraudulently procured or incorrectly made, it may order the registrar to remove the entry<sup>12</sup>. Where such an order is made, the registrar must without delay notify the person whose entry is to be removed of the order<sup>13</sup>, and of the right of appeal<sup>14</sup>. Where such an order is made, the person whose entry is to be removed may appeal to a county court<sup>15</sup>. Any such appeal must be brought before the end of the period of 28 days beginning with the date on which notification of the order was served<sup>16</sup>. On an appeal, the court may dismiss the appeal<sup>17</sup>; allow the appeal and quash the order appealed against<sup>18</sup>; or remit the case to the General Council to dispose of the case in accordance with the directions of the court<sup>19</sup>. The court may make such order as to costs as it thinks fit<sup>20</sup>.

1 As to the registrar see PARA 519 ante.

2 For the meaning of 'the register' see PARA 524 note 1 ante.

3 Osteopaths Act 1993 s 10(1). For the meaning of 'the General Council' see PARA 499 note 1 ante. An entry which has been restored to the register under s 6(5) (see PARA 524 ante) or s 8, or under rules made by virtue of s 8(8) (see PARA 531 ante), may be treated for the purposes of s 10 as having been fraudulently procured or incorrectly made if any previous entry from which the restored entry is derived was fraudulently procured or incorrectly made: s 10(2).

4 As to the suspension of registration see PARA 530 ante.

5 Osteopaths Act 1993 s 10(3). The General Council may by rules make such further provision as it considers appropriate with respect to suspensions under s 10(3), including in particular provision as to their duration: s 10(12). As to the rules that have been made see the General Osteopathic Council (Fraud or Error and Appeals) Rules 1999, approved by the General Osteopathic Council (Fraud or Error and Appeals) Rules Order of Council 1999, SI 1999/1846; and PARA 534 post.

6 As to the making of rules see PARA 506 ante; and as to the effect of competition orders on rules see PARA 518 ante.

7 Ie under the Osteopaths Act 1993 s 10(3): see the text to notes 4-5 supra.

8 As to the investigating committee see PARA 513 ante.

9 Osteopaths Act 1993 s 10(4)(a). As to the rules made under s 10(4) see note 5 supra.

10 Ibid s 10(4)(b). See also note 9 supra.

11 Ibid s 10(4)(c). See also note 9 supra.

12 Ibid s 10(5).

13 Ibid s 10(6)(a).

14 Ie the right of appeal given by ibid s 10(7) (as amended) (see the text to note 15 infra): s 10(6)(b).

15 Ibid s 10(7) (amended by the National Health Service Reform and Health Care Professions Act 2002 s 33(1), (2)(a)). In the case of a person whose address in the register is in Scotland, the appeal is to the sheriff in whose sheriffdom the address is situated: Osteopaths Act 1993 s 10(7) (as so amended). As to county courts see COURTS.

16 Ie served under ibid s 10(6): s 10(8) (substituted by the National Health Service Reform and Health Care Professions Act 2002 s 33(1), (2)(b)). On an appeal, the General Council is the respondent: Osteopaths Act 1993 s 10(9).

17 Ibid s 10(11)(a) (s 10(11) substituted by the National Health Service Reform and Health Care Professions Act 2002 s 33(1), (2)(d)).

18 Osteopaths Act 1993 s 10(11)(b) (as substituted: see note 17 supra).

19 Ibid s 10(11)(c) (as substituted: see note 17 supra).

20 Ibid s 10(11) (as substituted: see note 17 supra). As to costs generally see CIVIL PROCEDURE vol 12 (2009) PARA 1729 et seq.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/4. OSTEOPATHS/ (2) REGISTRATION/(ii) Registration and the Register/534. Suspension of registration for fraud or error.

### **534. Suspension of registration for fraud or error.**

Where the registrar<sup>1</sup> proposes to suspend an osteopath's registration pursuant to an allegation that such registration has been fraudulently procured or incorrectly made<sup>2</sup>, he must send the osteopath concerned a notice<sup>3</sup> stating that he may appear before the committee<sup>4</sup> and argue his case against suspension if he notifies the registrar in writing of his intention to do so within the period of 14 days beginning with the date of the sending of the notice<sup>5</sup>, and that he may be legally represented<sup>6</sup>. Where the osteopath concerned has, within the period referred to in the registrar's notice, or within any extension of that period allowed by the registrar, sent the registrar a notice stating that he wishes to appear before the committee<sup>7</sup>, the registrar must fix a day on which the committee is to hear the osteopath or his representative, and notify the osteopath of that day and the time and place at which the hearing is to be held<sup>8</sup>. The registrar must be a party to the proceedings and may appear before the committee at the hearing and be legally represented<sup>9</sup>.

Both the osteopath concerned and the registrar may produce documentary evidence to the committee and may call witnesses and put questions to any person called as a witness before the committee<sup>10</sup>. Where the proceedings before the committee concern an allegation that entry to the register<sup>11</sup> has been fraudulently procured, it must not hear any evidence which would not be admissible if the proceedings were criminal proceedings in any court in that part of the United Kingdom<sup>12</sup> in which the hearing takes place unless, after consultation with the legal assessor<sup>13</sup>, it is satisfied that its admission is necessary in order to protect members of the public<sup>14</sup>. At the hearing before the committee, the registrar first presents the case for suspending the registration of the osteopath concerned and the osteopath is given the opportunity to speak last but, subject to these requirements, the procedure at the hearing is such as the committee may determine<sup>15</sup>. The committee may adjourn the proceedings from time to time as it thinks fit<sup>16</sup>. The committee must decide whether or not there is reasonable cause for the registrar to suspend the registration of the osteopath concerned and, if there is reasonable cause, the duration of the suspension<sup>17</sup>. The chairman of the committee must give the decision of the committee orally at the end of the hearing and the registrar must<sup>18</sup>: (1) record the decision in writing<sup>19</sup>; (2) as soon as is practicable after the hearing, send a copy of the decision and the reasons for the decision to the osteopath concerned<sup>20</sup>; and (3) where the committee upholds the registrar's proposal to suspend the registration of the osteopath concerned, send to the osteopath a notice of suspension which includes the duration of the suspension<sup>21</sup>.

1 As to the registrar see PARA 519 ante.

2 As to the power of the registrar to make such a suspension see PARA 533 ante.

3 In the General Osteopathic Council (Fraud or Error and Appeals) Rules Order of Council 1999, SI 1999/1846, a reference to the sending of a notice or other document to any person is a reference to delivering it to him personally or sending it to him by registered post or by the recorded delivery service: (1) where the person is the registrar, to the address of any office of the General Council; (2) where the person is a registered osteopath, to his address in the register or, if his last known address differs from the address in the register, his last known address or, if he is represented by a solicitor, to the solicitor's professional address; (3) where the person is not a registered osteopath or the registrar, to his last known address, or if he is represented by a solicitor, to the solicitor's professional address: r 3(1). Where a notice or other document is:

140 (a) sent by registered post or by the recorded delivery service, it is treated as having been sent on the day that it was posted (r 3(2)(a));

141 (b) delivered personally, if:

5. (i) it is delivered by the registrar, it is treated as having been delivered when it is handed to the osteopath concerned or the person aggrieved, as the case may be (r 3(2)(b)(i));  
5
6. (ii) it is delivered by the osteopath concerned or the person aggrieved, it is treated as having been delivered when it is handed to the registrar or to his representative or left at any office of the General Council (r 3(2)(b)(ii)).  
6

For the meaning of 'the General Council' see PARA 499 note 1 ante. For the meaning of 'registered osteopath' see PARA 503 note 4 ante.

Where the registrar is required to send a notice under r 4(1), he must in that notice inform the person to whom it is sent that a notice under r 4(3) (see the text to notes 7-8 infra) must either be delivered personally or be sent by registered post or by the recorded delivery service: r 3(3). See, however, note 7 infra.

4 'The committee' means the investigating committee: *ibid* r 4(13). As to the investigating committee see PARA 513 ante.

5 *Ibid* r 4(1)(a). The registrar may extend the period referred to in r 4(1)(a) if he is satisfied that in all the circumstances it is reasonable to do so: r 4(2). For the meaning of 'writing' see PARA 20 note 22 ante.

6 *Ibid* r 4(1)(b).

7 Notwithstanding the provisions of *ibid* r 3(1)-(3) (see note 3 supra), a notice sent by post under r 4(3) other than by registered post or by the recorded delivery service is treated as complying with the requirements of r 3(1) if it is received at any office of the General Council within the time limits specified for sending that notice or notice of appeal, as the case may be: r 3(4).

8 *Ibid* r 4(3). The registrar must not fix a day for the hearing on any day earlier than the end of the period of 28 days beginning with the day on which the osteopath concerned delivered or sent the notice referred to in r 4(3) to the registrar: r 4(4).

9 *Ibid* r 4(5).

10 *Ibid* r 4(6).

11 For the meaning of 'the register' see PARA 524 note 1 ante.

12 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

13 'Legal assessor' means a person appointed under the Osteopaths Act 1993 s 27 (see PARA 579 post): General Osteopathic Council (Fraud or Error and Appeals) Rules Order of Council 1999, SI 1999/1846, r 2(1).

14 *Ibid* r 4(7). As to the admissibility of evidence in criminal proceedings see CIVIL PROCEDURE vol 11 (2009) PARA 758 et seq; CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1359 et seq.

15 *Ibid* r 4(8).

16 *Ibid* r 4(9).

17 *Ibid* r 4(10). The duration of the suspension of registration under the Osteopaths Act 1993 s 10(3) (see PARA 533 ante) must be for a period of not longer than six months but if, having considered any report of the registrar, the General Council is satisfied that the entry in question has not been fraudulently procured or incorrectly made, it must order the registrar to lift the suspension immediately: General Osteopathic Council (Fraud or Error and Appeals) Rules Order of Council 1999, SI 1999/1846, r 4(11).

18 *Ibid* r 4(12).

19 *Ibid* r 4(12)(a).

20 *Ibid* r 4(12)(b).

21 *Ibid* r 4(12)(c).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/4.  
 OSTEOPATHS/(3) PROFESSIONAL EDUCATION/(i) Standards of Education and Training/535.  
 Promotion of standards of education and training.

### **(3) PROFESSIONAL EDUCATION**

#### **(i) Standards of Education and Training**

##### **535. Promotion of standards of education and training.**

The education committee<sup>1</sup> has the general duty of promoting high standards of education and training in osteopathy and keeping the provision made for that education and training under review<sup>2</sup>. Where it considers it to be necessary in connection with the discharge of its general duty, the committee may itself provide, or arrange for the provision of, education or training<sup>3</sup>. The General Council<sup>4</sup> must consult the education committee on matters relating to education, training, examinations or tests of competence<sup>5</sup>, and it is the duty of the committee to give advice to the General Council on those matters either on being consulted by the General Council or where it considers it appropriate to do so<sup>6</sup>.

1 As to the education committee see PARA 512 ante.

2 Osteopaths Act 1993 s 11(1).

3 Ibid s 11(2).

4 For the meaning of 'the General Council' see PARA 499 note 1 ante.

5 Osteopaths Act 1993 s 11(3).

6 Ibid s 11(4).

#### **UPDATE**

##### **535 Promotion of standards of education and training**

TEXT AND NOTE 2--For the meaning of 'training' see PARA 503.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/4.  
OSTEOPATHS/(3) PROFESSIONAL EDUCATION/(i) Standards of Education and Training/536.  
Visitors.

### **536. Visitors.**

The education committee<sup>1</sup> may appoint persons to visit any place at which, or any institution by which or under whose direction: (1) any relevant course of study<sup>2</sup> is, or is proposed to be, given<sup>3</sup>; (2) any examination is, or is proposed to be, held in connection with any such course<sup>4</sup>; (3) any test of competence is, or is proposed to be, conducted in connection with any such course or for any other purpose connected with the Osteopaths Act 1993<sup>5</sup>. No person appointed as a visitor may exercise his functions<sup>6</sup> in relation to any place at which he regularly gives instruction in any subject<sup>7</sup>, or any institution with which he has a significant connection<sup>8</sup>. A person is not prevented from being appointed as a visitor merely because he is a member of the General Council<sup>9</sup> or any of its committees<sup>10</sup>.

Where a visitor visits any place or institution in the exercise of his functions, he must report to the education committee: (a) on the nature and quality of the instruction given, or to be given, and the facilities provided or to be provided, at that place or by that institution<sup>11</sup>; and (b) on such other matters, if any, as he was required to report on by the committee<sup>12</sup>. Where a visitor makes such a report to the education committee, the committee must on receipt of the report send a copy of it to the institution concerned<sup>13</sup>, and notify that institution of the period within which it may make observations on, or raise objections to, the report<sup>14</sup>. The education committee must not take any steps in the light of any report before the end of the specified period<sup>15</sup>.

The General Council may pay fees, allowances and expenses to persons appointed as visitors<sup>16</sup>, or treat any such person<sup>17</sup> as a member of its staff<sup>18</sup>. In the case of a visitor who is also a member of the General Council or one of its committees, any payment made to him in his capacity as a visitor is in addition to any to which he is entitled as such a member<sup>19</sup>.

1 As to the education committee see PARA 512 ante.

2 'Relevant course of study' means any course of study which forms, or is intended to form, part of: (1) the complete course of study required in order to obtain a recognised qualification or a qualification for which recognition is being sought; or (2) any training which a registered osteopath may be required to undergo after registration: Osteopaths Act 1993 s 12(2). For the meaning of 'recognised qualification' see PARA 538 post. For the meaning of 'registered osteopath' see PARA 503 note 4 ante. As to post registration training see PARA 543 post.

3 Ibid s 12(1)(a).

4 Ibid s 12(1)(b).

5 Ibid s 12(1)(c).

6 Ie his functions under ibid s 12.

7 Ibid s 12(3)(a).

8 Ibid s 12(3)(b).

9 Ibid s 12(4)(a). For the meaning of 'the General Council' see PARA 499 note 1 ante.

10 Ibid s 12(4)(b). As to the committees of the General Council see PARA 499 ante.

11 Ibid s 12(5)(a).

12 Ibid s 12(5)(b). Requirements of the kind mentioned in s 12(5)(b) may be imposed by the education committee: (1) generally in relation to all visits (s 12(6)(a)); (2) generally in relation to all visits made to a specified kind of place or institution (s 12(6)(b)); or (3) specifically in relation to a particular visit (s 12(6)(c)).

13 Ibid s 12(7)(a).

14 Ibid s 12(7)(b). The period specified by the committee in a notice given under s 12(7)(b) must not be less than one month beginning with the date on which a copy of the report is sent to the institution under s 12(7)(a) (see the text to note 13 supra); s 12(8). For the meaning of 'month' see PARA 13 note 14 ante.

15 Ibid s 12(9). As to the withdrawal of recognition as a result of s visitor's report see PARA 541 post.

16 Ibid s 12(10)(a).

17 Ie for the purposes of ibid Schedule para 15(2)(c)-(e): see PARA 505 ante.

18 Ibid s 12(10)(b).

19 Ibid s 12(11). As to the power of the General Council to make payments to its members and members of its committees see PARA 505 ante.

## **UPDATE**

### **536 Visitors**

NOTE 2--For the meaning of 'training' see PARA 503.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/4.  
 OSTEOPATHS/(3) PROFESSIONAL EDUCATION/(i) Standards of Education and Training/537.  
 The standard of proficiency.

### **537. The standard of proficiency.**

The General Council<sup>1</sup> must from time to time determine the standard of proficiency which, in its opinion, is required for the competent and safe practice of osteopathy<sup>2</sup>. The Council must publish a statement of the standard of proficiency as so determined by it<sup>3</sup>. If the Council at any time varies the standard so determined, it must publish a statement of the revised standard, accompanied by a statement of the differences between that standard and the standard as it was immediately before the revision<sup>4</sup>. No variation of the standard has effect before the end of the period of one year beginning with the date on which the Council publishes the statements required in connection with that variation<sup>5</sup>.

1 For the meaning of 'the General Council' see PARA 499 note 1 ante.

2 Osteopaths Act 1993 s 13(1). The 'required standard of proficiency' means the standard determined by the General Council under s 13(1): s 41.

3 Ibid s 13(2).

4 Ibid s 13(3) (amended by the Chiropractors Act 1994 s 42, Sch 2 para 2(a)).

5 Osteopaths Act 1993 s 13(4) (amended by the Chiropractors Act 1994 Sch 2 para 2(b)).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/4. OSTEOPATHS/(3) PROFESSIONAL EDUCATION/(ii) Qualifications/538. Recognised qualifications.

## (ii) Qualifications

### 538. Recognised qualifications.

A qualification is a 'recognised qualification' if it is recognised by the General Council<sup>1</sup> under the provisions described below<sup>2</sup>.

Where the General Council is satisfied that:

- 708 (1) a qualification granted by an institution in the United Kingdom<sup>3</sup> is evidence of having reached the required standard of proficiency<sup>4</sup>; or
- 709 (2) a qualification which such an institution proposes to grant will be evidence of having reached that standard<sup>5</sup>,

it may, with the approval of the Privy Council<sup>6</sup>, recognise that qualification for the purposes of the Osteopaths Act 1993<sup>7</sup>. Where the General Council is satisfied that a qualification granted by an institution outside the United Kingdom is evidence of having reached the required standard of proficiency, or of reaching a comparable standard, it may, with the approval of the Privy Council, recognise that qualification for the purposes of the Act<sup>8</sup>. When requesting the approval of the Privy Council for these purposes<sup>9</sup>, the General Council must make available to the Privy Council the information provided to it by the education committee<sup>10</sup> or, where the Privy Council considers it appropriate, a summary of that information<sup>11</sup>. The General Council must maintain and publish a list of the qualifications which are for the time being recognised<sup>12</sup>.

Where, by virtue of Community law<sup>13</sup> a person, 'the osteopath', is to be authorised to practise the profession of osteopathy on the same conditions as a person who holds a recognised qualification, the osteopath must be treated as having a recognised qualification<sup>14</sup>, but the General Council may, subject to Community law, require him to satisfy specified additional conditions before being registered<sup>15</sup>.

1 For the meaning of 'the General Council' see PARA 499 note 1 ante.

2 Osteopaths Act 1993 s 14(1). Before deciding whether or not to recognise a qualification under s 14, the General Council must consult the education committee: s 14(6). As to limited and conditional recognition of qualifications see PARA 539 post. As to the education committee see PARA 512 ante. As to the duty of that committee in relation to standards of education and training see PARA 535 ante.

3 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

4 Osteopaths Act 1993 s 14(2)(a). For the meaning of 'required standard of proficiency' see PARA 537 note 2 ante.

5 Ibid s 14(2)(b).

6 As to the giving of consent by the Privy Council see PARA 517 ante. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

7 Osteopaths Act 1993 s 14(2). The General Council may by rules make provision requiring the education committee to publish a statement indicating: (1) matters on which the committee will wish to be satisfied before advising the General Council to recognise a qualification under s 14(2); and (2) matters which may cause the committee to advise the General Council not to recognise a qualification under s 14(2): s 14(9). Rules have been made providing that the education committee must publish a statement, and may from time to time

amend the statement, indicating: (a) matters on which the committee will wish to be satisfied before advising the General Council to recognise a qualification under the Osteopaths Act 1993 s 14(2); and (b) matters which may cause the committee to advise the General Council not to recognise a qualification under that provision: see the General Osteopathic Council (Recognition of Qualifications) Rules Order of Council 2000, SI 2000/1281, r 3. As to the making of rules see PARA 506 ante; and as to the effect of competition orders on rules see PARA 518 ante.

8 Osteopaths Act 1993 s 14(3). The General Council may by rules:

142 (1) impose additional conditions for registration (s 14(4)(a)); or

143 (2) provide for any provision made by the Osteopaths Act 1993 in relation to conditions for registration to have effect subject to prescribed modifications (s 14(4)(b)),

in the case of any application for registration based on a person's holding a qualification which is recognised under s 14(3): s 14(4). At the date at which this volume states the law no such rules had been made.

9 le for the purposes of *ibid* s 14(2), (3): see the text to notes 4-8 *supra*.

10 *Ibid* s 14(7)(a). The Privy Council must have regard to the information made available to it under s 14(7) before deciding whether or not to give its approval: s 14(8).

11 *Ibid* s 14(7)(b). See also note 10 *supra*.

12 *Ibid* s 14(5).

13 For these purposes, 'Community law' means any enforceable Community right or any enactment giving effect to a Community obligation: *ibid* s 14(11). As to the meaning of 'enforceable Community right' see the European Communities Act 1972 s 2(1); and the Interpretation Act 1978 s 5, Sch 1. As to the meaning of 'Community obligation' see the European Communities Act 1972 Sch 1; and the Interpretation Act 1978 s 5, Sch 1.

14 Osteopaths Act 1993 s 14(10)(a).

15 *Ibid* s 14(10)(b).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/4. OSTEOPATHS/(3) PROFESSIONAL EDUCATION/(ii) Qualifications/539. Limited and conditional recognition of qualifications.

### **539. Limited and conditional recognition of qualifications.**

A qualification may be recognised by the General Council<sup>1</sup>: (1) only in respect of awards of that qualification made after a specified date<sup>2</sup>; (2) only in respect of awards made before a specified date<sup>3</sup>; or (3) only in respect of awards made after a specified date but before another specified date<sup>4</sup>. Where the General Council recognises a qualification in one or other of the limited ways set out in heads (1) to (3) above, the limitation must be specified in the list qualifications<sup>5</sup> issued by the General Council<sup>6</sup>.

The General Council may, in recognising a qualification, direct that the qualification is to remain a recognised qualification<sup>7</sup> only so long as such conditions as the General Council sees fit to impose are complied with in relation to the qualification<sup>8</sup>. Any such condition may at any time be removed by the General Council<sup>9</sup>. Any institution which is, or is likely to be, affected by such a direction must be notified by the General Council of the direction as soon as is reasonably practicable<sup>10</sup>.

Where an application is made by any institution for the recognition of a qualification, the General Council must notify the institution of the result of its application as soon as is reasonably practicable after the General Council determines the application<sup>11</sup>. Where the General Council refuses such an application, it must, when notifying the institution concerned, give reasons for its refusal<sup>12</sup>.

1    Ie under the Osteopaths Act 1993 s 14: see PARA 538 ante. For the meaning of 'the General Council' see PARA 499 note 1 ante.

2    Ibid s 15(1)(a). Any date specified under s 15(1) may be earlier than the date on which the Osteopaths Act 1993 was passed: s 15(2). The Osteopaths Act 1993 was passed on 1 July 1993.

3    Ibid s 15(1)(b). See also note 2 supra.

4    Ibid s 15(1)(c). See also note 2 supra.

5    Ie the list issued under ibid s 14(5): see PARA 538 ante.

6    Ibid s 15(3).

7    For the meaning of 'recognised qualification' see PARA 538 ante.

8    Osteopaths Act 1993 s 15(4). As to the withdrawal of recognition where such conditions are not complied with see PARA 541 post. The General Council must not exercise any of its functions under s 15(4) or (5) without the approval of the Privy Council: s 15(6). As to the giving of approval by the Privy Council see PARA 517 ante. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

9    Ibid s 15(5). See also note 8 supra.

10   Ibid s 15(7).

11   Ibid s 15(8).

12   Ibid s 15(9).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/4. OSTEOPATHS/(3) PROFESSIONAL EDUCATION/(ii) Qualifications/540. Non-United Kingdom qualifications.

#### **540. Non-United Kingdom qualifications.**

A person who: (1) has obtained a qualification in osteopathy outside the United Kingdom<sup>1</sup>; (2) does not hold a recognised qualification<sup>2</sup>; but (3) satisfies the registrar<sup>3</sup> that he has reached the required standard of proficiency<sup>4</sup>, must be treated as holding a recognised qualification for the purposes of the Osteopaths Act 1993<sup>5</sup>.

The General Council<sup>6</sup>, being the designated authority for the osteopaths profession in the United Kingdom<sup>7</sup>, may not, on grounds of inadequate qualifications, refuse to authorise a national of a European Union member state, Iceland, Norway, Liechtenstein or Switzerland to practise the profession on the same conditions as apply to a United Kingdom applicant, if that person holds the diploma required to practise in another such state or can satisfy certain other conditions as to experience and qualifications<sup>8</sup>.

1 General Osteopathic Council (Recognition of Qualifications) Rules Order of Council 2000, SI 2000/1281, r 4(a). For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

2 Ibid r 4(b). For the meaning of 'recognised qualification' see PARA 538 ante.

3 As to the registrar see PARA 519 ante.

4 General Osteopathic Council (Recognition of Qualifications) Rules Order of Council 2000, SI 2000/1281, r 4(c). For the meaning of 'required standard of proficiency' see PARA 537 note 2 ante.

5 Ibid r 4.

6 For the meaning of 'the General Council' see PARA 499 note 1 ante.

7 European Communities (Recognition of Professional Qualifications) (First General System) Regulations 2005, SI 2005/18, reg 4(1), Sch 1 Pt 1.

8 See ibid reg 5. As to proof of experience and qualifications see further regs 6-9. A national of a European Union member state, Iceland, Norway, Liechtenstein or Switzerland who has been granted authorisation to practise has the right to use the professional title and designatory letters applicable to the osteopaths profession in the United Kingdom, and the lawful academic title, and where appropriate the abbreviation thereof, acquired by him in the relevant state in which he formerly qualified and in the language of that state: reg 10(1)(a), (b). Where a person makes use of an academic title, the General Council may require that the title be followed by the name and location of the establishment or examining board which awarded it: reg 10(2).

#### **UPDATE**

#### **540 Non-United Kingdom qualifications**

NOTE 4--See further SI 2000/1281 r 4(2) (added by SI 2007/3101).

TEXT AND NOTES 7, 8--SI 2005/18 reg 4(1) revoked, Sch 1 Pt 1 replaced: European Communities (Recognition of Professional Qualifications) Regulations 2007, SI 2007/2781, Sch 1 Pt 1.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/4. OSTEOPATHS/(3) PROFESSIONAL EDUCATION/(ii) Qualifications/541. Withdrawal of recognition.

#### **541. Withdrawal of recognition.**

Where, as a result of any visitor's report<sup>1</sup> or other information acquired by the education committee<sup>2</sup>, the committee is of the opinion:

- 710 (1) that a recognised qualification<sup>3</sup> is no longer, or will no longer be, evidence of having reached the required standard of proficiency<sup>4</sup>;
- 711 (2) that a proposed qualification which has yet to be granted, but which was recognised<sup>5</sup>, will not be evidence of having reached that standard<sup>6</sup>; or
- 712 (3) that a condition for the continued recognition of a qualification<sup>7</sup> has not been complied with<sup>8</sup>,

it must refer the matter to the General Council<sup>9</sup>. In considering any such matter referred to it, the General Council must have regard to the information on which the education committee formed its opinion together with any other relevant information which the General Council may have<sup>10</sup>.

If the General Council is satisfied that the circumstances of the case are as mentioned in head (1), (2) or (3) above, it may, with the approval of the Privy Council<sup>11</sup>, direct that the qualification is no longer to be a recognised qualification for the purposes of the Osteopaths Act 1993<sup>12</sup>. When requesting the approval of the Privy Council, the General Council must make available to the Privy Council the information to which it had regard<sup>13</sup>, and the Privy Council must have regard to that information before deciding whether or not to give its approval<sup>14</sup>.

Where the recognition of any qualification is withdrawn under these provisions, the General Council must use its best endeavours to secure that any person who is studying for that qualification at any place, at the time when recognition is withdrawn, is given the opportunity to study at that or any other place for a qualification which is recognised<sup>15</sup>. The withdrawal under these provisions of recognition from any qualification does not affect the entitlement of any person to be registered<sup>16</sup> by reference to an award of that qualification made to him before the date on which the direction withdrawing recognition had effect<sup>17</sup>.

1 As to visitors see PARA 536 ante.

2 As to the education committee see PARA 512 ante.

3 For the meaning of 'recognised qualification' see PARA 538 ante.

4 Osteopaths Act 1993 s 16(1)(a). For the meaning of 'required standard of proficiency' see PARA 537 note 2 ante.

5 *Ibid* s 14(2)(b); see PARA 538 ante.

6 *Ibid* s 16(1)(b).

7 *Ibid* imposed under *ibid* s 15(4); see PARA 539 ante.

8 *Ibid* s 16(1)(c).

9 *Ibid* s 16(1). For the meaning of 'the General Council' see PARA 499 note 1 ante.

10 *Ibid* s 16(4).

11 As to the giving of approval by the Privy Council see PARA 517 ante. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

12 Osteopaths Act 1993 s 16(2). A direction under s 16(2) has effect from the date of the direction or from such later date as may be specified in the direction: s 16(3).

13 Ie under ibid s 16(4) (see the text to note 10 supra): s 16(5).

14 Ibid s 16(6).

15 Ibid s 16(7).

16 For the meaning of 'registered' see PARA 524 note 3 ante.

17 Osteopaths Act 1993 s 16(8).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/4. OSTEOPATHS/(3) PROFESSIONAL EDUCATION/(ii) Qualifications/542. Provision of information by institutions.

#### **542. Provision of information by institutions.**

The provisions described below apply to any institution by which, or under whose direction: (1) any relevant course of study<sup>1</sup> is, or is proposed to be, given<sup>2</sup>; (2) any examination is, or is proposed to be, held in connection with any such course<sup>3</sup>; or (3) any test of competence is, or is proposed to be, conducted in connection with any such course or for any other purpose connected with the Osteopaths Act 1993<sup>4</sup>.

Whenever required to do so by the education committee<sup>5</sup>, any such institution must give to the committee such information as the committee may reasonably require in connection with the exercise of its functions<sup>6</sup>. The matters with respect to which the education committee may require information include<sup>7</sup>: the requirements which must be met by any person pursuing the course of study, undergoing the course of training or taking the examination or test in question<sup>8</sup>; the financial position of the institution<sup>9</sup>; and the efficiency of the institution's management<sup>10</sup>. Where an institution refuses any such reasonable request for information made by the education committee, the committee may recommend to the General Council<sup>11</sup> that recognition of the qualification<sup>12</sup> in question be either refused<sup>13</sup> or withdrawn<sup>14</sup>. Where such a recommendation is made to the General Council, it may<sup>15</sup> refuse to recognise the qualification<sup>16</sup>, or<sup>17</sup> give a direction<sup>18</sup>, with the required approval of the Privy Council<sup>19</sup>, in respect of the qualification<sup>20</sup>.

1 For the meaning of 'relevant course of study' see PARA 536 note 2 ante; definition applied by the Osteopaths Act 1993 s 18(2). As to the appointment and functions of visitors see PARA 536 ante.

2 Ibid s 18(1)(a).

3 Ibid s 18(1)(b).

4 Ibid s 18(1)(c).

5 As to the education committee see PARA 512 ante.

6 Osteopaths Act 1993 s 18(3) (s 18(3), (4) amended by the Chiropractors Act 1994 s 42, Sch 2 para 3(1)).

7 Osteopaths Act 1993 s 18(4) (as amended: see note 6 supra).

8 Ibid s 18(4)(a).

9 Ibid s 18(4)(b).

10 Ibid s 18(4)(c).

11 For the meaning of 'the General Council' see PARA 499 note 1 ante.

12 As to the recognition of qualifications see PARAS 538-541 ante.

13 Osteopaths Act 1993 s 18(5)(a) (s 18(5) substituted by the Chiropractors Act 1994 Sch 2 para 3(2)).

14 Osteopaths Act 1993 s 18(5)(b) (as substituted: see note 13 supra).

15 Ie in a case to which ibid s 18(5)(a) (as substituted) applies: see the text to note 13 supra.

16 Ie under ibid s 14 (see PARA 538 ante): s 18(6)(a) (s 18(6) added by the Chiropractors Act 1994 Sch 2 para 3(2)).



17     le in a case to which the Osteopaths Act 1993 s 16(5)(b) (as substituted) applies: see the text to note 14 supra.

18     le under *ibid* s 16(2): see PARA 541 ante.

19     As to the giving of approval by the Privy Council see PARA 517 ante. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

20     Osteopaths Act 1993 s 18(6)(b) (as added: see note 16 supra).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/4. OSTEOPATHS/(3) PROFESSIONAL EDUCATION/(ii) Qualifications/543. Post registration training.

### **543. Post registration training.**

The General Council<sup>1</sup> may make rules<sup>2</sup> requiring registered osteopaths<sup>3</sup> to undertake further courses of training<sup>4</sup>. The rules may, in particular, make provision with respect to registered osteopaths who fail to comply with any requirements of the rules, including provision for their registration<sup>5</sup> to cease to have effect<sup>6</sup>. Before making or varying any such rules, the General Council must take such steps as are reasonably practicable to consult those who are registered osteopaths and such other persons as the Council considers appropriate<sup>7</sup>.

1 For the meaning of 'the General Council' see PARA 499 note 1 ante.

2 As to the making of rules see PARA 506 ante; and as to the effect of competition orders on rules see PARA 518 ante.

3 For the meaning of 'registered osteopath' see PARA 503 note 4 ante.

4 Osteopaths Act 1993 s 17(1). At the date at which this volume states the law no such rules had been made.

5 As to the registration of osteopaths see PARA 520 et seq.

6 Osteopaths Act 1993 s 17(2).

7 Ibid s 17(3).

### **UPDATE**

#### **543 Post registration training**

TEXT AND NOTES--The General Osteopathic Council (Continuing Professional Development) Rules 2006 (approved by the General Osteopathic Council (Continuing Professional Development) Rules Order of Council 2006, SI 2006/3511) provide for the continuing professional development of registered osteopaths, and provide for their removal from the register for failure to comply with the requirements of the rules.

As to the effect of the Osteopaths Act 1993 s 17(1), (2) to a temporarily registered osteopath, see s 17(2A)-(2D) (added by SI 2007/3101; 1993 Act s 17(2B) amended by SI 2008/1774).

TEXT AND NOTES 1-4--Osteopaths Act 1993 s 17(1) amended: SI 2008/1774.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/4. OSTEOPATHS/(4) PROFESSIONAL CONDUCT AND FITNESS TO PRACTISE/(i) Code of Practice/544. Code of practice.

## **(4) PROFESSIONAL CONDUCT AND FITNESS TO PRACTISE**

### **(i) Code of Practice**

#### **544. Code of practice.**

The General Council<sup>1</sup> must prepare and from time to time publish a code of practice laying down standards of conduct and practice expected of registered osteopaths<sup>2</sup>, and giving advice in relation to the practice of osteopathy<sup>3</sup>. It is the duty of the General Council to keep the code under review and to vary its provisions whenever it considers it appropriate to do so<sup>4</sup>. Before issuing the code or varying it, the General Council must consult such representatives of practising osteopaths as it considers appropriate<sup>5</sup>. Where any person is alleged to have failed to comply with any provision of the code, that failure is not to be taken, of itself, to constitute unacceptable professional conduct<sup>6</sup> on his part<sup>7</sup>, but will be taken into account in any proceedings against him under the Osteopaths Act 1993<sup>8</sup>. Any person who asks the General Council for a copy of the code is entitled to have one on payment of such reasonable fee as the General Council may determine<sup>9</sup>.

1 For the meaning of 'the General Council' see PARA 499 note 1 ante.

2 Osteopaths Act 1993 s 19(1)(a). For the meaning of 'registered osteopath' see PARA 503 note 4 ante.

3 Ibid s 19(1)(b).

4 Ibid s 19(2).

5 Ibid s 19(3).

6 For the meaning of 'unacceptable professional conduct' see PARA 545 note 2 post.

7 Osteopaths Act 1993 s 19(4)(a).

8 Ibid s 19(4)(b). As to proceedings in respect of professional conduct see PARA 545 et seq post.

9 Ibid s 19(5). This does not prevent the General Council from providing copies of the code free of charge whenever it considers it appropriate: s 19(6).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/4. OSTEOPATHS/(4) PROFESSIONAL CONDUCT AND FITNESS TO PRACTISE/(ii) The Investigating Committee/545. Allegations as to professional conduct and fitness to practise.

## **(ii) The Investigating Committee**

### **545. Allegations as to professional conduct and fitness to practise.**

Where any allegation is made against a registered osteopath<sup>1</sup> to the effect that: (1) he has been guilty of conduct which falls short of the standard required of a registered osteopath<sup>2</sup>; (2) he has been guilty of professional incompetence<sup>3</sup>; (3) he has been convicted, at any time, in the United Kingdom<sup>4</sup> of a criminal offence<sup>5</sup>; or (4) his ability to practise as an osteopath is seriously impaired because of his physical or mental condition<sup>6</sup>, then the provisions described below apply<sup>7</sup>.

Where an allegation<sup>8</sup> is made to the General Council<sup>9</sup>, or to any of its committees<sup>10</sup> other than the investigating committee<sup>11</sup>, it is the duty of the General Council or committee to refer the allegation to the investigating committee<sup>12</sup>.

The General Council may make rules<sup>13</sup> requiring any allegation which is made or referred to the investigating committee to be referred for preliminary consideration to a person appointed by the General Council in accordance with the rules<sup>14</sup>. Any such rules may allow for the appointment of persons who are members of the General Council<sup>15</sup>, but may not allow for the appointment of the registrar<sup>16</sup>. Any person to whom an allegation is referred by the investigating committee in accordance with such rules must: (a) consider the allegation with a view to establishing whether, in his opinion, power is given by the Osteopaths Act 1993 to deal with it if it proves to be well founded<sup>17</sup>; and (b) if he considers that such power is given, give the investigating committee a report of the result of his consideration<sup>18</sup>.

Where the investigating committee is required to investigate any allegation, it must:

- 713 (i) notify the registered osteopath concerned of the allegation and invite him to give the committee his observations before the end of the period of 28 days beginning with the day on which notice of the allegation is sent to him<sup>19</sup>;
- 714 (ii) take such steps as are reasonably practicable to obtain as much information as possible about the case<sup>20</sup>; and
- 715 (iii) consider, in the light of the information which it has been able to obtain and any observations duly made to it by the registered osteopath concerned, whether in its opinion there is a case to answer<sup>21</sup>.

Where the investigating committee concludes that there is a case to answer, it must notify both the osteopath concerned and the person making the allegation of its conclusion<sup>22</sup>, and refer the allegation as formulated by it either to the health committee in respect of an allegation relating to the impairment of an osteopath's physical or mental condition<sup>23</sup>, or to the professional conduct committee in the case of an allegation of any other kind<sup>24</sup>. Where the investigating committee concludes that there is no case to answer, it must notify both the osteopath concerned and the person making the allegation<sup>25</sup>.

1 For the meaning of 'registered osteopath' see PARA 503 note 4 ante.

2 Osteopaths Act 1993 s 20(1)(a). Conduct which falls short of the standard required of a registered osteopath is referred to as 'unacceptable professional conduct': s 20(2). For cases relating to professional misconduct see those cited in the notes to paras 143, 456 ante.

3 Ibid s 20(1)(b). As to the standard of proficiency required for the competent and safe practice of osteopathy see PARA 537 ante.

4 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

5 Osteopaths Act 1993 s 20(1)(c). The purpose of giving a disciplinary committee powers over a professional man who has been convicted of crime is not to punish him for a second time for the same offence but to protect the public who may come to him as patients and to maintain the high standards and good reputation of an honourable profession: *Ziderman v General Dental Council* [1976] 2 All ER 334, [1976] 1 WLR 330, PC. The maxim that a person ought not to be punished twice for the same offence does not apply to proceedings before a disciplinary committee: *R v Statutory Committee of the Pharmaceutical Society of Great Britain, ex p Pharmaceutical Society of Great Britain* [1981] 2 All ER 805, [1981] 1 WLR 886, DC. If the disciplinary committee is considering removal of a person's name from the register, it must satisfy itself that the criminal offence is of so grave a character as to show that the professional man is unfit to continue to practise: *Ziderman v General Dental Council* supra. As to the application of the Rehabilitation of Offenders Act 1974 to osteopaths see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 687.

6 Osteopaths Act 1993 s 20(1)(d).

7 Ibid s 20(1).

8 For the purposes of ibid s 20, 'allegation' means an allegation of a kind mentioned in s 20(1) (see the text to notes 1-7 supra): s 20(14).

9 For the meaning of 'the General Council' see PARA 499 note 1 ante.

10 As to the committees of the General Council see PARA 499 ante.

11 As to the investigating committee see PARA 513 ante.

12 Osteopaths Act 1993 s 20(3). Where there are rules in force under s 20(4) (see the text to note 14 infra), the investigating committee must investigate any allegation with respect to which it is given a report by a person appointed under the rules: s 20(7). Where there are no such rules in force, the investigating committee must investigate any allegation which is made or referred to it: s 20(8). The General Council must by rules make provision as to the procedure to be followed by the investigating committee in any investigation carried out by it: s 20(10) (amended by the Chiropractors Act 1994 s 42, Sch 2 para 4). As to the rules that have been made see the General Osteopathic Council (Investigation of Complaints) (Procedure) Rules 1999, approved by the General Osteopathic Council (Investigation of Complaints) (Procedure) Rules Order of Council 1999, SI 1999/1847. See further PARAS 546-549 post.

13 As to the making of rules see PARA 506 ante; and as to the effect of competition orders on rules see PARA 518 ante.

14 Ibid s 20(4). As to the rules made see note 12 supra. As to the appointment of legal assessors and medical assessors to give advice to any person appointed under rules made under s 20(4) see PARAS 579-580 post.

15 Ibid s 20(5)(a).

16 Ibid s 20(5)(b). As to the registrar see PARA 519 ante.

17 Ibid s 20(6)(a).

18 Ibid s 20(6)(b).

19 Ibid s 20(9)(a).

20 Ibid s 20(9)(b).

21 Ibid s 20(9)(c). In the case of an allegation of a kind mentioned in s 20(1)(c) (see the text to note 5 supra), the investigating committee may conclude that there is no case to answer if it considers that the criminal offence in question has no material relevance to the fitness of the osteopath concerned to practise osteopathy: s 20(11). In the event of a tie in the voting of the committee in respect of a decision under s 20(9)(c), the chairman of the committee must cast his additional vote in favour of the osteopath concerned: Schedule para 32(4); and see PARA 513 ante.

22 Ibid s 20(12)(a).

23     le an allegation of a kind mentioned in *ibid* s 20(1)(d) (see the text to note 6 *supra*); s 20(12)(b)(i). As to the consideration of allegations by the health committee see *PARA 552 post*. As to the health committee see *PARA 515 ante*.

24     *Ibid* s 20(12)(b)(ii). As to the consideration of allegations by the professional conduct committee see *PARA 550 post*. As to the professional conduct committee see *PARA 514 ante*.

25     *Ibid* s 20(13).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/4. OSTEOPATHS/(4) PROFESSIONAL CONDUCT AND FITNESS TO PRACTISE/(ii) The Investigating Committee/546. Screeners.

#### **546. Screeners.**

Before any case is considered by the investigating committee<sup>1</sup>, it must have been considered by a member of that committee appointed for the purpose by the Council<sup>2</sup> ('the screener'), and referred by that person to the committee<sup>3</sup>. The member appointed as the screener must be a fully registered osteopath<sup>4</sup>. However, he must not be the registrar<sup>5</sup> or a member of either the professional conduct committee<sup>6</sup> or the health committee<sup>7</sup>; and he must not sit as a member of the investigating committee on any case previously considered by him in his capacity as screener<sup>8</sup>. For the purposes of considering a case, the screener may seek information about or observations on the case from any person who, in the opinion of the screener, might assist him in his consideration<sup>9</sup>.

Where the screener decides that the investigating committee has no power to deal with a complaint<sup>10</sup>, then he must inform the complainant<sup>11</sup> of his decision in writing and give reasons<sup>12</sup>. Generally<sup>13</sup>, where the screener has decided on an earlier occasion that there is no power under the Osteopaths Act 1993 to deal with a complaint against an osteopath<sup>14</sup>, that earlier case may nevertheless be taken into account by the screener in connection with the consideration of a subsequent complaint against the same osteopath with a view to determining whether together they may indicate a case relating to conduct or incompetence<sup>15</sup> or a case relating to health<sup>16</sup>.

1 As to the investigating committee see PARA 513 ante.

2 For these purposes, 'the Council' means the General Osteopathic Council or a committee of the Council acting under delegated power: General Osteopathic Council (Investigation of Complaints) (Procedure) Rules Order of Council 1999, SI 1999/1847, r 2. As to the General Osteopathic Council and its committees see PARA 499 ante.

3 Ibid r 3(1).

4 Ibid r 3(2). For the meaning of 'fully registered osteopath' see PARA 520 note 3 ante.

5 As to the registrar see PARA 519 ante.

6 As to the professional conduct committee see PARA 514 ante.

7 General Osteopathic Council (Investigation of Complaints) (Procedure) Rules Order of Council 1999, SI 1999/1847, r 3(3)(a). As to the health committee see PARA 515 ante.

8 Ibid r 3(3)(b).

9 Ibid r 5.

10 'A complaint' means any allegation of any kind mentioned in the Osteopaths Act 1993 s 20(1) (see PARA 545 ante): General Osteopathic Council (Investigation of Complaints) (Procedure) Rules Order of Council 1999, SI 1999/1847, r 2.

11 'Complainant' means a person by whom a complaint has been made to the Council: ibid r 2.

12 Ibid r 6(1). In such circumstances, neither the complainant nor the osteopath has the right of access to any document relating to the case: r 6(2). For the meaning of 'writing' see PARA 20 note 22 ante.

13 An earlier case may only be taken into account in accordance with ibid r 4(1) if, when the osteopath is notified under the Osteopaths Act 1993 s 20(13) (see PARA 545 ante) that no further action is to be taken in connection with the earlier case, the notification contains a statement that the case may be taken into account

in the consideration of any subsequent complaint: General Osteopathic Council (Investigation of Complaints) (Procedure) Rules Order of Council 1999, SI 1999/1847, r 4(2).

14 'Osteopath' means a registered osteopath against whom a complaint has been made, and includes a person whose registration is currently suspended: *ibid* r 2. For the meaning of 'registered osteopath' see PARA 503 note 4 ante. As to the suspension of registration see PARA 530 ante.

15 'Case relating to conduct or incompetence' means a case where a question arises as to whether the osteopath may have been guilty of unacceptable professional conduct or professional incompetence under the Osteopaths Act 1993 s 20 (see PARA 545 ante): General Osteopathic Council (Investigation of Complaints) (Procedure) Rules Order of Council 1999, SI 1999/1847, r 2.

16 *Ibid* r 4(1). 'Case relating to health' means a case where a question arises as to whether the ability to practise of the osteopath is seriously impaired because of his physical or mental condition: r 2.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/4. OSTEOPATHS/(4) PROFESSIONAL CONDUCT AND FITNESS TO PRACTISE/(ii) The Investigating Committee/547. Procedure of the investigating committee.

#### **547. Procedure of the investigating committee.**

The investigating committee<sup>1</sup> must meet in private to: (1) consider all new cases of complaint<sup>2</sup>; (2) review all ongoing cases<sup>3</sup>; (3) review the reports of screeners<sup>4</sup>; (4) receive reports from sub-committees<sup>5</sup>; (5) take note of the outcome of cases referred to the professional conduct committee<sup>6</sup> or to the health committee<sup>7</sup>. The committee must meet not less than three times a year and on such days as it determines<sup>8</sup>. At each meeting, the committee must review all cases not yet concluded or referred to the professional conduct committee or to the health committee<sup>9</sup>. The committee must accept for consideration written statements made by the complainant<sup>10</sup>, the osteopath<sup>11</sup>, and by others submitting additional information and any other material collected by the screener<sup>12</sup>. In any case, the committee may consider that it has insufficient evidence on which to reach a decision and may require further investigations to be carried out<sup>13</sup>. Where the committee wishes in any case to make further enquiries or further investigations, to obtain further evidence or to seek legal advice<sup>14</sup>, it may adjourn further consideration of the case until its next meeting<sup>15</sup>. No member of the committee who is a member of the health committee or the professional conduct committee may take part in dealing with the same allegation in his capacity as a member of those other committees<sup>16</sup>.

Where the committee considers that it has insufficient evidence fully to understand the nature of the complaint<sup>17</sup>, the committee may delay notifying the osteopath of the complaint until sufficient evidence has been obtained<sup>18</sup>. The committee must enclose with any notice a summary of information received by the Council<sup>19</sup>. Notices sent to the osteopath requesting further information which is necessary to the proper investigation of the complaint, or asking him to agree to submit to a medical examination<sup>20</sup>, must contain a statement to the effect that, if the osteopath fails, without good reason, to respond to the notice within 28 days of the date of it being sent to him, then the committee will conclude that there is a case to answer and refer it forthwith to the professional conduct committee or the health committee as appropriate<sup>21</sup>.

Where the committee is required to carry out an investigation of a complaint relating to conduct, incompetence or criminal conviction<sup>22</sup>, it must, in the event that it concludes that there is no case to answer, record its reasons for so concluding and supply those reasons in writing both to the osteopath and the complainant<sup>23</sup>. Where, in relation to any complaint which is the subject of a report made to it, the committee dismisses that complaint on the grounds that there is no case to answer, and the screener then makes a further report to the committee in connection with a subsequent complaint, that report may, if the screener thinks fit, contain details of the dismissed complaint so that the committee may determine whether together the complaints indicate a case to answer<sup>24</sup>. Where the committee has concluded that there is no case to answer, neither the complainant nor the osteopath has any right of access to any documents relating to the case submitted to the Council<sup>25</sup>.

1 As to the investigating committee see PARA 513 ante.

2 General Osteopathic Council (Investigation of Complaints) (Procedure) Rules Order of Council 1999, SI 1999/1847, r 7(1).

3 Ibid r 7(2).

4 Ibid r 7(3). As to screeners see PARA 546 ante.

5 Ibid r 7(4).

6 As to the consideration of allegations by the professional conduct committee see PARA 550 post. As to the professional conduct committee generally see PARA 514 ante.

7 General Osteopathic Council (Investigation of Complaints) (Procedure) Rules Order of Council 1999, SI 1999/1847, r 7(5). As to the consideration of allegations by the health committee see PARA 552 post. As to the health committee generally see PARA 515 ante.

8 Ibid r 8.

9 Ibid r 23.

10 For the meaning of 'complainant' see PARA 546 note 11 ante. For the meaning of 'writing' see PARA 20 note 22 ante.

11 For the meaning of 'osteopath' see PARA 546 note 14 ante.

12 General Osteopathic Council (Investigation of Complaints) (Procedure) Rules Order of Council 1999, SI 1999/1847, r 9.

13 Ibid r 19(1). Such investigations may include seeking further information from the complainant or the osteopath, or statements or reports from other osteopaths, authorities or persons having knowledge of matters to do with the complaint; and may also include a request to the osteopath for members of the committee to visit the practice at a pre-arranged date and time: r 19(2).

14 The committee may in any case seek legal advice from a legal assessor on any question of law arising in connection with the case and may ask the solicitor to assist in any enquiries and investigations, and in the collection of evidence, and in the formulation of the allegation or allegations in the event that they are to be referred to the professional conduct committee or to the health committee: ibid r 20. 'The solicitor' means any solicitor appointed by the Council and includes counsel representing the solicitor: r 2. For the meaning of 'the Council' see PARA 546 note 2 ante. As to legal assessors see PARA 579 post.

15 Ibid r 21.

16 Ibid r 25.

17 For the meaning of 'complaint' see PARA 546 note 10 ante.

18 General Osteopathic Council (Investigation of Complaints) (Procedure) Rules Order of Council 1999, SI 1999/1847, r 18(1). Any notice or communication required by the rules to be served on an osteopath must be served by recorded delivery to the osteopath at his address on the register or to his last known or any other address if it appears to the registrar that a notice so addressed is more likely to reach him: r 27. For the meaning of 'the register' see PARA 524 note 1 ante. As to the registrar see PARA 519 ante.

19 Ibid r 18(2).

20 As to the powers of the committee to request an osteopath to submit to a medical examination see PARA 548 post.

21 General Osteopathic Council (Investigation of Complaints) (Procedure) Rules Order of Council 1999, SI 1999/1847, r 18(3).

22 Ie a complaint made under the Osteopaths Act 1993 s 20(1)(a), (b) or (c): see PARA 545 ante.

23 General Osteopathic Council (Investigation of Complaints) (Procedure) Rules Order of Council 1999, SI 1999/1847, r 10. As to the procedure to be followed in relation to the investigation of a complaint relating to the physical or mental health of an osteopath see PARA 548 post.

24 Ibid r 24.

25 Ibid r 26.

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OSTEOPATHS/(4) PROFESSIONAL CONDUCT AND FITNESS TO PRACTISE/(ii) The Investigating Committee/548. Investigation of cases relating to health.

#### **548. Investigation of cases relating to health.**

In any investigation of a complaint<sup>1</sup> relating to the physical or mental health of an osteopath<sup>2</sup>, the investigating committee<sup>3</sup> must follow the procedure described below<sup>4</sup>.

The committee may request permission from the osteopath to obtain reports from his medical advisers<sup>5</sup>. At any stage of its investigations, the committee may cause such enquiries to be made in relation to the matter as it thinks fit; and it may, if it considers it necessary to assist the committee in arriving at a decision<sup>6</sup>:

- 716 (1) obtain advice from a medical assessor<sup>7</sup> on the information and evidence which has been received<sup>8</sup>;
- 717 (2) send a notice<sup>9</sup> to the osteopath:
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- 199. (a) inviting him to agree within a period of 14 days beginning with the day on which the notice is sent to him to submit to examination by a medical assessor<sup>10</sup> and to agree that such assessor furnish to the committee reports on his fitness to practise<sup>11</sup>;
- 200. (b) informing the osteopath that it is also open to him to nominate other medical practitioners to examine him at his expense and report to the committee on his fitness to practise<sup>12</sup>; and
- 201. (c) inviting the osteopath to submit any further observations or other evidence which he may wish to offer as to his fitness to practise<sup>13</sup>.
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If the osteopath agrees to submit to medical examination in response to an invitation, the committee must make arrangements for such examination by one or more medical assessors of the appropriate specialty<sup>14</sup>. The committee must send copies of any report received from the medical assessor to the osteopath and invite him to submit any observations that he has on the reports within a period of 28 days beginning with the day on which the reports are sent to him<sup>15</sup>. However, if in the opinion of the committee a report contains any material which is not relevant to the present fitness to practise of the osteopath<sup>16</sup>, and it would not be in the best interests of the osteopath to see it<sup>17</sup>, then the committee may direct the medical assessor to exclude such material from his report<sup>18</sup>.

Following consideration of the information and reports it has been able to obtain, and any observations which have been supplied by the osteopath, the committee must determine whether there is a case to answer and inform the osteopath and the complainant in writing of its conclusion<sup>19</sup>.

1 For the meaning of 'complaint' see PARA 546 note 10 ante.

2 I.e. a complaint made under the Osteopaths Act 1993 s 20(1)(d): see PARA 545 ante. For the meaning of 'osteopath' see PARA 546 note 14 ante.

3 As to the investigating committee see PARA 513 ante. As to the procedure of the committee generally see PARA 547 ante.

4 General Osteopathic Council (Investigation of Complaints) (Procedure) Rules Order of Council 1999, SI 1999/1847, r 11.

5 Ibid r 12.

6 Ibid r 13.

7 As to medical assessors see PARA 580 post.

8 General Osteopathic Council (Investigation of Complaints) (Procedure) Rules Order of Council 1999, SI 1999/1847, r 13(1).

9 As to the service of notices see PARA 547 note 18 ante.

10 The General Osteopathic Council (Investigation of Complaints) (Procedure) Rules Order of Council 1999, SI 1999/1847, r 13(2)(a) refers to a medical assessor appointed pursuant to r 15. However, it is submitted that this reference should be a reference to r 14 (see the text to note 14 infra).

11 Ibid r 13(2)(a). The registrar must provide a copy of the General Osteopathic Council (Investigation of Complaints) (Procedure) Rules 1999 to the osteopath when taking any action under General Osteopathic Council (Investigation of Complaints) (Procedure) Rules Order of Council 1999, SI 1999/1847, r 13(2): r 28. As to the registrar see PARA 519 ante.

12 Ibid r 13(2)(b). See also note 11 supra.

13 Ibid r 13(2)(c). See also note 11 supra.

14 Ibid r 14.

15 Ibid r 15. This rule is stated to be subject to the provisions of r 17: see the text to note 19 infra.

16 Ibid r 16(1)(a).

17 Ibid r 16(1)(b).

18 Ibid r 16(1). No material so excluded may subsequently be presented to the health committee: r 16(2). As to the consideration of allegations by the health committee see PARA 552 post. As to the health committee generally see PARA 515 ante.

19 Ibid r 17. For the meaning of 'writing' see PARA 20 note 22 ante.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/4. OSTEOPATHS/(4) PROFESSIONAL CONDUCT AND FITNESS TO PRACTISE/(ii) The Investigating Committee/549. Interim suspension powers of the investigating committee.

#### **549. Interim suspension powers of the investigating committee.**

Where the investigating committee<sup>1</sup> is investigating an allegation against a registered osteopath<sup>2</sup>, if the committee is satisfied that it is necessary to do so in order to protect members of the public, it may order the registrar<sup>3</sup> to suspend the osteopath's registration<sup>4</sup>. The order must specify the period of the suspension, which must not exceed two months<sup>5</sup> beginning with the date on which the order is made<sup>6</sup>. The committee must not make an order in any case after it has referred the allegation in question to the professional conduct committee<sup>7</sup> or the health committee<sup>8</sup>, or make more than one order in respect of the same allegation<sup>9</sup>. Before making an order, the investigating committee must give the osteopath concerned an opportunity to appear before it and to argue his case against the making of the proposed order<sup>10</sup>.

If the investigating committee considers that the nature of the complaint<sup>11</sup> received is such that in order to protect members of the public it may be necessary to order the registrar to suspend the osteopath's<sup>12</sup> registration, it must<sup>13</sup>: (1) notify<sup>14</sup> the osteopath of his opportunity to appear before it at a hearing to argue why such an order should not be made and of his right to be legally represented at any hearing<sup>15</sup>; (2) proceed in accordance with the provisions described below<sup>16</sup>.

A legal assessor<sup>17</sup> appointed by the Council<sup>18</sup> must be present at any hearing<sup>19</sup>. Where the osteopath is neither present nor represented at the hearing, the committee may, nevertheless, proceed with the hearing if it is satisfied that all reasonable efforts have been made<sup>20</sup> to serve notification of the hearing on the osteopath<sup>21</sup>. When considering whether to make an order, the committee may invite the solicitor<sup>22</sup> to address it as to the circumstances of the case<sup>23</sup>. The committee must ensure that its decision is recorded in writing<sup>24</sup>, and direct the registrar as soon as practicable after the hearing to send a copy of the order to the osteopath<sup>25</sup>. Subject to the provisions described above, the committee's procedure in dealing with such orders is to be as it determines<sup>26</sup>.

1 As to the investigating committee see PARA 513 ante.

2 Ie under the Osteopaths Act 1993 s 20 (see PARA 545 ante): s 21(1). For the meaning of 'registered osteopath' see PARA 503 note 4 ante.

3 As to the registrar see PARA 519 ante.

4 Osteopaths Act 1993 s 21(2). In the event of a tie in the voting of the committee in respect of a decision under s 21(2), the chairman of the committee must cast his additional vote in favour of the osteopath concerned: Schedule para 32(4); and see PARA 513 ante. As to the registrar's obligations in respect of the suspension of registration see PARA 530 ante. As to the registration of osteopaths generally see PARA 520 et seq ante.

5 For the meaning of 'month' see PARA 13 note 14 ante.

6 Osteopaths Act 1993 s 21(3).

7 As to the reference of allegations to the professional conduct committee see *ibid* s 20(12)(b)(ii); and PARA 545 ante. As to the professional conduct committee generally see PARA 514 ante.

8 *Ibid* s 21(4)(a). As to the reference of allegations to the health committee see s 20(12)(b)(i); and PARA 545 ante. As to the health committee generally see PARA 515 ante.

- 9 Ibid s 21(4)(b).
- 10 Ibid s 21(5). At any such hearing the osteopath is entitled to be legally represented: s 21(6).
- 11 For the meaning of 'complaint' see PARA 546 note 10 ante.
- 12 For the meaning of 'osteopath' see PARA 546 note 14 ante.
- 13 General Osteopathic Council (Investigation of Complaints) (Procedure) Rules Order of Council 1999, SI 1999/1847, r 22(1).
- 14 As to the service of notices see PARA 547 note 18 ante. The registrar must provide a copy of the General Osteopathic Council (Investigation of Complaints) (Procedure) Rules 1999 to the osteopath when taking any action under the General Osteopathic Council (Investigation of Complaints) (Procedure) Rules Order of Council 1999, SI 1999/1847, r 22: r 28.
- 15 Ibid r 22(1)(a). A hearing under r 22 must not be fixed within a period of five days beginning with the day on which the notice under r 22(1)(a) is sent to the osteopath: r 22(2).
- 16 Ibid r 22(1)(b).
- 17 As to legal assessors see PARA 579 post.
- 18 For the meaning of 'the Council' see PARA 546 note 2 ante.
- 19 General Osteopathic Council (Investigation of Complaints) (Procedure) Rules Order of Council 1999, SI 1999/1847, r 22(3).
- 20 In accordance with ibid r 22(1)(a): see the text to note 15 supra.
- 21 Ibid r 22(4).
- 22 For the meaning of 'the solicitor' see PARA 547 note 14 ante.
- 23 General Osteopathic Council (Investigation of Complaints) (Procedure) Rules Order of Council 1999, SI 1999/1847, r 22(5).
- 24 Ibid r 22(6)(a). For the meaning of 'writing' see PARA 20 note 22 ante.
- 25 Ibid r 22(6)(b).
- 26 Ibid r 22(7).

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 OSTEOPATHS/(4) PROFESSIONAL CONDUCT AND FITNESS TO PRACTISE/(iii) The Professional  
 Conduct Committee and the Health Committee/A. CONSIDERATION OF ALLEGATIONS/550.  
 Consideration of allegations by the professional conduct committee.

### **(iii) The Professional Conduct Committee and the Health Committee**

#### **A. CONSIDERATION OF ALLEGATIONS**

##### **550. Consideration of allegations by the professional conduct committee.**

Where an allegation has been referred to the professional conduct committee<sup>1</sup>, it is the duty of the committee to consider the allegation<sup>2</sup>. If, having considered it, the committee is satisfied that the allegation is well founded it must proceed as follows<sup>3</sup>.

If the allegation relates to a criminal conviction<sup>4</sup>, the committee may take no further action if it considers that the criminal offence in question has no material relevance to the fitness of the osteopath concerned to practise osteopathy<sup>5</sup>. Otherwise, the committee must take one of the following steps:

- 718 (1) admonish the osteopath<sup>6</sup>;
- 719 (2) make an order imposing conditions with which he must comply while practising as an osteopath, known as a 'conditions of practice order'<sup>7</sup>;
- 720 (3) order the registrar<sup>8</sup> to suspend the osteopath's registration<sup>9</sup> for such period as may be specified in the order, known as a 'suspension order'<sup>10</sup>; or
- 721 (4) order the registrar to remove the osteopath's name from the register<sup>11</sup>.

A conditions of practice order must specify one or both of the following: (a) the period for which the order is to have effect<sup>12</sup>; (b) a test of competence which must be taken by the osteopath<sup>13</sup>. A conditions of practice order ceases to have effect, if a period is specified in the order, when that period ends<sup>14</sup>; if no such period is specified but a test of competence is so specified, when the osteopath concerned passes the test<sup>15</sup>; or if both a period and a test are so specified, when the period ends or when the osteopath concerned passes the test, whichever is the later to occur<sup>16</sup>.

At any time while a conditions of practice order is in force under these provisions or by virtue of a decision of a court on an appeal<sup>17</sup>, the committee may, whether or not of its own motion<sup>18</sup>: (i) extend, or further extend, the period for which the order has effect<sup>19</sup>; (ii) revoke or vary any of the conditions<sup>20</sup>; (iii) require the osteopath concerned to pass a test of competence specified by the committee<sup>21</sup>; (iv) reduce the period for which the order has effect<sup>22</sup>; or (v) revoke the order<sup>23</sup>. At any time while a suspension order is in force with respect to an osteopath under these provisions or by virtue of a decision of a court on an appeal<sup>24</sup>, the committee may, whether or not of its own motion<sup>25</sup>, extend, or further extend, the period of suspension<sup>26</sup>, and make a conditions of practice order with which the osteopath must comply if he resumes the practice of osteopathy after the end of his period of suspension<sup>27</sup>. The period specified in a conditions of practice order or in a suspension order, and any extension of a specified period<sup>28</sup> must not in each case exceed three years<sup>29</sup>. In exercising its powers<sup>30</sup>, the committee must ensure that the conditions imposed on the osteopath concerned are, or the period of suspension imposed on him is, the minimum which it considers necessary for the protection of members of the public<sup>31</sup>.

Before exercising its powers<sup>32</sup>, the committee must give the osteopath concerned an opportunity to appear before it and to argue his case<sup>33</sup>.

- 1 le under the Osteopaths Act 1993 s 20 (see PARA 545 ante) or by virtue of any rule made under s 26(2)(a) (see PARA 555 post). As to the professional conduct committee see PARA 514 ante.
- 2 Ibid s 22(1). As to the procedural rules relating to the consideration of allegations see PARA 556 et seq post. As to the power of the Council for the Regulation of Health Care Professionals to refer to the court any step taken by the professional conduct committee under s 22 (as amended) or any decision of the committee not to take any disciplinary measure see PARA 306 ante.
- 3 Ibid s 22(2). In the event of a tie in voting in respect of a decision under s 22 (as amended), the chairman of the committee must cast his additional vote in favour of the osteopath concerned: Schedule para 36(4). As to the chairman's casting vote see PARA 514 ante.
- 4 le is an allegation of a kind mentioned in ibid s 20(1)(c): see PARA 545 ante.
- 5 Ibid s 22(3). As to the application of the Rehabilitation of Offenders Act 1974 to osteopaths see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 687 et seq.
- 6 Osteopaths Act 1993 s 22(4)(a).
- 7 Ibid s 22(4)(b).
- 8 As to the registrar see PARA 519 ante.
- 9 As to the registrar's obligations in respect of the suspension of registration see PARA 530 ante. As to the registration of osteopaths generally see PARA 520 et seq ante.
- 10 Osteopaths Act 1993 s 22(4)(c).
- 11 Ibid s 22(4)(d). For the meaning of 'the register' see PARA 524 note 1 ante. As to the restoration to the register of osteopaths who have been struck off see PARA 531 ante.
- 12 Ibid s 22(4A)(a) (s 22(4A) added by the Chiropractors Act 1994 s 42, Sch 2 para 5(1)).
- 13 Osteopaths Act 1993 s 22(4A)(b) (as added: see note 12 supra).
- 14 Ibid s 22(5)(a) (amended by the Chiropractors Act 1994 Sch 2 para 5(2)). Where the period for which a conditions of practice order has effect is extended or reduced under s 22(6) (as amended) (see the text to notes 17-23 infra), or a test of competence is specified under s 22(6) (as amended), then s 22(5) (as amended) has effect as if: (1) the period specified in the conditions of practice order was the extended or reduced period; and (2) the test of competence was specified in that order: s 22(7).
- 15 Ibid s 22(5)(b). See also note 14 supra.
- 16 Ibid s 22(5)(c). See also note 14 supra.
- 17 le an appeal under ibid s 31: see PARA 588 post.
- 18 Ibid s 22(6) (s 22(6), (8) amended by the National Health Service Reform and Health Care Professions Act 2002 s 33(1), (3)).
- 19 Osteopaths Act 1993 s 22(6)(a).
- 20 Ibid s 22(6)(b).
- 21 Ibid s 22(6)(c).
- 22 Ibid s 22(6)(d).
- 23 Ibid s 22(6)(e).
- 24 le an appeal under ibid s 31: see PARA 588 post.
- 25 Ibid s 22(8) (as amended: see note 18 supra).
- 26 Ibid s 22(8)(a).
- 27 Ibid s 22(8)(b).



28 le under ibid s 22(6) (as amended) or s 22(8) (as amended): see the text to notes 17-27 supra.

29 Ibid s 22(9).

30 le under ibid s 22(6) (as amended) or s 22(8) (as amended): see the text to notes 17-27 supra.

31 Ibid s 22(12).

32 le under ibid s 22(4), (6) or (8) (s 22(6), (8) as amended): see the text to notes 6-11, 17-27 supra.

33 Ibid s 22(10). At any such hearing the osteopath is entitled to be legally represented: s 22(11).

## **UPDATE**

### **550 Consideration of allegations by the professional conduct committee**

NOTE 11--See *Moody v General Osteopathic Council* [2008] All ER (D) 226 (Apr), CA.

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 Conduct Committee and the Health Committee/A. CONSIDERATION OF ALLEGATIONS/551.  
 Annual report by the professional conduct committee.

### **551. Annual report by the professional conduct committee.**

The professional conduct committee<sup>1</sup> must, before the end of the period of 12 months<sup>2</sup> from 8 March 2000<sup>3</sup>, and at least once in every succeeding period of 12 months, publish a report setting out: (1) the names of those osteopaths in respect of whom it has investigated allegations<sup>4</sup> and found the allegations to be well founded<sup>5</sup>; (2) the nature of those allegations<sup>6</sup>; and (3) the steps, if any, taken by the committee in respect of the osteopaths so named<sup>7</sup>. Where the committee has investigated any allegation against an osteopath and has not been satisfied that the allegation was well founded, it must include in its report for the year in question a statement of that fact if the osteopath so requests<sup>8</sup>.

1 As to the professional conduct committee see PARA 514 ante.

2 For the meaning of 'month' see PARA 13 note 14 ante.

3 I.e. the date of the commencement of the Osteopaths Act 1993 s 22 (as amended): see the Osteopaths Act 1993 (Commencement No 5) Order 2000, SI 2000/217.

4 I.e. under the Osteopaths Act 1993 s 22 (as amended): see PARA 550 ante.

5 Ibid s 22(13)(a).

6 Ibid s 22(13)(b).

7 Ibid s 22(13)(c).

8 Ibid s 22(14).

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## **552. Consideration of allegations by the health committee.**

Where an allegation has been referred to the health committee<sup>1</sup>, it is the duty of the committee to consider the allegation<sup>2</sup>. If, having considered it, the committee is satisfied that the allegation is well founded it must: (1) make an order imposing conditions with which the osteopath concerned must comply while practising as an osteopath, known as a 'conditions of practice order'<sup>3</sup>; or (2) order the registrar<sup>4</sup> to suspend the osteopath's registration for such period as may be specified in the order, known as a 'suspension order'<sup>5</sup>.

Any condition in a conditions of practice order must be imposed so as to have effect for a period specified in the order<sup>6</sup>. At any time while a conditions of practice order is in force<sup>7</sup>, the committee may, whether or not of its own motion<sup>8</sup>: (a) extend, or further extend, the period for which the order has effect<sup>9</sup>; or (b) make a suspension order with respect to the osteopath concerned<sup>10</sup>. At any time while a suspension order is in force<sup>11</sup>, the committee may, whether or not of its own motion<sup>12</sup>: (i) extend, or further extend, the period of suspension<sup>13</sup>; (ii) replace the order with a conditions of practice order having effect for the remainder of the period of suspension<sup>14</sup>; or (iii) make a conditions of practice order with which the osteopath must comply if he resumes the practice of osteopathy after the end of his period of suspension<sup>15</sup>. The period specified in a conditions of practice order or in a suspension order, and any extension of a specified period<sup>16</sup>, must not in each case exceed three years<sup>17</sup>. In exercising any of its powers under these provisions, the committee must ensure that any conditions imposed on the osteopath concerned are, or any period of suspension imposed on him is, the minimum which it considers necessary for the protection of members of the public<sup>18</sup>.

On the application of the osteopath with respect to whom a conditions of practice order or a suspension order is in force<sup>19</sup>, the committee may<sup>20</sup>: (A) revoke the order<sup>21</sup>; (B) vary the order by reducing the period for which it has effect<sup>22</sup>; or (C) in the case of a conditions of practice order, vary the order by removing or altering any of the conditions<sup>23</sup>. Where an osteopath has made such an application which has been refused, the committee may not entertain a further such application unless it is made after the end of the period of 12 months<sup>24</sup> beginning with the date on which the previous application was received by the committee<sup>25</sup>.

Before exercising its powers<sup>26</sup>, the committee must give the osteopath concerned an opportunity to appear before it and to argue his case<sup>27</sup>.

1    Ie under the Osteopaths Act 1993 s 20 (see PARA 545 ante) or by virtue of any rule made under s 26(2)(a) (see PARA 555 post). As to the health committee see PARA 515 ante.

2    Ibid s 23(1). In the event of a tie in voting in respect of a decision under s 23 (as amended), the chairman of the committee must cast his additional vote in favour of the osteopath concerned: Schedule para 40(4). As to the chairman's casting vote see PARA 515 ante. As to the procedural rules relating to the consideration of allegations see PARA 568 et seq post.

3    Ibid s 23(2)(a).

4    As to the registrar see PARA 519 ante.

5    Osteopaths Act 1993 s 23(2)(b). As to the maximum length of any period specified see the text to note 17 infra. As to the registrar's obligations in respect of the suspension of registration see PARA 530 ante. As to the registration of osteopaths generally see PARA 520 et seq ante. As to appeals against decisions of the committee see PARA 584 post.

- 6 Ibid s 23(3). As to the maximum length of any period specified see the text to note 17 infra.
- 7 Ie under ibid s 23 (as amended) or under s 30 (see PARA 584 post) or by virtue of a decision of a court on an appeal under s 31 (see PARA 588 post).
- 8 Ibid s 23(4) (s 23(4), (5), (6) amended by the National Health Service Reform and Health Care Professions Act 2002 s 33(1), (4)).
- 9 Osteopaths Act 1993 s 23(4)(a).
- 10 Ibid s 23(4)(b).
- 11 Ie under ibid s 23 (as amended) or under s 30 (see PARA 584 post) or by virtue of a decision of a court on an appeal under s 31 (see PARA 588 post).
- 12 Ibid s 23(5) (as amended: see note 8 supra).
- 13 Ibid s 23(5)(a).
- 14 Ibid s 23(5)(b).
- 15 Ibid s 23(5)(c).
- 16 Ie under ibid s 23(4) (as amended) or s 23(5) (as amended): see the text to notes 7-15 supra.
- 17 Ibid s 23(8).
- 18 Ibid s 23(11).
- 19 Ie under ibid s 23 (as amended) or under s 30 (see PARA 584 post) or by virtue of a decision of a court on an appeal under s 31 (see PARA 588 post).
- 20 Ibid s 23(6) (as amended: see note 8 supra).
- 21 Ibid s 23(6)(a).
- 22 Ibid s 23(6)(b).
- 23 Ibid s 23(6)(c).
- 24 For the meaning of 'month' see PARA 13 note 14 ante.
- 25 Osteopaths Act 1993 s 23(7).
- 26 Ie the powers under ibid s 23(2), (4), (5) or (6) (as amended).
- 27 Ibid s 23(9). At any such hearing the osteopath is entitled to be legally represented: s 23(10).

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 Conduct Committee and the Health Committee/A. CONSIDERATION OF ALLEGATIONS/553.  
 Interim suspension orders.

### **553. Interim suspension orders.**

Where: (1) an allegation against a registered osteopath<sup>1</sup> has been referred<sup>2</sup> to the professional conduct committee<sup>3</sup> or the health committee<sup>4</sup> and the committee has not reached a decision on the matter<sup>5</sup>; or (2) the professional conduct committee or the health committee reaches a relevant decision<sup>6</sup> on any such allegation<sup>7</sup>, then the provisions described below apply<sup>8</sup>.

The committee concerned may, if it is satisfied that it is necessary to do so in order to protect members of the public, order the registrar<sup>9</sup> to suspend the registration of the osteopath concerned<sup>10</sup>. Such an order is known as an 'interim suspension order'<sup>11</sup> and ceases to have effect:

- 722 (a) in a case where the committee has not reached a decision on the matter<sup>12</sup>,  
 when the committee reaches a decision in respect of the allegation in question<sup>13</sup>;  
 and
- 723 (b) in a case where the committee reaches a relevant decision on an allegation<sup>14</sup>;  
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- 202. (i) if there is no appeal against the decision, when the period for appealing  
 expires<sup>15</sup>; or
- 203. (ii) if there is an appeal against the decision, when the appeal is withdrawn or  
 otherwise disposed of<sup>16</sup>.
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Before making an interim suspension order, the committee must give the osteopath in question an opportunity to appear before it and to argue his case against the making of the proposed order<sup>17</sup>.

Where an interim suspension order has been made, the osteopath concerned may appeal against it to the appropriate court<sup>18</sup>. Any such appeal must be brought before the end of the period of 28 days beginning with the date on which the order appealed against is made<sup>19</sup>. On an appeal the court may terminate the suspension<sup>20</sup>. The decision of the court on an appeal is final<sup>21</sup>.

1 For the meaning of 'registered osteopath' see PARA 503 note 4 ante.

2 Ie under the Osteopaths Act 1993 s 20 (see PARA 545 ante) or by virtue of any rule made under s 26(2)(a) (see PARA 555 post).

3 As to the professional conduct committee see PARA 514 ante.

4 As to the health committee see PARA 515 ante.

5 Osteopaths Act 1993 s 24(1)(a).

6 'Relevant decision' means an order under *ibid* s 22(4)(c) or (d) (see PARA 550 ante), or an order under s 23(2)(b) (see PARA 552 ante); s 24(10).

7 *Ibid* s 24(1)(b). As to the powers of interim suspension of an appeal tribunal and the application of this provision in relation to such suspension orders see PARA 584 text and note 18 post.

8 Ibid s 24(1).

9 As to the registrar see PARA 519 ante.

10 Osteopaths Act 1993 s 24(2). As to the revocation of such orders see PARA 554 post. As to the registrar's obligations in respect of the suspension of registration see PARA 530 ante. As to the registration of osteopaths generally see PARA 520 et seq ante. In the event of a tie in voting in respect of a decision under s 24, the chairman of the professional conduct committee or the health committee, as the case may be, must cast his additional vote in favour of the osteopath concerned: Schedule paras 36(4), 40(4). As to the chairman's casting vote see PARAS 514, 515 ante.

11 Ibid s 24(3).

12 Ie a case falling within ibid s 24(1)(a): see the text to note 5 supra.

13 Ibid s 24(3)(a).

14 Ie a case falling within ibid s 24(1)(b): see the text to note 7 supra.

15 Ibid s 24(3)(b)(i). As to appeals see PARAS 584, 588 post.

16 Ibid s 24(3)(b)(ii).

17 Ibid s 24(4). At any such hearing the osteopath is entitled to be legally represented: s 24(5).

18 Ibid s 24(6). 'The appropriate court' means: (1) in the case of an osteopath whose registered address is in Scotland, the Court of Session; (2) in the case of an osteopath whose registered address is in Northern Ireland, the High Court of Justice in Northern Ireland; and (3) in any other case, the High Court of Justice in England and Wales: s 24(10)(a)-(c). As to the High Court of Justice in England and Wales see COURTS.

19 Ibid s 24(7).

20 Ibid s 24(8).

21 Ibid s 24(9).

## UPDATE

### 553 Interim suspension orders

TEXT AND NOTES 18-21--In determining the appeal the court is entitled to consider the merits of the substantive appeal but cannot reach a definitive conclusion on them: *Moody v General Osteopathic Council* [2007] EWHC 2518 (Admin), [2008] 2 All ER 532.

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#### **554. Revocation of interim suspension orders.**

On an application made by the osteopath concerned<sup>1</sup>, an interim suspension order<sup>2</sup> may be revoked by the committee which made it on the ground that a change in the circumstances of the case has made the order unnecessary<sup>3</sup>. Generally<sup>4</sup>, no such application may be entertained by the committee concerned if it is made before the end of the period of six months<sup>5</sup> beginning with the date on which the order was imposed<sup>6</sup> or, where an unsuccessful appeal against the order has been made<sup>7</sup>, the date on which the appeal was dismissed<sup>8</sup>. Where a previous application for revocation has been made in relation to an interim suspension order, no further such application may be entertained by the committee concerned if it is made before the end of the period of six months beginning with the date on which the previous application was finally disposed of<sup>9</sup>.

Where an osteopath has made an application for the revocation of an interim suspension order which has been refused, he may appeal to the appropriate court<sup>10</sup> against the refusal<sup>11</sup>. Where, in relation to an interim suspension order: (1) an appeal has been made against the making of the order<sup>12</sup>; or (2) a further application for the order to be revoked has been made after an unsuccessful appeal<sup>13</sup> against the refusal of an earlier application<sup>14</sup>, then leave of the appropriate court is required for any appeal to the court under these provisions<sup>15</sup> in relation to that order<sup>16</sup>. Any appeal to the court must be brought before the end of the period of 28 days beginning with the date on which notice of the refusal is sent to the osteopath<sup>17</sup>. On an appeal, the court may terminate the suspension<sup>18</sup>. The decision of the court is final<sup>19</sup>.

1    Ie in a case falling within the Osteopaths Act 1993 s 24(1)(a): see PARA 553 ante.

2    As to interim suspension orders see PARA 553 ante.

3    Osteopaths Act 1993 s 25(1).

4    Ie except in cases falling within *ibid* s 25(5): see the text to note 9 *infra*.

5    For the meaning of 'month' see PARA 13 note 14 ante.

6    Osteopaths Act 1993 s 25(4)(a).

7    Ie under *ibid* s 24(6): see PARA 553 ante.

8    *Ibid* s 25(4)(b).

9    *Ibid* s 25(5).

10   For the meaning of 'the appropriate court' see PARA 553 note 18 ante; definition applied by *ibid* s 25(9).

11   *Ibid* s 25(2).

12   Ie under *ibid* s 24(6) (see PARA 553 ante): s 25(3)(a).

13   Ie under *ibid* s 25.

14   *Ibid* s 25(3)(b).

15   Ie under *ibid* s 25(2): see the text to note 11 *supra*.

16 Ibid s 25(3).

17 Ibid s 25(6).

18 Ibid s 25(7).

19 Ibid s 25(8).



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 Investigation of allegations: procedural rules.

### **555. Investigation of allegations: procedural rules.**

The General Council<sup>1</sup> must make rules<sup>2</sup> as to the procedure to be followed by the professional conduct committee<sup>3</sup> or the health committee<sup>4</sup> in considering<sup>5</sup> any allegation as to professional conduct or fitness to practise<sup>6</sup>. The rules must, in particular, include provision:

- 724 (1) empowering each committee to refer to the other any allegation which it considers would be better dealt with by that other committee<sup>7</sup>;
- 725 (2) requiring the osteopath to whom the allegation relates to be given notice of the allegation<sup>8</sup>;
- 726 (3) giving the osteopath an opportunity to put his case at a hearing if:  
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  - 204. (a) before the end of the period of 28 days beginning with the date on which notice of the allegation is sent to him, he asks for a hearing<sup>9</sup>; or
  - 205. (b) the committee considers that a hearing is desirable<sup>10</sup>;
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- 727 (4) entitling the osteopath to be legally represented at any hearing in respect of the allegation<sup>11</sup>;
- 728 (5) securing that:  
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  - 206. (a) any hearing before the professional conduct committee is held in public unless the committee decides that it is in the interests of the person making the allegation, or of any person giving evidence or of any patient, to hold the hearing or any part of it in private<sup>12</sup>; and
  - 207. (b) any hearing before the health committee is held in private unless the committee considers that it is appropriate to hold the hearing or any part of it in public<sup>13</sup>;
 147
- 729 (6) requiring the osteopath to be notified by the committee of its decision, its reasons for reaching that decision and of his right of appeal<sup>14</sup>;
- 730 (7) requiring the person by whom the allegation was made to be notified by the committee of its decision and of its reasons for reaching that decision<sup>15</sup>;
- 731 (8) empowering the committee to require persons to attend and give evidence or to produce documents<sup>16</sup>;
- 732 (9) about the admissibility of evidence<sup>17</sup>;
- 733 (10) enabling the committee to administer oaths<sup>18</sup>.

No person may be required by any such rules to give any evidence or produce any document or other material at a hearing held by either committee which he could not be compelled to give or produce in civil proceedings<sup>19</sup> in any court in that part of the United Kingdom<sup>20</sup> in which the hearing takes place<sup>21</sup>.

1 For the meaning of 'the General Council' see PARA 499 note 1 ante.

2 As to the making of rules see PARA 506 ante; and as to the effect of competition orders on rules see PARA 518 ante.

- 3 As to the professional conduct committee see PARA 514 ante.
- 4 As to the health committee see PARA 515 ante.
- 5 le under the Osteopaths Act 1993 s 22 (as amended) (see PARA 550 ante) or s 23 (as amended) (see PARA 552 ante).
- 6 Ibid s 26(1). As to the rules that have been made see the General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules 2000, approved by the General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241 (see PARAS 556-567 post); and the General Osteopathic Council (Health Committee) (Procedure) Rules 2000, approved by the General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000, SI 2000/242 (see PARAS 568-578 post).
- 7 Osteopaths Act 1993 s 26(2)(a).
- 8 Ibid s 26(2)(b).
- 9 Ibid s 26(2)(c)(i).
- 10 Ibid s 26(2)(c)(ii).
- 11 Ibid s 26(2)(d).
- 12 Ibid s 26(2)(e)(i).
- 13 Ibid s 26(2)(e)(ii).
- 14 Ibid s 26(2)(f).
- 15 Ibid s 26(2)(g).
- 16 Ibid s 26(2)(h). A person who, without reasonable excuse, fails to comply with any requirement imposed by the professional conduct committee or the health committee under rules made by virtue of s 26(2)(h) is guilty of an offence: s 32(2)(a), (b). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level five on the standard scale: s 32(3). As to the standard scale see PARA 185 note 11 ante.
- 17 Ibid s 26(2)(i).
- 18 Ibid s 26(2)(j). For the meaning of 'oath' see PARA 153 note 4 ante.
- 19 As to evidence in civil proceedings see CIVIL PROCEDURE vol 11 (2009) PARA 749 et seq. As to the production of documents in civil proceedings see CIVIL PROCEDURE vol 11 (2009) PARAS 538-583.
- 20 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.
- 21 Osteopaths Act 1993 s 26(3).

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## ***B. PROCEDURE OF THE PROFESSIONAL CONDUCT COMMITTEE***

### **556. Initial procedure.**

The professional conduct committee<sup>1</sup> must meet not less than three times a year on such days as it determines provided always that there is business to discharge<sup>2</sup>. On a referral to the committee by the investigating committee<sup>3</sup> or by the health committee<sup>4</sup>, the committee must request the solicitor<sup>5</sup> to review the evidence assembled by the referring committee and formulate a written statement setting out the allegations against the osteopath<sup>6</sup>. The chairman<sup>7</sup> must select from amongst the full membership of the committee a panel of the committee to sit with him to hear the case, and at least one member of that panel must be a lay member of the committee<sup>8</sup>. No person is eligible to sit on a panel hearing a case if he has personal knowledge of the facts of the case or of the complainant<sup>9</sup> or the osteopath which could be considered prejudicial to a fair hearing<sup>10</sup>, or if there would be a conflict of interest<sup>11</sup>.

On referral of a case, the committee must: (1) serve<sup>12</sup> on the osteopath concerned a copy of the complaint<sup>13</sup> that has been formulated, any document or statement on which the committee will be asked to rely, and a copy of the rules<sup>14</sup>; and (2) notify the osteopath of his opportunity to put his case at a hearing if before the end of the period of 28 days beginning with the date on which the complaint is sent to him he asks for a hearing<sup>15</sup>, or the committee considers that a hearing is desirable<sup>16</sup>; and (3) notify the osteopath of his right to be legally represented at the hearing<sup>17</sup>. Without prejudice to heads (1) to (3) above, after referral of a case and after reviewing the evidence assembled by the referring committee and any material submitted by the osteopath concerned, the committee, in any case where it considers it appropriate to do so, must:

- 734 (a) invite the osteopath to indicate whether he accepts the facts set out in the complaint and, if so, whether he accepts that those facts amount to either unacceptable professional conduct<sup>18</sup> or professional incompetence or that he has been convicted of the criminal offence or offences referred to in the complaint, as the case may be<sup>19</sup>;
- 735 (b) indicate to him that, in that event, the committee would be minded to conclude that the complaint should be dealt with by way of an admonishment without any need for a hearing unless the osteopath otherwise requests<sup>20</sup>; and
- 736 (c) advise the osteopath that if he does not accept the facts set out in the complaint, or he accepts some or all of these facts but denies that the facts which are so accepted amount to either unacceptable professional conduct or professional incompetence, he has the right<sup>21</sup> to appear before the committee to argue his case and to be legally represented at such a hearing<sup>22</sup>.

The committee must send notice of the date, time and place of a hearing to the osteopath before the beginning of the period of 28 days ending with the date on which the hearing is to be held<sup>23</sup>.

1 As to the professional conduct committee see PARA 514 ante. As to the consideration by the professional conduct committee of allegations concerning professional conduct or fitness to practise see PARA 550 ante.

2 General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 3. Nothing in the rules is to be construed as preventing the consideration together of allegations against two or more osteopaths and, where such consideration is given, the rules apply with necessary adaptation and subject to any direction given by the committee as to the order in which proceedings are to be heard under any of the rules in relation to the several osteopaths concerned: r 42.

3 As to referrals by the investigating committee see PARA 545 ante. As to the investigating committee see PARA 513 ante.

4 As to referrals by the health committee see PARA 574 post. As to the consideration by the health committee of allegations concerning fitness to practise see PARA 552 ante. As to the health committee see PARA 515 ante.

5 'The solicitor' means any solicitor representing the Council and presenting evidence to the committee of the allegation against an osteopath, and includes counsel instructed to represent the Council in connection with any such case: General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 2. 'The Council' means the General Osteopathic Council or a committee performing the functions of the Council delegated to it under the Osteopaths Act 1993 Schedule para 15(2)(i): General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 2. As to the General Osteopathic Council see PARA 499 ante. As to the delegation of powers by the Council see PARA 505 text to note 15 ante.

6 Ibid r 4. 'Osteopath' means a registered osteopath about whom an allegation as to his fitness to practise has been made, and includes a person whose registration is currently suspended: r 2. For the meaning of 'registered osteopath' see PARA 503 note 4 ante. As to the suspension of registration see PARA 530 ante.

7 'The chairman' means the chairman of the professional conduct committee: ibid r 2. As to the chairman of the committee see PARA 514 ante.

8 Ibid r 5. In making his selection, the chairman is to have due regard to the need for a quorum and to the requirements of the Osteopaths Act 1993 Schedule para 24(2) (see PARA 509 ante): General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 5. As to the quorum of the committee see PARA 514 ante.

9 'The complainant' means a person who has made an allegation against an osteopath to the effect specified in the Osteopaths Act 1993 s 20(1)(a), (b) or (c) (see PARA 545 ante): General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 2.

10 Ibid r 6(a).

11 Ibid r 6(b).

12 Any notice or communication required by the General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, to be served on a person may be served on the person either by delivering it to him or leaving it at his address, or by sending it by registered post or by recorded delivery service: r 65(1). For these purposes, the osteopath's address is his address in the register or his last known address if it differs from his address in the register and it appears to the solicitor that a letter sent to him there is more likely to reach him than at his registered address: r 65(2). Service of a notification sent by post is deemed to have been effected at the time when the letter containing it is sent: r 65(3). Any notice or communication other than a notice or communication required by the rules must be sent by first class post: r 65(4). For the meaning of 'the register' see PARA 524 note 1 ante.

13 'Complaint' means the written statement formulated by the solicitor in accordance with ibid r 4 (see the text to note 6 supra): r 2.

14 Ie the General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules 2000: General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 7(a).

15 Ibid r 7(b)(i).

16 Ibid r 7(b)(ii).

17 Ibid r 7(c).

18 For the meaning of 'unacceptable professional conduct' see PARA 545 note 2 ante.

19 General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 8(a).

20 Ibid r 8(b).

21 Ie in accordance with ibid r 7(b)(i); see the text to note 15 supra.

22 Ibid r 8(c).

23 Ibid r 9. No hearing is to be fixed for a date which occurs before the end of the period of 28 days beginning with the day on which the notice of hearing is sent except with the agreement of the osteopath on his receipt of the material specified in r 7(a) (see the text to note 14 supra): r 10.

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### **557. Representation and evidence.**

The osteopath<sup>1</sup> has the right to be legally represented at any hearing to consider the allegations against him<sup>2</sup>. The professional conduct committee<sup>3</sup> may hear witnesses called by the solicitor<sup>4</sup> and by or on behalf of the osteopath<sup>5</sup>. Both the Council<sup>6</sup> and the osteopath must send to the registrar<sup>7</sup> and each other notice of the names of the witnesses to be called before the beginning of the period of seven days ending with the date set for the hearing, failing which such witnesses may not be called unless the committee otherwise gives leave<sup>8</sup>. If any party to the proceedings<sup>9</sup> wishes to rely at the hearing upon documentary evidence which has not previously been supplied to the committee, he must forward copies of such documents to the committee before the beginning of the period of four days ending with the date on which the hearing is to be held<sup>10</sup>. The committee must request the solicitor to produce to the osteopath at the osteopath's request copies of any statement, explanation, admission or other document sent to the Council by any person in connection with the proceedings against the osteopath<sup>11</sup>, and copies of statements in the possession of the solicitor or the Council from persons who may be called to give evidence at the hearing, other than any medical evidence of fitness to practise<sup>12</sup>. Any party may at any time give another party notice to produce any document relevant to the inquiry alleged to be in the possession of that party<sup>13</sup>. Upon request, the committee may<sup>14</sup> require the production of any document to the registrar at any time before the beginning of any hearing if satisfied that the document is material and that a request for it to be produced voluntarily has not been complied with<sup>15</sup>.

The committee has the power to administer oaths and all evidence given orally is to be given on oath or to be affirmed<sup>16</sup>. The committee may, if satisfied that the interests of justice will not thereby be prejudiced, admit into evidence without strict proof, copies of documents which are themselves admissible<sup>17</sup>, photographs, certificates of conviction<sup>18</sup> and sentence, the records and registers of the Council, notes of proceedings before the committee<sup>19</sup> and before other tribunals, or any other material, and the committee may take note without strict proof of the professional qualifications, registration<sup>20</sup>, address and identity of the osteopath or of any other person<sup>21</sup>. The committee may by summons require any person to attend at a time and place stated in the summons to give evidence or to produce any documents in his custody or under his control which relate to any matter in issue before the committee, and must pay or tender the necessary expenses of attendance<sup>22</sup>. Any person summoned to attend under these provisions must be informed of the offence<sup>23</sup> which may be committed in the event of non-compliance<sup>24</sup>. Without the leave of the committee, no person, other than a party to the proceedings<sup>25</sup>, may be called as a witness by either party in proceedings before the committee unless he has been excluded from the proceedings until he is called to give evidence<sup>26</sup>. All parties to the proceedings are entitled to seek an order of the committee requiring persons to attend and give evidence or to produce documents before the committee<sup>27</sup>.

1 For the meaning of 'osteopath' see PARA 556 note 6 ante. As to the consideration together of allegations against two or more osteopaths see PARA 556 note 2 ante.

2 General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 11. References to legal representation include representation by counsel, a solicitor, an officer or member of any professional organisation of which the osteopath is a member, or a member of his family: r 60.

- 3 As to the professional conduct committee see PARA 514 ante. As to the consideration by the professional conduct committee of allegations concerning professional conduct or fitness to practise see PARA 550 ante.
- 4 For the meaning of 'the solicitor' see PARA 556 note 5 ante.
- 5 General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 12(1).
- 6 For the meaning of 'the Council' see PARA 556 note 5 ante.
- 7 As to the registrar see PARA 519 ante.
- 8 General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 12(2).
- 9 'Party to proceedings' means the Council or the osteopath: *ibid* r 2.
- 10 *Ibid* r 13(1). The committee must send copies of such evidence to all other parties to the hearing before the beginning of the period of four days ending with the date on which the hearing is to be held, and any such evidence not forwarded will only be admitted with the leave of the committee: r 13(2).
- 11 *Ibid* r 14(1)(a). Rule 14(1) is stated to be without prejudice to any of the other rules: r 14(1). The solicitor must not be requested to produce any written advice or other document or communication sent by himself to the Council or one of its committees: r 14(2).
- 12 *Ibid* r 14(1)(b). See also note 11 *supra*.
- 13 *Ibid* r 15(1).
- 14 *Ie* subject to the Osteopaths Act 1993 s 26(3): see PARA 555 ante.
- 15 General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 15(2).
- 16 *Ibid* r 56. As to the oaths and affirmations see CIVIL PROCEDURE vol 11 (2009) PARA 1021 *et seq*.
- 17 As to the admissibility of documents in evidence see CIVIL PROCEDURE vol 11 (2009) PARA 758 *et seq*.
- 18 As to certificates of conviction see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1500.
- 19 As to the keeping of a record of the proceedings of the committee see PARA 567 *post*.
- 20 As to certificates of registration see PARA 525 ante.
- 21 General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 57(1).
- 22 *Ibid* r 57(2).
- 23 *Ie* the offence under the Osteopaths Act 1993 s 32(2): see PARA 555 note 16 ante.
- 24 General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 57(3).
- 25 See note 9 *supra*.
- 26 General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 57(4).
- 27 *Ibid* r 58.

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### **558. Openness, postponement and cancellation of hearings.**

The proceedings of the professional conduct committee<sup>1</sup> must be held in public<sup>2</sup>, unless the committee decides that it is in the interests of the complainant<sup>3</sup>, or of any person giving evidence, or of any patient, to hold the hearing or any part of it in private and, in such a case, all persons who are not concerned with the hearing<sup>4</sup> must withdraw<sup>5</sup>. The chairman<sup>6</sup> may postpone the hearing to such later date or such later meeting of the committee as he may determine<sup>7</sup>. The committee must send to all parties to whom the notice of hearing has been sent, notification<sup>8</sup> of the decision to postpone and of any subsequent date, time and place fixed for the postponed hearing, which must not take place before the end of the period of 14 days beginning with the day on which notification is given<sup>9</sup>.

Where, after a complaint<sup>10</sup> has been referred to the committee for consideration, it appears to the committee that such consideration cannot due to exceptional circumstances properly take place, it may, after taking advice from the legal assessor<sup>11</sup> and after consulting the investigating committee<sup>12</sup> and obtaining the consent of the osteopath concerned<sup>13</sup>, direct that a hearing should not be held and that the case should be concluded, provided that where there is an individual complainant the committee must, before it consults the investigating committee, endeavour to ascertain the views of the complainant<sup>14</sup>. As soon as any decision is reached as to cancellation of a hearing, the committee must send notice of that decision to the osteopath and to the complainant, if any<sup>15</sup>.

1 As to the professional conduct committee see PARA 514 ante. As to the consideration by the professional conduct committee of allegations concerning professional conduct or fitness to practise see PARA 550 ante.

2 General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 17(1). The committee may deliberate in camera with or without the legal assessor at any time and for any purpose during or after the hearing of any proceedings; and for such purpose it may exclude the solicitor, the Council, the osteopath, and his representative: r 59. For the meanings of 'the Council' and 'the solicitor' see PARA 556 note 5 ante. For the meaning of 'osteopath' see PARA 556 note 6 ante. As to the right of the osteopath to be represented see PARA 557 text to note 2 ante.

3 For the meaning of 'complainant' see PARA 556 note 9 ante.

4 A person is not concerned with the hearing unless he is: (1) a member of the committee or a legal or medical assessor; (2) the osteopath or his representative; (3) the solicitor or his representative; (4) an officer or member of the Council; (5) a person giving oral evidence to the committee; (6) a person given leave by the chairman to remain at the hearing: General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 17(3)(a)-(f). 'Medical assessor' means an assessor appointed by the Council under the Osteopaths Act 1993 s 28 (see PARA 580 post): General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 2.

5 Ibid r 17(2). As to the consideration together of allegations against two or more osteopaths see PARA 556 note 2 ante.

6 For the meaning of 'the chairman' see PARA 556 note 7 ante.

7 General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 18(1). As to the meetings of the committee see PARA 556 text to note 2 ante.

8 As to the service of notices see PARA 556 note 12 ante.



9 General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 18(2).

10 For the meaning of 'complaint' see PARA 556 note 13 ante.

11 'Legal assessor' means an assessor appointed by the Council under the Osteopaths Act 1993 s 27 (see PARA 579 post): General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 2.

12 As to the investigating committee see PARA 513 ante. As to the investigation of allegations by the investigating committee see PARAS 545 et seq ante.

13 The committee is not required to obtain the consent of the osteopath where such consent could not properly be obtained due to death, or mental or physical incapacity: General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 19(2).

14 Ibid r 19(1).

15 Ibid r 19(3).

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### **559. Conduct of the hearing.**

A legal assessor<sup>1</sup> must be selected by the chairman<sup>2</sup> for any hearing from the list of those appointed by the Council<sup>3</sup> to assist the professional conduct committee<sup>4</sup>. Where the osteopath<sup>5</sup> does not appear and is not represented<sup>6</sup>, the committee may nevertheless proceed with the hearing, make a finding and, if appropriate, apply sanctions, provided the solicitor<sup>7</sup> satisfies the committee that all reasonable steps have been taken to serve the notice of the hearing on the osteopath concerned<sup>8</sup>.

On calling the hearing to order, the chairman must first introduce all the parties to the proceedings<sup>9</sup>. The hearing must open with the registrar<sup>10</sup>, or the person appointed to act for him, reading the complaint<sup>11</sup> against the osteopath<sup>12</sup>.

At this point the osteopath or his representative may submit any objection on grounds of law to any part of the complaint and the solicitor may be invited to reply to any such submission on behalf of the Council<sup>13</sup>. After seeking the advice, if any, of the legal assessor, the committee will rule on the objection raised by the osteopath<sup>14</sup>.

If, at any stage of the hearing, it appears to the committee that the complaint should be amended, the committee may, after hearing the parties and seeking advice from the legal assessor, make such amendments to the complaint as may seem necessary or desirable, if it is satisfied that no injustice would thereby be caused<sup>15</sup>.

If, at any stage of the hearing, it appears to the committee that the case would more appropriately be heard by the health committee<sup>16</sup>, it must halt the proceedings and refer the case to the health committee<sup>17</sup>.

At any stage during the proceedings the chairman has the power to adjourn the proceedings<sup>18</sup>. When the proceedings are so adjourned, the committee must send to the osteopath concerned and to the complainant written notice<sup>19</sup> of the date, time and place of any resumed hearing<sup>20</sup>. A resumed hearing must not be fixed for a date which occurs before the end of the period of 14 days after which the notice of that hearing is sent<sup>21</sup>.

1 For the meaning of 'legal assessor' see PARA 558 note 11 ante.

2 For the meaning of 'the chairman' see PARA 556 note 7 ante.

3 For the meaning of 'the Council' see PARA 556 note 5 ante.

4 General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 16. As to the professional conduct committee see PARA 514 ante. As to the consideration by the professional conduct committee of allegations concerning professional conduct or fitness to practise see PARA 550 ante.

5 For the meaning of 'osteopath' see PARA 556 note 6 ante. As to the consideration together of allegations against two or more osteopaths see PARA 556 note 2 ante.

6 As to the right of an osteopath to be represented see PARA 557 text to note 2 ante.

7 For the meaning of 'the solicitor' see PARA 556 note 5 ante.

8 General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 20. As to the giving of notice of the hearing see PARA 556 ante.

9 Ibid r 21. For the meaning of 'party to the proceedings' see PARA 557 note 9 ante.

10 As to the registrar see PARA 519 ante.

11 For the meaning of 'complaint' see PARA 556 note 13 ante.

12 General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 22.

13 Ibid r 23(1).

14 Ibid r 23(2).

15 Ibid r 24.

16 As to the health committee see PARA 515 ante. As to the consideration of allegations of fitness to practise by the health committee see PARA 552 ante. As to the procedure to be followed by the health committee see PARA 568 et seq post.

17 General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 25.

18 Ibid r 55(1).

19 As to the service of notices see PARA 556 note 12 ante.

20 General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 55(2).

21 Ibid r 55(3).

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## **560. Cases relating to conviction.**

In cases relating to conviction<sup>1</sup>, the order of proceedings is as follows:

- 737 (1) the solicitor<sup>2</sup> is requested to adduce evidence of any conviction and its circumstances<sup>3</sup>;
- 738 (2) evidence of a conviction may be adduced by the production of a certified copy of a certificate of conviction relating to a criminal offence<sup>4</sup>;
- 739 (3) if, in respect of any conviction, no evidence is so adduced, the chairman<sup>5</sup> must announce that the conviction has not been proved<sup>6</sup>;
- 740 (4) the chairman asks the osteopath<sup>7</sup> whether he accepts each conviction of which evidence is adduced, and in respect of such accepted conviction the chairman announces the conviction to have been proved<sup>8</sup>;
- 741 (5) in respect of convictions not so accepted, the osteopath or his representative<sup>9</sup> may address the professional conduct committee<sup>10</sup> and adduce both oral and documentary evidence to show that he was not the person convicted<sup>11</sup>;
- 742 (6) thereafter the solicitor may, with the committee's leave, seek to rebut any evidence of the osteopath by adducing evidence to that effect<sup>12</sup>;
- 743 (7) the solicitor and then the osteopath or his representative may address the committee<sup>13</sup>.

On conclusion of the proceedings described above, the committee considers each conviction alleged in the complaint<sup>14</sup>, other than those admitted or announced to be not proved, and determines whether or not each such conviction is proved; and the committee then announces its determination<sup>15</sup>. Where the committee has found that a conviction has been proved or a conviction has been admitted, the chairman invites: (a) the solicitor to address the committee and to adduce any further evidence as to the circumstances leading up to the conviction, and as to the character and previous history of the osteopath<sup>16</sup>; and (b) the osteopath or his representative to address the committee by way of mitigation and adduce any further such evidence<sup>17</sup>. The solicitor and the osteopath or his representative are, if appropriate, invited to address the committee on whether the criminal offence in question has any material relevance to the fitness of the osteopath concerned to practise osteopathy<sup>18</sup>. The committee then proceeds in accordance with the provisions relating to the consideration of sanctions<sup>19</sup>.

1 'Case relating to conviction' means a case where it is alleged that an osteopath has been convicted of a criminal offence whether or not while registered in the United Kingdom: General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 2. For the meaning of 'United Kingdom' see PARA 1 note 3 ante. As to the registration of osteopaths see PARA 520 et seq ante. As to the consideration together of allegations against two or more osteopaths see PARA 556 note 2 ante.

2 For the meaning of 'the solicitor' see PARA 556 note 5 ante.

3 General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 26(1)(a).

4 Ibid r 26(1)(b). As to certificates of conviction see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1500.

5 For the meaning of 'the chairman' see PARA 556 note 7 ante.

6 General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 26(1)(c).

7 For the meaning of 'osteopath' see PARA 556 note 6 ante.

8 General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 26(1)(d).

9 As to the right of an osteopath to be represented see PARA 557 text to note 2 ante.

10 As to the professional conduct committee see PARA 514 ante. As to the consideration by the professional conduct committee of allegations concerning professional conduct or fitness to practise see PARA 550 ante.

11 General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 26(1)(e). As to the calling of witnesses and the production of documentary evidence see PARA 557 ante.

12 Ibid r 26(1)(f).

13 Ibid r 26(1)(g).

14 For the meaning of 'complaint' see PARA 556 note 13 ante.

15 General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 26(2).

16 Ibid r 26(3)(a).

17 Ibid r 26(3)(b).

18 Ibid r 26(4). As to the code of practice laying down standards of conduct and practice expected of registered osteopaths see PARA 544 ante. As to the application of the Rehabilitation of Offenders Act 1974 to osteopaths see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 687.

19 Ie the provisions of the General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, rr 35-39 (see PARA 562 post): r 26(5).

## **UPDATE**

### **560 Cases relating to conviction**

TEXT AND NOTES--Provision is also made for the order of proceedings in cases where the Independent Barring Board includes a person in a barred list (barring entries) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 681): see SI 2000/241 r 26A (added by SI 2009/1182) (in force on the coming into force of the Safeguarding Vulnerable Groups Act 2006 s 44(1) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 704)).

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### **561. Cases relating to conduct or incompetence.**

In cases of conduct or incompetence<sup>1</sup>, the chairman<sup>2</sup> asks the osteopath<sup>3</sup> whether he admits any or all of the facts alleged and, in respect of any such facts so admitted, the professional conduct committee<sup>4</sup> must record a finding that those facts have been proved<sup>5</sup>. Where all the facts are admitted, the osteopath or his representative<sup>6</sup> may submit that in respect of any complaint<sup>7</sup> where the facts have been admitted, those facts are insufficient to support a finding of unacceptable professional conduct<sup>8</sup> or professional incompetence<sup>9</sup>. Where such a submission is made, the solicitor<sup>10</sup> may answer that submission and the osteopath or his representative has the right of reply<sup>11</sup>. The committee must consider and determine whether to uphold the submission and, if it does, the committee records and announces a finding that the osteopath is not guilty of unacceptable professional conduct or professional incompetence in respect of the matters to which the complaint relates<sup>12</sup>.

If none or some only of the facts are admitted or if the committee does not uphold any such submission, the committee proceeds as follows: (1) the solicitor is requested to open the case against the osteopath by presenting the facts alleged on which the complaint is based and by then adducing any evidence<sup>13</sup> of the facts alleged and which have not been admitted by the osteopath<sup>14</sup>; (2) any witness called to give evidence may be cross-examined by the osteopath or his representative and re-examined by the solicitor<sup>15</sup>; (3) if, on any allegation, no evidence is adduced, the committee must record and announce a finding that the osteopath is not guilty of unacceptable professional conduct or professional incompetence in respect of that allegation<sup>16</sup>. When the solicitor has closed his presentation of the case, the osteopath or his representative may submit: (a) that, in respect of the facts alleged but not admitted in the complaint, no sufficient evidence has been adduced upon which the committee could find the facts proved<sup>17</sup>; (b) in respect of any allegation, the facts adduced or admitted are insufficient to support a finding of unacceptable professional conduct or professional incompetence<sup>18</sup>. The osteopath or his representative may then address the committee concerning any allegation that remains and may adduce evidence either documentary or oral, including his own, in his defence<sup>19</sup>. The osteopath or any witness called on his behalf may be cross-examined by the solicitor and re-examined by the osteopath or his representative<sup>20</sup>. At the end of the evidence of the osteopath, the solicitor may, with the leave of the committee, adduce evidence to rebut any evidence adduced by the osteopath or his representative<sup>21</sup>. The solicitor may then address the committee, following which the osteopath or his representative may also address the committee<sup>22</sup>.

The committee then considers the case in private and determines whether the facts alleged in the complaint have been proved to its satisfaction by the evidence<sup>23</sup>. If it so determines, it next decides whether the facts as proved amount to unacceptable professional conduct or professional incompetence<sup>24</sup>. All parties to the case having reassembled, the chairman announces the committee's findings and its reasons for those findings, with regard both to the facts of the case and to whether the osteopath has been found guilty of unacceptable professional conduct or of professional incompetence<sup>25</sup>. Where the committee finds the complaint not to be proved, the chairman announces this finding and the reasons for it and dismisses the case<sup>26</sup>. Where the committee has found the complaint proved, either in whole or in part, the chairman invites the solicitor to address the committee as to any additional circumstances leading up to the unacceptable professional conduct or professional incompetence and as to the character and previous history of the osteopath<sup>27</sup>. He then invites

the osteopath or his representative to address the committee by way of mitigation and the osteopath may adduce oral or documentary evidence to support mitigation<sup>28</sup>.

At any stage during the proceedings before the committee, any member of the committee or the legal assessor<sup>29</sup> may, with the chairman's permission, question those presenting evidence or any witness called<sup>30</sup>.

1 'Case relating to conduct or incompetence' means a case where a question arises as to whether the osteopath may have been guilty of unacceptable professional conduct or professional incompetence within the meaning of the Osteopaths Act 1993 s 20 (see PARA 545 ante): General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 2. As to the consideration together of allegations against two or more osteopaths see PARA 556 note 2 ante.

2 For the meaning of 'the chairman' see PARA 556 note 7 ante.

3 For the meaning of 'osteopath' see PARA 556 note 6 ante.

4 As to the professional conduct committee see PARA 514 ante. As to the consideration by the professional conduct committee of allegations concerning professional conduct or fitness to practise see PARA 550 ante.

5 General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 27(1).

6 As to the right of an osteopath to be represented see PARA 557 text to note 2 ante.

7 For the meaning of 'complaint' see PARA 556 note 13 ante.

8 For the meaning of 'unacceptable professional conduct' see PARA 545 note 2 ante.

9 General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 27(2). As to the code of practice laying down standards of conduct and practice expected of registered osteopaths see PARA 544 ante.

10 For the meaning of 'the solicitor' see PARA 556 note 5 ante.

11 General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 27(3).

12 Ibid r 27(4).

13 As to the calling of witnesses and the production of documentary evidence see PARA 557 ante.

14 General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 27(5)(a).

15 Ibid r 27(5)(b).

16 Ibid r 27(5)(c).

17 Ibid r 27(6)(a). Where a submission or submissions are made under r 27(6)(a) or (b) (see the text and note 18 infra), the committee must proceed in accordance with r 27(3), (4) (see the text to notes 10-12 supra): r 27(6).

18 Ibid r 27(6)(b). See also note 17 supra.

19 Ibid r 28(1).

20 Ibid r 28(2).

21 Ibid r 28(3).

22 Ibid r 28(4).

23 Ibid r 29.

24 Ibid r 30.

25 Ibid r 31.

26 Ibid r 32.

27 Ibid r 33(1).

28 Ibid r 33(2).

29 For the meaning of 'legal assessor' see PARA 558 note 11 ante.

30 General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 34.



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## **562. Consideration of sanctions.**

In any case where the professional conduct committee<sup>1</sup> has found a conviction proved<sup>2</sup> or has made a finding of unacceptable professional conduct<sup>3</sup> or professional incompetence<sup>4</sup> either in whole or in part, and has heard any plea in mitigation, the committee considers in private what sanction<sup>5</sup>, if any, it will apply to the osteopath<sup>6</sup>. When all parties to the case have reassembled, the chairman<sup>7</sup> announces the committee's decision with regard to sanctions<sup>8</sup>. In any case where the committee has imposed conditions on or suspended the registration of a practitioner for a specified period<sup>9</sup>, the chairman also indicates that the committee will review the case at a review hearing before the end of that period<sup>10</sup>, and what information it will require at the review hearing<sup>11</sup>. The committee notifies<sup>12</sup> the osteopath of its decision, of its reasons for reaching that decision, and of his rights of appeal<sup>13</sup>. The committee also notifies the complainant<sup>14</sup> of the committee's decision and of its reasons for reaching that decision<sup>15</sup>.

1 As to the professional conduct committee see PARA 514 ante. As to the consideration by the professional conduct committee of allegations concerning professional conduct or fitness to practise see PARA 550 ante.

2 As to the consideration of cases relating to conviction see PARA 560 ante.

3 For the meaning of 'unacceptable professional conduct' see PARA 545 note 2 ante.

4 As to the consideration of cases relating to conduct or incompetence see PARA 561 ante.

5 As to the sanctions available to the committee see the Osteopaths Act 1993 s 22(4); and PARA 550 ante.

6 General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 35. For the meaning of 'osteopath' see PARA 556 note 6 ante. As to the consideration together of allegations against two or more osteopaths see PARA 556 note 2 ante.

7 For the meaning of 'chairman' see PARA 556 note 7 ante.

8 General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 36.

9 As to conditions of practice orders and suspension orders see PARA 550 ante.

10 General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 37(a). As to review hearings see PARA 565 post.

11 Ibid r 37(b).

12 As to the service of notifications see PARA 556 note 12 ante.

13 General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 38. As to appeals see PARA 588 post.

14 For the meaning of 'complainant' see PARA 556 note 9 ante.

15 General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 39.

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### **563. Cases relating to conviction and to conduct or incompetence.**

Where in the case of any hearing, it is alleged against the osteopath<sup>1</sup> both that he has been convicted and that he has been guilty of unacceptable professional conduct<sup>2</sup> or professional incompetence, the procedure is as follows<sup>3</sup>:

- 744 (1) the committee first proceeds with every allegation that the osteopath has been convicted, until it has completed the specified process<sup>4</sup>;
- 745 (2) the committee then proceeds with every allegation that the osteopath has been guilty of unacceptable professional conduct or professional incompetence, until it has completed the specified process<sup>5</sup>;
- 746 (3) the committee then takes any proceedings required by way of mitigation and imposition of sanctions<sup>6</sup>.

1 For the meaning of 'osteopath' see PARA 556 note 6 ante. As to the consideration together of allegations against two or more osteopaths see PARA 556 note 2 ante.

2 For the meaning of 'unacceptable professional conduct' see PARA 545 note 2 ante.

3 General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 43.

4 Ie the process required by *ibid* r 26, save for r 26(5) (see PARA 560 ante): r 43(a).

5 Ie the process required by *ibid* rr 27-32 (see PARA 561 ante): r 43(b).

6 Ie under *ibid* rr 33-39 (see PARAS 561, 562 ante): r 43(c).

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#### **564. Interim suspension orders.**

Where a case has been referred to the professional conduct committee<sup>1</sup> and: (1) the committee has not reached a final decision on the matter<sup>2</sup>; or (2) the committee has reached a decision to impose a suspension order<sup>3</sup> or to remove an osteopath's<sup>4</sup> name from the register<sup>5</sup>, then the committee may, if it is satisfied that it is necessary to do so in order to protect members of the public, order the registrar<sup>6</sup> to suspend the registration of the osteopath concerned<sup>7</sup>, such order being known as an 'interim suspension order'<sup>8</sup>. Where the committee considers that an interim suspension order may be appropriate, it fixes a date, time and place for deciding that question, having regard to the urgency and all the circumstances of the case, and notifies the osteopath of his right to appear before the committee and to argue his case and to be legally represented<sup>9</sup>. A medical assessor<sup>10</sup> may be appointed by the chairman<sup>11</sup> to be present at any such a hearing<sup>12</sup>.

The solicitor<sup>13</sup> is requested to present the case to the committee and call such evidence<sup>14</sup> as he wishes to justify an interim suspension order<sup>15</sup>. The osteopath or his representative has the right to cross-examine any witness called by the solicitor who may in turn re-examine such witness<sup>16</sup>. The osteopath or his representative may then present the case against the making of such an order by calling such evidence as he wishes, the solicitor has the right to cross-examine such witness on behalf of the Council<sup>17</sup>, and the osteopath or his representative may in turn re-examine such witness<sup>18</sup>. The solicitor and the osteopath or his representative may address the committee<sup>19</sup>. Members of the committee, the legal assessor<sup>20</sup>, and the medical assessor may, with the consent of the chairman, question a person giving evidence at the hearing<sup>21</sup>. Save as described above, the procedure of the committee is as it may determine<sup>22</sup>.

The committee decides in private whether to impose an interim suspension order, and the decision of the committee is given at the conclusion of the hearing<sup>23</sup>. The committee directs the registrar to confirm its decision in writing<sup>24</sup> to the osteopath, informing him also of his right to appeal against the decision<sup>25</sup>.

The committee may, on the written application of the osteopath, revoke an interim suspension order on specified grounds<sup>26</sup>. When such an application is made, it is heard by the committee at the first available opportunity and the committee follows the procedures described above<sup>27</sup>.

1 As to the professional conduct committee see PARA 514 ante. As to the consideration by the professional conduct committee of allegations concerning professional conduct or fitness to practise see PARA 550 ante.

2 General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 40(1)(a).

3 As to suspension orders see PARA 550 ante.

4 For the meaning of 'osteopath' see PARA 556 note 6 ante. As to the consideration together of allegations against two or more osteopaths see PARA 556 note 2 ante.

5 General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 40(1)(b). As to the power of the committee to order removal from the register see PARA 550 text to note 11 ante. For the meaning of 'the register' see PARA 524 note 1 ante. As to the restoration to the register of osteopaths who have been struck off see PARA 531 ante.

6 As to the registrar see PARA 519 ante. As to the registrar's obligations in relation to the suspension of registration see PARA 530 ante.

7 le in accordance with the Osteopaths Act 1993 s 24: see PARA 553 ante.

8 General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 40(1).

9 Ibid r 40(2). The committee may postpone a hearing or adjourn proceedings as it thinks fit, either on its own motion or on the request of the osteopath: r 40(3). Where the osteopath does not appear and is not represented, the provisions of r 20 (see PARA 559 text to note 8 ante) apply: r 40(5). As to the right of an osteopath to be represented see PARA 557 text to note 2 ante.

10 For the meaning of 'medical assessor' see PARA 558 note 4 ante.

11 For the meaning of 'the chairman' see PARA 556 note 7 ante.

12 General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 40(4).

13 For the meaning of 'the solicitor' see PARA 556 note 5 ante.

14 As to evidence see PARA 557 ante.

15 General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 40(6).

16 Ibid r 40(7).

17 For the meaning of 'the Council' see PARA 556 note 5 ante.

18 General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 40(8).

19 Ibid r 40(9).

20 For the meaning of 'legal assessor' see PARA 558 note 11 ante.

21 General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 40(10).

22 Ibid r 40(11).

23 Ibid r 40(12).

24 As to the service of documents see PARA 556 note 12 ante. For the meaning of 'writing' see PARA 20 note 22 ante.

25 le his right to appeal in accordance with the Osteopaths Act 1993 s 24 (see PARA 553 ante): General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 40(13).

26 le on the grounds stated in the Osteopaths Act 1993 s 25(1) (see PARA 554 ante): General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 41(1).

27 le the procedures set out in ibid r 40(6)-(11) (see the text to notes 13-22 supra): r 41(2).

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#### **565. Procedure on resumed or review hearings.**

Where the professional conduct committee<sup>1</sup> is to resume a previous hearing or is meeting to review orders previously made<sup>2</sup>, it sends to the osteopath<sup>3</sup> notice<sup>4</sup> of the date, time and place fixed for the resumed or review hearing and any information or further evidence on which the committee will be asked to rely, before the beginning of the period of 28 days ending with the date on which the hearing is to be held<sup>5</sup>. The committee must give the osteopath the opportunity to appear before it and argue his case, and must inform him of his right to be legally represented<sup>6</sup>. The committee, where appropriate, invites the osteopath to provide it with any evidence whether by way of statement, report or document<sup>7</sup> as to the conduct of the osteopath since the time of the original inquiry, and his compliance with the conditions in any conditions of practice order<sup>8</sup>. Where the committee has adjourned the hearing<sup>9</sup>, or has imposed conditions upon an osteopath's registration, or suspended the registration of an osteopath<sup>10</sup>, and has given notice that it will resume consideration of such a case, the committee may ask the osteopath to provide to it the names and addresses of professional colleagues and other persons of standing to whom the committee can apply for information about the osteopath's conduct since the time of the original or any previous hearing; and the committee must supply copies of any such information received to the osteopath<sup>11</sup>. If, since the original hearing, any new allegation against the osteopath has been referred to the committee, the committee must first proceed with any new allegation<sup>12</sup>.

At any meeting at which the proceedings are resumed, or a review undertaken, the chairman<sup>13</sup> first invites the solicitor<sup>14</sup> to recall the position in which the case stands for the information of the committee and to adduce such evidence as he thinks fit in the same way as for the original hearing<sup>15</sup>. The committee then hears the osteopath or his representative, who adduces such evidence as he thinks fit; and the committee then proceeds as the circumstances of a case may require<sup>16</sup>. It is the duty of the committee, where the osteopath is subject to a conditions of practice order, to judge first whether the osteopath has failed or succeeded in complying with any of the requirements imposed on him as conditions<sup>17</sup>. If the committee judges that the osteopath has complied, it must determine whether to revoke the direction made at the previous hearing, to vary the conditions if necessary, or to make no further directions and allow the case to conclude on the expiry of the period for which the direction made at the previous hearing applies<sup>18</sup>. If the committee judges that the osteopath has failed to comply with the conditions, it must consider and determine whether it is sufficient to vary the conditions imposed, or, if not, whether to direct that the current period of conditions should be extended with or without any variation, or to impose some other sanction<sup>19</sup>. Where previously the committee had directed that an osteopath's registration should be suspended, the committee must consider and determine whether it is sufficient to make no further direction or, if not, whether to direct the registration of the osteopath to be subject to a conditions of practice order if the osteopath resumes practice after the end of his suspension, or to direct that any current period of suspension should be extended for a further period of no more than three years<sup>20</sup>.

The chairman announces the determinations of the committee in such terms as the committee may approve, and may also indicate at the same time in the case of a conditions of practice order which is being extended or reduced for a specified period that it will review the case before any order ceases to have effect and consider any further determination that may be necessary<sup>21</sup>.

Subject to the provisions of the Osteopaths Act 1993, the validity of any resumed proceedings of the committee may not be called into question by reason only that members of the committee who were present at any former meeting were not present at the resumed meeting, or that members present at the resumed meeting were not present at any former meeting<sup>22</sup>.

- 1 As to the professional conduct committee see PARA 514 ante. As to the consideration by the professional conduct committee of allegations concerning professional conduct or fitness to practise see PARA 550 ante.
- 2 Ie in accordance with the General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 37 (see PARA 562 ante) or r 53 (see the text to note 21 infra).
- 3 For the meaning of 'osteopath' see PARA 556 note 6 ante.
- 4 As to the service of notices see PARA 556 note 12 ante.
- 5 General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 45(1).
- 6 Ibid r 45(2). As to the right of the osteopath to be represented see PARA 557 text to note 2 ante.
- 7 As to the production of documentary evidence see PARA 557 ante.
- 8 General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 45(3). As to conditions of practice orders see PARA 550 ante.
- 9 As to the adjournment of hearings see PARA 559 ante.
- 10 As to suspension orders see PARA 550 ante. As to the obligations of the registrar in relation to the suspension of registration see PARA 530 ante. As to the registrar see PARA 519 ante.
- 11 General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 45(4). Where any osteopath has supplied to the committee the name of any person to whom reference may be made as to his conduct, the committee must consider any information received from such person in consequence of such a reference: r 45(5).
- 12 Ie in accordance with ibid rr 21-39 (see PARAS 559-562 ante): r 46.
- 13 For the meaning of 'chairman' see PARA 556 note 7 ante.
- 14 For the meaning of 'the solicitor' see PARA 556 note 5 ante.
- 15 General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 47. As to the procedure at the original hearing see PARAS 560-561 ante.
- 16 Ibid r 48.
- 17 Ibid r 49.
- 18 Ibid r 50.
- 19 Ie some other sanction as stated in the Osteopaths Act 1993 s 22(6) (as amended) (see PARA 550 ante): General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 51.
- 20 Ibid r 52.
- 21 Ibid r 53.
- 22 Ibid r 54.

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#### **566. Referral to the health committee.**

Where it appears to the professional conduct committee<sup>1</sup> that an osteopath's<sup>2</sup> ability to practise may be seriously impaired by reason of his physical or mental condition, the committee may refer that question to the health committee<sup>3</sup> for determination whether or not the allegation has been proven and, if it has been proven, whether or not the professional conduct committee has made a conditions of practice order<sup>4</sup> with respect to the osteopath<sup>5</sup>. If, following such a referral, the health committee subsequently certifies to the professional conduct committee its opinion that the fitness of the osteopath to practise is not seriously impaired by reason of his physical or mental condition, then the professional conduct committee resumes its consideration of the case and concludes it<sup>6</sup>. If, following a reference to the health committee, the health committee certifies to the professional conduct committee its opinion that the fitness of the osteopath is seriously impaired, then the professional conduct committee ceases to exercise its functions in relation to that case<sup>7</sup>.

1 As to the professional conduct committee see PARA 514 ante. As to the consideration by the professional conduct committee of allegations concerning professional conduct or fitness to practise see PARA 550 ante.

2 For the meaning of 'osteopath' see PARA 556 note 6 ante.

3 As to the health committee see PARA 515 ante. As to the consideration of allegations by the health committee see PARA 552 ante. As to the procedure of the health committee see PARA 568 et seq post.

4 As to conditions of practice orders see PARA 550 ante.

5 General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 62.

6 Ibid r 63.

7 Ibid r 64.

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### **567. Record of proceedings.**

A shorthand writer or recording system must be available at the hearing to permit a verbatim record of the proceedings to be made<sup>1</sup>. Any party to the proceedings<sup>2</sup> of the professional conduct committee<sup>3</sup> must, on application to the registrar<sup>4</sup> before the end of the period of three months<sup>5</sup> beginning on the last day of the hearing in question, be furnished with a transcript of all or any part of the proceedings at which the party was entitled to be present, whether he was present or not<sup>6</sup>.

1 General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 61(1).

2 For the meaning of 'party to proceedings' see PARA 557 note 9 ante.

3 As to the professional conduct committee see PARA 514 ante. As to the consideration by the professional conduct committee of allegations concerning professional conduct or fitness to practise see PARA 550 ante.

4 As to the registrar see PARA 519 ante.

5 For the meaning of 'month' see PARA 13 note 14 ante.

6 General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, r 61(2).



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### ***C. PROCEDURE OF THE HEALTH COMMITTEE***

#### **568. Meetings of the committee.**

The health committee<sup>1</sup> meets on such days as the committee may determine and at such time and place as the chairman<sup>2</sup> may determine<sup>3</sup>. No case<sup>4</sup> is to be considered by the committee unless it has been referred to it either by the investigating committee<sup>5</sup> or by the professional conduct committee<sup>6</sup>. Any complaint made directly to the health committee must be immediately referred by the committee to the investigating committee for consideration<sup>7</sup>. Before considering a case, the health committee must request the investigating committee or, as the case may be, the professional conduct committee, to supply to it all the evidence which was before that committee<sup>8</sup>. On a referral of a case to the committee, the committee must: (1) serve notice<sup>9</sup> on the osteopath concerned of the allegation that has been made together with copies of any relevant documentation and a copy of the rules<sup>10</sup>; and (2) inform the osteopath of his opportunity to put his case at a hearing, if before the end of the period of 28 days beginning with the date on which notice of the allegation is sent to him he asks for a hearing<sup>11</sup>, or if the committee considers that a hearing is desirable<sup>12</sup>.

Where, after an allegation has been referred to the committee for consideration, it appears to the committee that such consideration cannot owing to exceptional circumstances properly take place, it may, after taking advice from the legal assessor<sup>13</sup> and after consulting the investigating committee and obtaining the consent of the osteopath<sup>14</sup> concerned, direct that a hearing should not be held and that the case should be concluded, provided that where there is an individual complainant<sup>15</sup> the committee must before it consults the investigating committee try to ascertain the views of the complainant<sup>16</sup>. As soon as any decision is reached, the committee must conclude the case and give notice of its determination to cancel a hearing to the osteopath and to the complainant, if any<sup>17</sup>.

At any stage during the proceedings, the chairman has the power to suspend the proceedings before the committee<sup>18</sup>.

The committee may deliberate in private at any time and for any purpose during any proceedings<sup>19</sup>.

1 As to the health committee see PARA 515 ante. As to the consideration of allegations by the health committee see PARA 552 ante.

2 'The chairman' means the chairman of the health committee: General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000, SI 2000/242, r 2.

3 Ibid r 3.

4 'A case' means a case where it is alleged that the ability of the osteopath to practise as an osteopath is seriously impaired because of his physical or mental condition within the meaning of the Osteopaths Act 1993 s 20(1)(d) (see PARA 545 ante): General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000, SI 2000/242, r 2.

5 Ibid r 4(1)(a). As to the investigating committee see PARA 513 ante. As to the investigation of cases relating to health by the investigating committee see PARA 548 ante.

6 Ibid r 4(1)(b). As to the professional conduct committee see PARA 514 ante. As to the referral of cases to the health committee by the professional conduct committee see PARA 566 ante.

7 Ibid r 4(3).

8 Ibid r 4(2).

9 A reference to the sending of a notice or other communication required by the General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000, SI 2000/242, to be served on an osteopath is a reference to delivering it to him or sending it to him by registered post or by the recorded delivery system to his address in the register or if his last known address differs from the address in the register then to his last known address: r 42(1). Where such notice is sent by registered post or recorded delivery service, it is treated as having been sent on the day it was posted: r 42(2). Where personally delivered, then it is treated as having been delivered when it is handed to the osteopath: r 42(3). For the meaning of 'the register' see PARA 524 note 1 ante.

10 Ibid r 5(a).

11 Ibid r 5(b)(i).

12 Ibid r 5(b)(ii). Subject to rr 8, 9 (see PARA 570 post), and in the absence of a request from the osteopath for a hearing, as soon as may be after the case has been referred the committee must decide whether it is desirable that there should be a hearing of the case: r 10.

13 'Legal assessor' means an assessor appointed by the Council under the Osteopaths Act 1993 s 27 (see PARA 579 post); and 'the Council' means the General Osteopathic Council or a committee performing the functions of the Council delegated to it under the Osteopaths Act 1993 Schedule para 15(2)(i): General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000, SI 2000/242, r 2. As to the General Osteopathic Council see PARA 499 ante. As to the delegation of powers by the Council see PARA 505 text to note 15 ante.

14 The committee is not required to obtain the consent of the osteopath where such consent could not be obtained owing to the osteopath's death, or mental or physical incapacity: ibid r 36(2).

15 'The complainant' means a person who has made an allegation against an osteopath that his ability to practise as an osteopath is seriously impaired by reason of his physical or mental condition as specified by the Osteopaths Act 1993 s 20(1)(d) (see PARA 545 ante): General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000, SI 2000/242, r 2.

16 Ibid r 36(1).

17 Ibid r 36(3).

18 Ibid r 37(1). When the proceedings are so suspended, the committee must send written notice of the date, time and place of any recommenced hearing to the osteopath, and such hearing may not take place before the end of the period of 28 days beginning with the day on which the notice of hearing is sent: r 37(2).

19 Ibid r 38.

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### **569. Review of information and medical examination.**

After a case<sup>1</sup> has been referred to the health committee<sup>2</sup>, the chairman<sup>3</sup>:

747 (1) must initially review the information and reports from the investigating committee<sup>4</sup> or the professional conduct committee<sup>5</sup> on behalf of the committee and determine whether further information is required<sup>6</sup>; and

748 (2) may:

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208. (a) request permission from the osteopath to obtain further reports from his medical advisers<sup>7</sup>;

209. (b) cause such further enquiries to be made in relation to the matter as he thinks fit, including obtaining a further opinion from a medical assessor<sup>8</sup> on the information or evidence which has been received<sup>9</sup>;

210. (c) invite the osteopath to agree before the end of the period of 14 days beginning with the date on which the invitation was given to submit to examination by one or more medical assessors<sup>10</sup>; and

211. (d) inform the osteopath that it is also open to him to nominate any other medical practitioner to examine him at his expense and report on his fitness to practise<sup>11</sup>.

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1 For the meaning of 'a case' see PARA 568 note 4 ante.

2 As to the health committee see PARA 515 ante. As to the consideration of allegations by the health committee see PARA 552 ante. As to the referral of cases to the health committee see PARAS 545, 566 ante.

3 For the meaning of 'the chairman' see PARA 568 note 2 ante.

4 As to the investigating committee see PARA 513 ante. As to the investigation of cases relating to health by the investigating committee see PARA 548 ante. As to the provision of information to the health committee by the investigating committee see PARA 568 text to note 8 ante.

5 As to the professional conduct committee see PARA 514 ante. As to the referral of cases to the health committee by the professional conduct committee see PARA 566 ante. As to the provision of information to the health committee by the professional conduct committee see PARA 568 text to note 8 ante.

6 General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000, SI 2000/242, r 6(a).

7 Ibid r 6(b)(i). All reports obtained under r 6(b) must be referred to the committee and supplied to the osteopath: r 7(2). 'Medical adviser' means, in relation to the osteopath, any registered medical practitioner whom the osteopath has consulted as a patient in regard to his own health and whom the osteopath elects to treat as his medical adviser for the purpose of proceedings under the Osteopaths Act 1993 s 23 (as amended) (see PARA 552 ante): General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000, SI 2000/242, r 2. For the meaning of 'registered medical practitioner' see PARA 4 ante.

8 'Medical assessor' means an assessor appointed by the Council under the Osteopaths Act 1993 s 28 (see PARA 580 post): General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000, SI 2000/242, r 2. For the meaning of 'the Council' see PARA 568 note 13 ante.

9 Ibid r 6(b)(ii). See also note 7 supra.

10 Ibid r 6(b)(iii). See also note 7 *supra*. If the osteopath agrees to submit to an examination under r 6(b)(iii), the committee must make the arrangements for examination: r 7(1).

11 Ibid r 6(b)(iv). See also note 7 *supra*.

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### **570. Action following reports of medical examination.**

Where the medical assessors<sup>1</sup> and any medical advisers<sup>2</sup> nominated by the osteopath report<sup>3</sup> unanimously that he:

- 749 (1) is not fit to practise<sup>4</sup>; or
- 750 (2) is not fit to practise except subject to conditions<sup>5</sup>; or (3) suffers from a recurring or episodic physical or mental condition which, although at the time of examination is in remission, may be expected in future to render him unfit to practise or unfit to practise except subject to conditions<sup>6</sup>,

the health committee<sup>7</sup> must consider whether it judges the ability of the osteopath to be seriously impaired by reason of his physical or mental condition, and must further consider whether it is sufficient to direct that the registration of the osteopath be conditional on his compliance with a conditions of practice order<sup>8</sup>. If the committee considers that such a conditions of practice order will be appropriate it must so inform the osteopath by letter<sup>9</sup> and:

- 751 (a) invite him to state before the end of the period of 28 days beginning with the date on which the letter was sent whether he would be prepared to comply with any recommendations in the reports as to the management of his case, including any conditions on his practice which the committee feels appropriate<sup>10</sup>;
- 752 (b) indicate that, in that event, the committee would be minded to impose a conditions of practice order and that the matter could be dealt with without the need for a hearing of the case, unless the osteopath requests a hearing<sup>11</sup>;
- 753 (c) advise the osteopath that, if he does not wish to accept the conditions of practice proposed, he has the right<sup>12</sup> to appear before the committee to argue his case, and that he is entitled to be legally represented<sup>13</sup> at such a hearing<sup>14</sup>.

If within the time limit specified in head (a) above the osteopath indicates that he is willing to accept a conditions of practice order as proposed in head (b) above, then the committee must make an order to this effect<sup>15</sup>.

1 For the meaning of 'medical assessor' see PARA 569 note 8 ante.

2 For the meaning of 'medical adviser' see PARA 569 note 7 ante.

3 As to the provision of reports see PARA 569 ante.

4 General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000, SI 2000/242, r 8(1)(a).

5 Ibid r 8(1)(b).

6 Ibid r 8(1)(c).

7 As to the health committee see PARA 515 ante. As to the consideration of allegations by the health committee see PARA 552 ante.

8 General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000, SI 2000/242, r 8(1). Rule 8(1) is stated to be without prejudice to rule 5(b): see PARA 568 ante. As to conditions of practice orders see PARA 552 ante.

9 As to the service of documents see PARA 568 note 9 ante.

10 General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000, SI 2000/242, r 8(2)(a).

11 Ibid r 8(2)(b).

12 Ie in accordance with ibid r 5: see PARA 568 ante.

13 References to legal representation in the General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000, SI 2000/242, include representation by counsel, a solicitor, an officer or member of any professional organisation of which the osteopath is a member, or a member of his family: r 40.

14 Ibid r 8(2)(c).

15 Ie in accordance with ibid rr 24, 25 (see PARAS 571 note 4, 575 post): r 9.

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### **571. Actions preparatory to the hearing.**

If the osteopath asks for a hearing<sup>1</sup> or, in the absence of such a request, the health committee<sup>2</sup> decides that there should be a hearing of the case<sup>3</sup>, the committee proceeds in accordance with the specified procedure<sup>4</sup>.

The committee sends a notice<sup>5</sup> of hearing to the osteopath which must:

- 754 (1) indicate the physical or mental condition by reason of which it is alleged that his fitness to practise is seriously impaired<sup>6</sup>;
- 755 (2) state the day, time and place at which the committee will meet to consider the matter, such hearing not to take place before the end of the period of 28 days beginning with the date on which the notice of hearing is sent<sup>7</sup>;
- 756 (3) indicate that the osteopath may be legally represented<sup>8</sup> and also be accompanied by his medical adviser<sup>9</sup>;
- 757 (4) invite the osteopath to state whether he proposes to attend the hearing<sup>10</sup>;
- 758 (5) inform the osteopath that he may call witnesses in his defence with or without notice<sup>11</sup>;
- 759 (6) invite the osteopath to supply in advance of the hearing any document or report which he may wish to place before the committee<sup>12</sup>.

The committee must send with the notice of hearing copies of any reports or information which it is proposed to present to the committee other than reports and information of which copies have already been sent to the osteopath<sup>13</sup>. The committee must also identify to the osteopath any document which it is proposed to supplement by the oral evidence of its author at the hearing and arrange for statements relating to that evidence to be sent to the osteopath before the beginning of the period of seven days ending with the date on which the hearing is to be held<sup>14</sup>. If the osteopath states that he requires a document to be supplemented by the oral evidence of its author, the document may be presented to the committee only if the author is called as a witness and is available to be questioned, provided the osteopath gives notice in writing of such a requirement before the beginning of the period of 14 days ending with the date on which the hearing is to be held<sup>15</sup>. The committee may at any stage of the proceedings at its discretion, either with the consent of the osteopath or if, after consultation with the legal assessor<sup>16</sup>, it is satisfied that it is desirable to enable it to perform its duty, receive any document a copy of which has not previously been supplied to the osteopath in accordance with these provisions and whose author has not been called as a witness<sup>17</sup>. The complainant<sup>18</sup> is not entitled to have sight of any medical reports or other confidential information concerning the medical condition of the osteopath<sup>19</sup>.

Before the hearing, the committee supplies to each member of the committee, and to the legal assessor and the medical assessor<sup>20</sup> chosen to advise the committee on the case, copies of the notice of hearing, of the information and reports sent to the osteopath, of any medical reports, and of any observations or other evidence submitted by or on behalf of the osteopath<sup>21</sup>. The chairman<sup>22</sup> arranges for one or more medical assessors to attend the hearing<sup>23</sup>. In choosing medical assessors to act in relation to a particular case, the chairman is to have regard to the nature of the physical or mental condition which is alleged to impair the osteopath's fitness to practise<sup>24</sup>. The chairman may postpone the hearing to such later date or such later meeting of

the committee<sup>25</sup> as he may determine<sup>26</sup>. In such circumstances, the committee must send to all parties to whom the notice of hearing had been sent notification of the decision to postpone, and of any subsequent date fixed for the hearing of the postponed hearing<sup>27</sup>.

- 1     le in accordance with the General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000, SI 2000/242, r 5(b)(i): see PARA 568 ante.
- 2     As to the health committee see PARA 515 ante. As to the consideration of allegations by the health committee see PARA 552 ante.
- 3     For the meaning of 'a case' see PARA 568 note 4 ante.
- 4     le the procedure laid down in the General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000, SI 2000/242, rr 12-26 (see the text and notes infra; and PARAS 572, 575, 577 post): r 11. If the committee decides that it is not desirable that there should be a hearing of the case, and the osteopath has not requested a hearing, the committee considers the case on the basis of the written material provided to it and determines it in accordance with rr 21, 22 (see PARA 575 post): rr 11, 24.
- 5     As to the service of notices see PARA 568 note 9 ante.
- 6     General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000, SI 2000/242, r 12(1)(a).
- 7     Ibid r 12(1)(b).
- 8     As to legal representation see PARA 570 note 13 ante.
- 9     General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000, SI 2000/242, r 12(1)(c). For the meaning of 'medical adviser' see PARA 569 note 7 ante.
- 10    Ibid r 12(1)(d).
- 11    Ibid r 12(1)(e).
- 12    Ibid r 12(1)(f).
- 13    Ibid r 12(2). The written evidence sent to the osteopath in accordance with r 12(2) should be admissible in documentary form without the necessity of calling witnesses to give that evidence orally: r 39(1). This provision is stated to be subject to r 17(2), (3) (see PARA 572 post). As to the provision of copies of reports obtained by the chairman of the committee see PARA 569 ante.
- 14    Ibid r 12(3).
- 15    Ibid r 12(4). For the meaning of 'writing' see PARA 20 note 22 ante.
- 16    For the meaning of 'legal assessor' see PARA 568 note 13 ante.
- 17    General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000, SI 2000/242, r 12(5).
- 18    For the meaning of 'complainant' see PARA 568 note 15 ante.
- 19    General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000, SI 2000/242, r 12(6).
- 20    For the meaning of 'medical assessor' see PARA 569 note 8 ante.
- 21    General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000, SI 2000/242, r 14.
- 22    For the meaning of 'the chairman' see PARA 568 note 2 ante.
- 23    General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000, SI 2000/242, r 15(1). Such assessors are to be chosen by the chairman from a list of those approved for this purpose by the Council; and they are to perform the duties and functions prescribed for them from time to time in rules made



by the Council: r 15(2). As to such rules see PARA 580 post. For the meaning of 'the Council' see PARA 568 note 13 ante.

24 Ibid r 15(3).

25 As to meetings of the committee see PARA 568 text to notes 1-3 ante.

26 General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000, SI 2000/242, r 13(1).

27 Ibid r 13(2).

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## **572. The hearing.**

The health committee<sup>1</sup> sits in private unless the committee considers that it is appropriate to hold the hearing or any part of it in public<sup>2</sup>. The osteopath is entitled to be present while his case is considered and may also be legally represented<sup>3</sup> and may be accompanied by his medical adviser<sup>4</sup>. The committee must determine: (1) whether the osteopath has failed to reply within 28 days to a notice sent to him<sup>5</sup>; (2) whether the osteopath has failed to submit to medical examination<sup>6</sup>. When the osteopath is neither present nor represented, the committee must determine whether or not the notice of hearing has been served on him<sup>7</sup>. If the committee is satisfied that the notice has been so served, the hearing may proceed if the committee thinks fit<sup>8</sup>. If, however, the committee is not satisfied that the notice has been so served, it may, if in its opinion all reasonable steps have been taken to serve the notice, proceed with the hearing<sup>9</sup> or, if it is of the opinion that further steps should be taken to serve the notice, adjourn the hearing to a later date to allow this to happen<sup>10</sup>.

If the committee has decided to proceed with the hearing, the chairman<sup>11</sup> invites the solicitor<sup>12</sup> to open the case and to present the evidence by reason of which it is alleged that the osteopath's fitness to practise is seriously impaired<sup>13</sup>. If in any case before the opening of the hearing the solicitor or the osteopath has indicated that he requires that all or part of the information or reports be supported by oral evidence<sup>14</sup>, then the persons on whose testimony or opinions such information or reports depend are to be called as witnesses<sup>15</sup>. Such witnesses are examined by the solicitor, may be cross-examined by the osteopath or his representative, and may be questioned by the committee, by any medical assessor<sup>16</sup> and by the legal assessor<sup>17</sup>. At the conclusion of any such oral evidence, the chairman invites the osteopath or his representative to address the committee and to adduce evidence as to the osteopath's fitness to practise<sup>18</sup>. Any witness called on behalf of the osteopath is examined by the osteopath or his representative, may be cross-examined by the solicitor and may be questioned by the committee, by any medical assessor and by the legal assessor<sup>19</sup>. When any evidence has been called on behalf of the osteopath, including any evidence given by the osteopath, the chairman invites the solicitor to address the committee<sup>20</sup>. The osteopath or his representative may then address the committee for a second time<sup>21</sup>.

If the osteopath or his representative indicates at the hearing, not having given prior notice, that he wishes any document presented to the committee to be supplemented by oral evidence from its author, the committee is to consult the legal assessor as to whether in the interests of justice the hearing should be adjourned in order to permit the evidence to be given or whether the hearing should proceed on the basis of the documents before the committee<sup>22</sup>. When a written statement has been presented to the committee<sup>23</sup> without its author being available and the committee is of the opinion that it should be supplemented by oral evidence, the hearing may be adjourned to allow the author to be called as a witness; and, on subsequently resuming the hearing, the committee may disregard the document unless the author gives oral evidence<sup>24</sup>.

At the conclusion of the proceedings described above<sup>25</sup>, the committee may formally adjourn the case for a period of not less than 28 days in order to obtain further medical reports or other information as to the physical or mental condition of the osteopath, or in relation to his fitness to practise, or with a view to resuming consideration of the osteopath's fitness to practise at a later date<sup>26</sup>.

1 As to the health committee see PARA 515 ante. As to the consideration of allegations by the health committee see PARA 552 ante.

2 General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000, SI 2000/242, r 16(1).

3 As to legal representation see PARA 570 note 13 ante.

4 General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000, SI 2000/242, r 16(2). For the meaning of 'medical adviser' see PARA 569 note 7 ante.

5 Ibid r 16(3)(a).

6 Ibid r 16(3)(b). As to medical examinations see PARA 569 ante.

7 Ie served in accordance with ibid r 42 (see PARA 568 note 9 ante): r 16(4).

8 Ibid r 16(5).

9 Ibid r 16(5)(a).

10 Ibid r 16(5)(b).

11 For the meaning of 'the chairman' see PARA 568 note 2 ante.

12 'The solicitor', means any solicitor representing the Council and presenting evidence to the committee of the allegation against an osteopath, and includes counsel instructed by the solicitor to represent the Council in connection with any such case: General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000, SI 2000/242, r 2. For the meaning of 'the Council' see PARA 568 note 13 ante.

13 Ibid r 17(1).

14 As to the restriction on the presentation of any document to the committee where the osteopath has indicated that he requires the author to attend to give evidence see PARA 571 text to note 15 ante.

15 General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000, SI 2000/242, r 17(2).

16 For the meaning of 'medical assessor' see PARA 569 note 8 ante.

17 General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000, SI 2000/242, r 17(3). For the meaning of 'legal assessor' see PARA 568 note 13 ante.

18 Ibid r 18(1).

19 Ibid r 18(2).

20 Ibid r 18(3).

21 Ibid r 18(4).

22 Ibid r 19(1). Except with the agreement of the osteopath, no hearing is to be recommenced under r 19 on a date which occurs before the end of the period of 28 days beginning with the date on which notice of resumption is given to the osteopath: r 19(3).

23 Ie under the provisions of ibid r 12: see PARA 571 ante.

24 Ibid r 19(2). See also note 22 supra.

25 Ie the proceedings under ibid rr 16-19.

26 Ibid r 20. In such cases, the provisions of Schedule Pt IV (rr 29-35) (see PARA 578 post) apply to the resumed hearing: r 20.

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### **573. Evidence.**

At any hearing<sup>1</sup> the health committee<sup>2</sup> may, at its discretion, receive oral or documentary or other evidence of any fact or matter which appears to it relevant to the inquiry into the case before it, provided that, where any fact or matter is tendered as evidence which would not be admissible as such if the proceedings were criminal proceedings<sup>3</sup> in the United Kingdom<sup>4</sup>, the committee must not receive it unless after consultation with the legal assessor<sup>5</sup> it is satisfied that its reception is necessary to enable it to perform its duty and that the interests of justice will not thereby be prejudiced<sup>6</sup>. The committee has the power to administer oaths and all evidence given orally is to be given on oath or to be affirmed<sup>7</sup>. The committee may by summons require any person to attend at a time and place stated in the summons to give evidence, or to produce any documents in his custody or under his control which relate to any matter in issue before the committee<sup>8</sup>. All parties to the proceedings may seek a summons of the committee requiring persons to attend and give evidence or to produce documents before the committee<sup>9</sup>.

1 As to hearings see PARA 572 ante.

2 As to the health committee see PARA 515 ante.

3 As to the admissibility of evidence in criminal proceedings see CIVIL PROCEDURE vol 11 (2009) PARA 758 et seq; CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1359 et seq.

4 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

5 For the meaning of 'legal assessor' see PARA 568 note 13 ante.

6 General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000, SI 2000/242, r 39(2). This provision is stated to be subject to r 39(1) (see PARA 571 note 13 ante).

7 Ibid r 39(3). As to the oaths and affirmations see CIVIL PROCEDURE vol 11 (2009) PARA 1021 et seq.

8 Ibid r 39(4). The committee must pay the necessary expenses of attendance: r 39(4). Any person summoned to attend must be informed of the offence under the Osteopaths Act 1993 s 32(2) (see PARA 555 note 16 ante) which may be committed in the event of non-compliance: General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000, SI 2000/242, r 39(5).

9 Ibid r 39(6).

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#### **574. Referral to the professional conduct committee.**

Where it appears to the health committee<sup>1</sup> that the allegation which it is considering would be better dealt with by the professional conduct committee<sup>2</sup>, the committee may refer the allegation to the professional conduct committee for consideration<sup>3</sup>. If, following such a referral, the professional conduct committee subsequently notifies the health committee that it does not propose to consider the allegation, the health committee resumes its consideration of the allegation and concludes it<sup>4</sup>. If, following such a referral, the professional conduct committee certifies to the health committee that it has dealt with the allegation, the health committee ceases to exercise its functions in relation to it<sup>5</sup>.

1 As to the health committee see PARA 515 ante.

2 As to the professional conduct committee see PARA 514 ante.

3 General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000, SI 2000/242, r 41(1). As to the consideration of allegations by the professional conduct committee see PARA 550 ante. As to the procedure before that committee see PARA 556 et seq ante.

4 Ibid r 41(2).

5 Ibid r 41(3).

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### **575. Determination of the committee.**

If the health committee<sup>1</sup> decides not to adjourn the case<sup>2</sup>, it must consider and determine whether or not it judges the ability of the osteopath to practise to be seriously impaired because of his physical or mental condition<sup>3</sup>. In reaching its judgement, the committee is entitled to take account of the osteopath's current physical or mental condition, or a continuing and episodic condition, or a condition which, although currently in remission, may be expected to cause recurrence of a serious impairment<sup>4</sup>. Where the osteopath has refused or failed to submit to medical examination after an invitation by the committee<sup>5</sup>, the committee is entitled to find that the osteopath's ability to practise is seriously impaired on the basis of the information before it and the osteopath's refusal or failure to submit to medical examination<sup>6</sup>. If the osteopath's ability to practise is judged to be seriously impaired, the committee then considers and determines whether it is sufficient to direct that the registration of the osteopath should be conditional on his compliance, during such period not exceeding three years as the committee may specify, with such conditions as the committee may think it necessary to impose for the protection of members of the public<sup>7</sup>. If the committee so determines, it then considers and decides what conditions are to be imposed; and the committee may impose more than one condition if that is considered necessary<sup>8</sup>. If the committee decides that it is not sufficient to impose conditions on an osteopath's registration, it must direct that the osteopath's registration be suspended for a period determined by the committee but not exceeding three years<sup>9</sup>.

The chairman<sup>10</sup> announces the decision of the committee and its reasons for reaching that decision in such terms as the committee may approve; and, if appropriate, the committee will make a conditions of practice order or a suspension order, which must not take effect before the end of the period of 28 days beginning with the date on which the osteopath is notified<sup>11</sup> of the Committee's decision, unless immediate suspension is imposed<sup>12</sup>. The committee must notify the osteopath and the complainant<sup>13</sup> in writing of its determination and the reasons for the decision, and also notify the osteopath of his right of appeal<sup>14</sup>.

If, in any case referred to it by the professional conduct committee<sup>15</sup>, the health committee judges that the ability to practise of the osteopath is not seriously impaired because of his physical or mental condition, it must remit that case to the professional conduct committee and notify the osteopath<sup>16</sup>.

<sup>1</sup> As to the health committee see PARA 515 ante. As to the consideration of allegations by the health committee see PARA 552 ante.

<sup>2</sup> I.e. under General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000, SI 2000/242, r 20: see PARA 572 ante. For the meaning of 'a case' see PARA 568 note 4 ante.

<sup>3</sup> Ibid r 21(1).

<sup>4</sup> Ibid r 21(2).

<sup>5</sup> As to such medical examinations see PARA 569 ante.

<sup>6</sup> General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000, SI 2000/242, r 21(3).

7 Ibid r 21(4). As to conditions of practice orders see PARA 552 ante. As to the registration of osteopaths see PARA 520 et seq.

8 Ibid r 21(5).

9 Ie a suspension order as defined by the Osteopaths Act 1993 s 23(2)(b) (see PARA 552 ante): General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000, SI 2000/242, r 22.

10 For the meaning of 'the chairman' see PARA 568 note 2 ante.

11 As to the service of notices see PARA 568 note 9 ante.

12 Ie under the General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000, SI 2000/242, r 26(1) (see PARA 577 post): r 23.

13 For the meaning of 'complainant' see PARA 568 note 15 ante.

14 Ie his right of appeal under the Osteopaths Act 1993 s 30 (see PARA 584 post): General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000, SI 2000/242, r 25. For the meaning of 'writing' see PARA 20 note 22 ante.

15 As to the professional conduct committee see PARA 514 ante. As to the referral of cases to the health committee by the professional conduct committee see PARA 566 ante.

16 General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000, SI 2000/242, r 28.

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**576. Notes and transcripts of hearings.**

A shorthand writer or recording system must be available at the hearing<sup>1</sup> to permit a verbatim record of the proceedings to be made<sup>2</sup>. Any party to the proceedings of the health committee<sup>3</sup> may, on application to the registrar<sup>4</sup> before the end of the period of three months beginning on the last day of the hearing in question, be furnished with a transcript of all or any part of the proceedings at which the party was entitled to be present, whether he was present or not<sup>5</sup>.

1 As to the hearing see PARA 572 ante.

2 General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000, SI 2000/242, r 43(1).

3 As to the health committee see PARA 515 ante.

4 As to the registrar see PARA 519 ante.

5 General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000, SI 2000/242, r 43(2).



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### **577. Interim suspension orders.**

Where a case has been referred to the health committee<sup>1</sup> and the committee has not reached a decision on the matter<sup>2</sup> or the committee has decided to impose a suspension order<sup>3</sup>, then the committee may, if it is satisfied that it is necessary to do so in order to protect members of the public, order the registrar<sup>4</sup> to suspend the registration of the osteopath concerned<sup>5</sup>. Such an order is known as 'an interim suspension order'<sup>6</sup>. Where the committee considers that an interim suspension order may be appropriate, it fixes a date, time and place for deciding that question, having regard to the urgency and all the circumstances of the case, and notifies the osteopath of the date, time and place so fixed<sup>7</sup>. The committee further notifies<sup>8</sup> the osteopath of his right to appear before the committee and to be legally represented<sup>9</sup>.

If the committee decides to proceed with the hearing<sup>10</sup>, the solicitor<sup>11</sup> is invited to present the case to the committee and call such evidence as he wishes to justify an interim suspension order<sup>12</sup>. The osteopath has the right to cross-examine any witness called by the solicitor, who may in turn re-examine such witness<sup>13</sup>. The osteopath may then present his own case against the making of such an order by calling such evidence as he wishes<sup>14</sup>, and the solicitor has the right to cross-examine any such witness on behalf of the Council<sup>15</sup> and the osteopath may in turn re-examine any such witness<sup>16</sup>. The solicitor and the osteopath may then address the committee<sup>17</sup>. Save as described above, the procedure of the committee in deciding whether to impose an interim suspension order is as it may determine<sup>18</sup>.

The committee decides in private whether to impose an interim suspension order; and the decision of the committee is given at the conclusion of the hearing, and confirmed in writing to the osteopath, who is also informed of his right to appeal against the decision where the committee has decided to impose an order<sup>19</sup>.

The committee may on the written application of the osteopath revoke an interim suspension order on specified grounds<sup>20</sup>.

1 As to the health committee see PARA 515 ante. As to the referral of cases to the health committee by the investigating committee see PARA 545 ante; and as to the referral of cases to the health committee by the professional conduct committee see PARA 566 ante.

2 General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000, SI 2000/242, r 26(1)(a). As to the consideration of matters by the health committee see PARA 568 et seq ante.

3 I.e. a suspension order under *ibid* r 22 (see PARA 575 ante): r 26(1)(b).

4 As to the registrar see PARA 519 ante.

5 I.e. in accordance with the Osteopaths Act 1993 s 24 (see PARA 553 ante): General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000, SI 2000/242, r 26(1). As to the registrar's obligations in relation to the suspension of registration see PARA 530 ante.

6 *Ibid* r 26(1).

7 *Ibid* r 26(2). The committee may postpone such a hearing or adjourn proceedings as it thinks fit, either on its own motion or on the request of the osteopath: r 26(4). A medical assessor may be appointed by the chairman to be present at any such hearing: r 26(5). For the meaning of 'medical assessor' see PARA 569 note 8 ante. For the meaning of 'chairman' see PARA 568 note 2 ante.

8 As to the service of notices see PARA 568 note 9 ante.

9 General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000, SI 2000/242, r 26(3). As to legal representation see PARA 570 note 13 ante.

10 Where the osteopath does not appear and is not represented, the provisions of *ibid* r 16(4), (5) (see PARA 572 ante) apply: r 26(6).

11 For the meaning of 'the solicitor' see PARA 572 note 12 ante.

12 General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000, SI 2000/242, r 26(6)(a). As to evidence generally see PARA 573 ante.

13 *Ibid* r 26(6)(b). Members of the committee, the legal adviser, and the medical assessor may, with the consent of the chairman, question a person giving evidence at the hearing: r 26(6)(f).

14 *Ibid* r 26(6)(c). See also note 13 *supra*.

15 For the meaning of 'the Council' see PARA 568 note 13 ante.

16 General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000, SI 2000/242, r 26(6)(d).

17 *Ibid* r 26(6)(e).

18 *Ibid* r 26(7).

19 *Ie* his right to appeal in accordance with the Osteopaths Act 1993 s 24 (see PARA 553 ante): General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000, SI 2000/242, r 26(8). For the meaning of 'writing' see PARA 20 note 22 ante.

20 *Ie* the grounds stated in the Osteopaths Act 1993 s 25 (see PARA 554 ante): General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000, SI 2000/242, r 27(1). When such an application is made, it is heard by the committee at the first available opportunity; and the committee follows the same procedure as set out in r 26(3)-(8) (see the text to notes 7-19 *supra*) save that the osteopath is first invited to present his application and his witnesses and the solicitor then has the right to cross-examine witnesses and to present his own case thereafter: r 27(2).

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### **578. Resumed and review hearings.**

Where the health committee<sup>1</sup> has decided to adjourn the proceedings<sup>2</sup>, it must, when announcing such a decision, state that it will resume consideration of the case at a further meeting on a specified date<sup>3</sup>. The committee may also at the same time indicate the need for further medical examinations and reports<sup>4</sup>, including reports from medical practitioners involved in the treatment or supervision of the osteopath following the adjournment, and any other relevant information as to the osteopath's fitness to practise<sup>5</sup>. The committee may also invite the osteopath to submit to examination by any medical assessor<sup>6</sup> chosen by or on behalf of the committee<sup>7</sup>. The committee may, at its discretion and subject to the osteopath's right to an oral hearing in any event<sup>8</sup>, decide to consider only written testimony at a resumed hearing, or oral testimony (in which case the procedures for conducting the original hearing will be followed)<sup>9</sup>.

The committee may review a conditions of practice or suspension order<sup>10</sup> at any time at its own discretion, and must do so<sup>11</sup>: (1) before the beginning of the period of three months ending on the date on which a condition in a conditions of practice order or suspension order is to cease to have effect<sup>12</sup>; (2) on the written application of the osteopath, save that where an osteopath has made a previous application which has been refused the committee may not entertain a further such application unless it is made after the end of the period of 12 months beginning with the date on which the previous application was received by the committee<sup>13</sup>. Before exercising its powers to review an order<sup>14</sup>, the committee may invite the osteopath to submit to medical examination<sup>15</sup>.

Where the committee has adjourned a case or proposes to review a conditions of practice order or a suspension order, the committee sends to the osteopath a notice<sup>16</sup> which must:

- 760 (a) specify the date, time and place at which the proceedings are to be resumed or the review is to be held, and invite him to appear<sup>17</sup>;
- 761 (b) in any case where the committee has exercised its powers of review<sup>18</sup>, state the circumstance under which it has exercised those powers<sup>19</sup>;
- 762 (c) if the committee has so directed, invite the osteopath to submit to examination by the medical assessors chosen by the committee and, if the osteopath so elects, by another medical practitioner of his own choosing and at his expense<sup>20</sup>;
- 763 (d) if the committee has so directed, invite the osteopath to furnish the names and addresses of medical practitioners or other persons to whom the committee will be able to apply for information as to their knowledge of his fitness to practise since the time of the original hearing<sup>21</sup>;
- 764 (e) indicate that the osteopath may be legally represented<sup>22</sup>, and may also be accompanied by his medical adviser<sup>23</sup>;
- 765 (f) invite the osteopath to state whether he proposes to attend the resumed or review hearing<sup>24</sup>;
- 766 (g) inform the osteopath that he may call witnesses in his defence with or without notice<sup>25</sup>;
- 767 (h) invite the osteopath in advance of the resumed or review hearing to supply any document or report which he may wish to place before the committee<sup>26</sup>.

An osteopath may elect to give oral evidence, to call witnesses and to be legally represented at a resumed or review hearing; and the proceedings are then conducted according to the procedure prescribed for the consideration of oral evidence at the earlier hearing<sup>27</sup>.

Subject to the provisions of the Osteopaths Act 1993, the validity of any resumed or review proceedings may not be called into question by reason only that members of the committee who were present at any earlier hearing were not present at the resumed hearing, or that members present at the resumed hearing were not present at any earlier hearing<sup>28</sup>.

1 As to the health committee see PARA 515 ante.

2 Ie under the General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000, SI 2000/242, r 20: see PARA 572 ante.

3 Ibid r 29(1). If, in any case where the committee has adjourned a case under r 20 (see PARA 572 ante), it appears to the committee that it should resume consideration of the case at an earlier meeting or date than that specified under r 29(1), the committee may notify the osteopath that the committee will resume consideration of the case at such earlier meeting or date as the chairman determines and must further specify the date, time and place of such resumed hearing: r 29(5).

4 As to the power to require medical reports in relation to the original hearing see PARA 569 ante.

5 General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000, SI 2000/242, r 29(2).

6 For the meaning of 'medical assessor' see PARA 569 note 8 ante.

7 General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000, SI 2000/242, r 29(3). In choosing medical assessors to assist the committee at any resumed or review hearing, the chairman is to have regard to any opinion previously expressed by the committee as to the nature of the matters on which medical advice would be useful: r 32. For the meaning of 'chairman' see PARA 568 note 2 ante.

8 Ie under ibid r 33(1): see the text to note 27 infra.

9 Ibid r 29(4). As to the procedure for the original hearing see PARAS 572-573 ante.

10 As to conditions of practice orders and suspension orders see PARA 552 ante. As to the procedure for the imposition of such orders see PARA 575 ante.

11 General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000, SI 2000/242, r 30(1). Where in any case the committee has imposed a conditions of practice order and it appears from information subsequently received that the osteopath is in a material respect not complying with a condition in that order, the committee may exercise its powers under r 30(1): r 30(2).

12 Ibid r 30(1)(a).

13 Ibid r 30(1)(b). An application under r 30(1)(b) must be made in writing to the registrar: r 34. As to the registrar see PARA 519 ante. For the meaning of 'writing' see PARA 20 note 22 ante.

14 Ie under ibid r 30(1) or (2): see the text and note 11 supra.

15 Ibid r 30(3). See also note 7 supra.

16 Except with the agreement of the osteopath, the proceedings may not be resumed or the review held before the end of the period of 28 days beginning with the day on which the notice of the resumed or review hearing is sent: ibid r 31(2). As to the service of notices see PARA 568 note 9 ante.

17 Ibid r 31(1)(a).

18 Ie its powers under ibid r 30(1), (2): see the text and note 11 supra.

19 Ibid r 31(1)(b).

20 Ibid r 31(1)(c). See also note 7 supra.

21 Ibid r 31(1)(d).

22 As to legal representation see PARA 570 note 13 ante.

23 General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000, SI 2000/242, r 31(1)(e). For the meaning of 'medical adviser' see PARA 569 note 7 ante.

24 Ibid r 31(1)(f).

25 Ibid r 31(1)(g).

26 Ibid r 31(1)(h).

27 Ibid r 33(1). As to the prescribed procedure see PARA 572 ante. The committee determines a case at a resumed or review hearing in accordance with rr 21-25 (see PARA 575 ante): r 33(2).

28 Ibid r 35.

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## **(iv) Assessors**

### **579. Legal assessors.**

The General Council<sup>1</sup> must appoint persons to be legal assessors<sup>2</sup>. They have the general function of giving advice to:

- 768 (1) any person appointed<sup>3</sup> to give preliminary consideration to allegations made against a registered osteopath<sup>4</sup> in respect of his professional conduct or fitness to practise<sup>5</sup>;
- 769 (2) the investigating committee<sup>6</sup>;
- 770 (3) the professional conduct committee<sup>7</sup>;
- 771 (4) the health committee<sup>8</sup>; or
- 772 (5) the registrar<sup>9</sup>,

on questions of law arising in connection with any matter which he or, as the case may be, the committee is considering<sup>10</sup>. Legal assessors also have such other functions as may be conferred on them by rules<sup>11</sup> made by the General Council<sup>12</sup>.

A legal assessor has the following additional functions: (a) to give advice to the General Council on questions of law arising in connection with any matter which the General Council is considering<sup>13</sup>; (b) to be present at such meetings of the investigating committee, the professional conduct committee, or the health committee as the committee in question may request, at which an allegation against a registered osteopath is being considered, and to advise on any questions of law arising which may be referred to the assessor by that committee<sup>14</sup>; (c) to inform the General Council or the committee concerned forthwith of any irregularity in the General Council's or the committee's consideration of any complaint or in the conduct of any proceedings before the General Council or that committee which may come to his knowledge, and to advise it of his own motion where it appears to him that, but for such advice, there is a possibility of a mistake of law being made<sup>15</sup>; (d) to be present at such meetings of the General Council as the General Council may require, at which an appeal against a decision of the registrar<sup>16</sup> is being considered, to advise on any question of law arising which may be referred to the assessor by the General Council, and to question any witness giving evidence at an oral hearing of such an appeal<sup>17</sup>.

The General Council may pay such fees, allowances and expenses to persons appointed as legal assessors as it may determine<sup>18</sup>. In the case of a legal assessor who is also a member of the General Council<sup>19</sup> or of any of its committees<sup>20</sup>, any such payment made to him in his capacity as a legal assessor is in addition to any to which he is entitled as such a member<sup>21</sup>.

1 For the meaning of 'the General Council' see PARA 499 note 1 ante.

2 Osteopaths Act 1993 s 27(1). To be qualified for appointment as a legal assessor, a person must: (1) have a ten year general qualification within the meaning of the Courts and Legal Services Act 1990 s 71 (see LEGAL PROFESSIONS vol 65 (2008) PARA 742) (Osteopaths Act 1993 s 27(4)(a)); (2) be an advocate or solicitor in Scotland of at least ten years' standing (s 27(4)(b)); or (3) be a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least ten years' standing (s 27(4)(c)).

3    le persons appointed in accordance with rules made under *ibid* s 20(4): see PARA 545 ante. As to such rules see PARA 546 ante.

4    For the meaning of 'registered osteopath' see PARA 503 note 4 ante.

5    Osteopaths Act 1993 s 27(2)(a).

6    *Ibid* s 27(2)(b). As to the investigating committee see PARA 513 ante. As to the investigation of allegations by the investigating committee see PARA 545 et seq ante.

7    *Ibid* s 27(2)(c) (s 27(2)(c) amended, and s 27(2)(e) added, by the Chiropractors Act 1994 s 42, Sch 2 para 6). As to the professional conduct committee see PARA 514 ante. As to the investigation of allegations by the professional conduct committee see PARA 550 et seq ante.

8    Osteopaths Act 1993 s 27(2)(d). As to the health committee see PARA 515 ante. As to the investigation of allegations by the health committee see PARA 552 et seq ante.

9    *Ibid* s 27(2)(e) (as added: see note 7 supra). As to the registrar see PARA 519 ante.

10   *Ibid* s 27(2).

11   As to the making of rules see PARA 506 ante; and as to the effect of competition orders on rules see PARA 518 ante.

12   Osteopaths Act 1993 s 27(3). As to the rules that have been made see the General Osteopathic Council (Legal Assessors) Rules 1999, approved by the General Osteopathic Council (Legal Assessors) Rules Order of Council 1999, SI 1999/1848; and the text to notes 13-17 infra.

13   *Ibid* r 3(a).

14   *Ibid* r 3(b).

15   *Ibid* r 3(c).

16   le an appeal under the Osteopaths Act 1993 s 29: see PARA 581 post.

17   General Osteopathic Council (Legal Assessors) Rules Order of Council 1999, SI 1999/1848, r 3(d). As to the procedure for appeals under the Osteopaths Act 1993 s 29 see PARA 582 post.

18   *Ibid* s 27(5).

19   As to the membership of General Council see PARA 500 et seq ante.

20   As to the membership of the committees see PARAS 509-515 ante.

21   Osteopaths Act 1993 s 27(6). As to the power of the General Council to make payments to its members and the members of its committees see PARA 505 ante.

## **UPDATE**

### **579 Legal assessors**

NOTE 2--Osteopaths Act 1993 s 27(4)(c) amended: Constitutional Reform Act 2005 Sch 11 para 5 (in force 1 October 2009: SI 2009/1604).

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Medical assessors.

## **580. Medical assessors.**

The General Council<sup>1</sup> may appoint registered medical practitioners<sup>2</sup> to be medical assessors<sup>3</sup>. Medical assessors have the general function of giving advice to:

- 773 (1) any person appointed<sup>4</sup> to give preliminary consideration to allegations made against a registered osteopath<sup>5</sup> in respect of his professional conduct or fitness to practise<sup>6</sup>;
- 774 (2) the investigating committee<sup>7</sup>;
- 775 (3) the professional conduct committee<sup>8</sup>;
- 776 (4) the health committee<sup>9</sup>; or
- 777 (5) the registrar<sup>10</sup>,

on matters within their professional competence arising in connection with any matter which he or, as the case may be, the committee is considering<sup>11</sup>. Medical assessors also have such other functions as may be conferred on them by rules<sup>12</sup> made by the General Council<sup>13</sup>.

A medical assessor has the following additional functions: (a) to give advice to the General Council on matters within his professional competence arising in connection with any matter which the General Council is considering<sup>14</sup>; (b) at the request of the committee<sup>15</sup>, to examine a registered osteopath against whom an allegation has been made and to report on his fitness to practise with or without conditions<sup>16</sup>; (c) to be present at such meetings of the committee as the committee may request, at which an allegation concerning an osteopath's physical or mental condition is being considered, and to advise the committee on the medical significance of the evidence before the committee<sup>17</sup>; (d) to be present at such meetings of the General Council as the General Council may request, at which an appeal against a decision of the registrar<sup>18</sup> is being considered and which involve consideration of the physical or mental condition of an appellant, to advise the General Council and committee on the medical significance of the evidence before the General Council and committee, and to question any witness giving evidence<sup>19</sup>; (e) to inform the General Council or the committee if it appears to him that, but for such advice, there is a possibility of a mistake being made in judging the medical significance of such evidence, or the absence of evidence, on any particular matter relevant to the matter before the General Council or that committee, whether relating to the fitness to practise of the osteopath or such other question as the General Council or that committee or the chairman of either may think relevant<sup>20</sup>.

The General Council may pay such fees, allowances and expenses to persons appointed as medical assessors as it may determine<sup>21</sup>. In the case of a medical assessor who is also a member of the General Council<sup>22</sup> or of any of its committees<sup>23</sup>, any such payment made to him in his capacity as a medical assessor is in addition to any to which he is entitled as such a member<sup>24</sup>.

1 For the meaning of 'the General Council' see PARA 499 note 1 ante.

2 For the meaning of 'registered medical practitioner' see PARA 4 ante.

3 Osteopaths Act 1993 s 28(1).



- 4    le persons appointed in accordance with rules made under *ibid* s 20(4): see PARA 545 ante. As to the appointment and duties of such persons see PARA 546 ante.
- 5    For the meaning of 'registered osteopath' see PARA 503 note 4 ante.
- 6    Osteopaths Act 1993 s 28(2)(a).
- 7    *Ibid* s 28(2)(b). As to the investigating committee see PARA 513 ante. As to the investigation of allegations by the investigating committee see PARA 545 et seq ante.
- 8    *Ibid* s 28(2)(c) (s 28(2)(c) amended, and s 28(2)(e) added, by the Chiropractors Act 1994 s 42, Sch 2 para 6). As to the professional conduct committee see PARA 514 ante. As to the investigation of allegations by the professional conduct committee see PARA 550 et seq ante.
- 9    Osteopaths Act 1993 s 28(2)(d). As to the health committee see PARA 515 ante. As to the investigation of allegations by the health committee see PARA 552 et seq ante.
- 10   *Ibid* s 28(2)(e) (as added: see note 8 supra). As to the registrar see PARA 519 ante.
- 11   *Ibid* s 28(2).
- 12   As to the making of rules see PARA 506 ante; and as to the effect of competition orders on rules see PARA 518 ante.
- 13   Osteopaths Act 1993 s 28(3). As to the rules that have been made see the General Osteopathic Council (Medical Assessors) Rules 1999, approved by the General Osteopathic Council (Medical Assessors) Rules Order of Council 1999, SI 1999/1879; and notes 14-20 *infra*.
- 14   General Osteopathic Council (Medical Assessors) Rules Order of Council 1999, SI 1999/1879, r 3(a).
- 15   'The committee' means the investigating committee, the professional conduct committee, or the health committee, as the case may be: *ibid* r 2.
- 16   *Ibid* r 3(b).
- 17   *Ibid* r 3(c).
- 18   le an appeal under the Osteopaths Act 1993 s 29: see PARA 581 post.
- 19   General Osteopathic Council (Medical Assessors) Rules Order of Council 1999, SI 1999/1879, r 3(d). As to the procedure for appeals under the Osteopaths Act 1993 s 29 see PARA 582 post.
- 20   General Osteopathic Council (Medical Assessors) Rules Order of Council 1999, SI 1999/1879, r 3(e).
- 21   Osteopaths Act 1993 s 28(4).
- 22   As to the membership of General Council see PARA 500 et seq ante.
- 23   As to the membership of the committees see PARAS 509-515 ante.
- 24   Osteopaths Act 1993 s 28(5). As to the power of the General Council to make payments to its members and the members of its committees see PARA 505 ante.

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## **(v) Appeals**

### **581. Appeals against decisions of the registrar.**

Where the registrar<sup>1</sup>: (1) refuses to register an applicant for registration under the Osteopaths Act 1993<sup>2</sup>; (2) registers such an applicant with provisional or conditional registration<sup>3</sup>; (3) refuses to renew any registration<sup>4</sup>; (4) removes the name of a registered osteopath<sup>5</sup> from the register<sup>6</sup> on the ground that he has breached one or more of the conditions subject to which his registration had effect, otherwise than under an order of the professional conduct committee<sup>7</sup>; or (5) refuses to grant an application for the conversion of a conditional, or provisional, registration into full registration<sup>8</sup>, then the person aggrieved may appeal to the General Council<sup>9</sup>. Any such appeal is subject to such rules as the General Council may make for the purpose of regulating those appeals<sup>10</sup>. An appeal to the General Council must be made before the end of the period of 28 days beginning with the date on which notice of the registrar's decision is sent to the person concerned<sup>11</sup>.

A person aggrieved by the decision of the General Council on such an appeal may appeal to a county court<sup>12</sup>. On an appeal to the county court, the court may:

- 778 (a) dismiss the appeal<sup>13</sup>;
- 779 (b) allow the appeal and quash the decision appealed against<sup>14</sup>;
- 780 (c) substitute for the decision appealed against any other decision which could have been made by the registrar<sup>15</sup>; or
- 781 (d) remit the case to the General Council to dispose of the case in accordance with the directions of the court<sup>16</sup>,

and may make such order as to costs as it thinks fit<sup>17</sup>.

1 As to the registrar see PARA 519 ante.

2 Osteopaths Act 1993 s 29(1)(a). As to applications for registration, and registration generally, see PARA 520 et seq ante.

3 Ibid s 29(1)(b). As to provisional and conditional registration see PARAS 522-523 ante.

4 Ibid s 29(1)(c).

5 For the meaning of 'registered osteopath' see PARA 503 note 4 ante.

6 For the meaning of 'the register' see PARA 524 note 1 ante.

7 Osteopaths Act 1993 s 29(1)(d). As to the professional conduct committee see PARA 514 ante. As to the making of conditions of practice orders by the professional conduct committee see PARA 550 ante.

8 Ibid s 29(1)(e). As to the conversion of conditional registration and provisional registration to full registration see PARAS 522-523 ante.

9 Ibid s 29(1). For the meaning of 'the General Council' see PARA 499 note 1 ante.

10 Ibid s 29(2). As to the rules that have been made see the General Osteopathic Council (Fraud or Error and Appeals) Rules 1999, approved by the General Osteopathic Council (Fraud or Error and Appeals) Rules Order of

Council 1999, SI 1999/1846; and PARAS 582-583 post. As to the making of rules see PARA 506 ante; and as to the effect of competition orders on rules see PARA 518 ante.

11 Osteopaths Act 1993 s 29(3).

12 Ibid s 29(4) (s 29(4) substituted, and s 29(4A) added, by the National Health Service Reform and Health Care Professions Act 2002 s 33(1), (5)). As to county courts see COURTS.

13 Osteopaths Act 1993 s 29(4A)(a) (as added: see note 12 supra).

14 Ibid s 29(4A)(b) (as added: see note 12 supra).

15 Ibid s 29(4A)(c) (as added: see note 12 supra).

16 Ibid s 29(4A)(d) (as added: see note 12 supra).

17 Ibid s 29(4A) (as added: see note 12 supra). As to costs generally see CIVIL PROCEDURE vol 12 (2009) PARA 1729 et seq.

## **UPDATE**

### **581 Appeals against decisions of the registrar**

TEXT AND NOTES--As to appeals against the General Osteopathic Council, see the Osteopaths Act 1993 s 29A (added by SI 2007/3101).

NOTE 8--Add head (6) refuses to register a person with temporary registration: Osteopaths Act 1993 s 29(1)(ba) (added by SI 2007/3101).

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OSTEOPATHS/(4) PROFESSIONAL CONDUCT AND FITNESS TO PRACTISE/(v) Appeals/582.  
Procedure for appeals against decisions of the registrar.

## **582. Procedure for appeals against decisions of the registrar.**

Where the registrar<sup>1</sup> has made a relevant decision<sup>2</sup>, he must, before the end of the period of seven days beginning with the date on which the decision was made, send to the person in respect of whom the decision was made notice in writing<sup>3</sup> of the decision<sup>4</sup>, and inform him that he may appeal to the General Council<sup>5</sup>, and be legally represented<sup>6</sup>. A notice of appeal must be in writing<sup>7</sup>, be delivered or sent to the registrar<sup>8</sup>, and contain a concise statement of the grounds of appeal on which the person aggrieved intends to rely<sup>9</sup>. Except where the procedure is otherwise specified<sup>10</sup>, the procedure for determining an appeal is such as the General Council may decide<sup>11</sup>.

As soon as practicable after the person aggrieved has appealed against a relevant decision, the registrar must fix a day on which the General Council is to hold a hearing of the case<sup>12</sup>, and notify the person aggrieved of the day on which and the time and place at which the hearing is to be held<sup>13</sup>. The registrar and the person aggrieved may appear before the General Council and be legally represented<sup>14</sup>. The person aggrieved and the registrar may produce documentary evidence to the General Council, may call witnesses<sup>15</sup> and may put questions to any person called as a witness<sup>16</sup>. The oral hearing is in private unless the person aggrieved requests a public hearing<sup>17</sup>. The General Council, either of its own motion or at the request in writing of the person aggrieved, may postpone a hearing at any time before the beginning of the hearing, and may adjourn the proceedings from time to time as it thinks fit<sup>18</sup>. Where the person aggrieved is neither present nor represented at the hearing, the General Council may nevertheless proceed with the hearing if it is satisfied that all reasonable steps have been taken<sup>19</sup> to serve the notice of the hearing on the person aggrieved<sup>20</sup>.

<sup>1</sup> As to the registrar see PARA 519 ante.

<sup>2</sup> 'A relevant decision' means a decision referred to in the Osteopaths Act 1993 s 29(1) (see PARA 581 ante): General Osteopathic Council (Fraud or Error and Appeals) Rules Order of Council 1999, SI 1999/1846, r 5.

<sup>3</sup> As to the service of notices see PARA 534 note 3 ante. For the meaning of 'writing' see PARA 20 note 22 ante.

<sup>4</sup> General Osteopathic Council (Fraud or Error and Appeals) Rules Order of Council 1999, SI 1999/1846, r 5(a).

<sup>5</sup> Ibid r 5(b)(i). An appeal is to be made within the period of 28 days beginning with the date on which notice of the relevant decision is sent to the person in respect of whom the decision was made: r 5(b)(i). For the meaning of 'the General Council' see PARA 499 note 1 ante.

<sup>6</sup> Ibid r 5(b)(ii).

<sup>7</sup> Ibid r 6(a).

<sup>8</sup> Ibid r 6(b).

<sup>9</sup> Ibid r 6(c).

<sup>10</sup> Ie in the Schedule to the General Osteopathic Council (Fraud or Error and Appeals) Rules Order of Council 1999 (see the text to notes 12-20 infra; and PARA 583 post): General Osteopathic Council (Fraud or Error and Appeals) Rules Order of Council 1999, SI 1999/1846, r 7(1).

<sup>11</sup> Ibid r 7(2).

12 Ibid Schedule para 1(1)(a).

13 Ibid Schedule para 1(1)(b). The registrar must not fix a day for the hearing on any day earlier than the end of the period of 28 days beginning with the day on which the notice of the hearing has been sent: Schedule para 1(2).

14 Ibid Schedule para 1(3).

15 The person aggrieved and the registrar must each, before the beginning of the period of seven days ending with the date fixed for the hearing, produce to the other a list of witnesses to be called at the hearing, failing which a witness may not be called except with the consent of the General Council: ibid Schedule para 1(5).

16 Ibid Schedule para 1(4).

17 Ibid Schedule para 2.

18 Ibid Schedule para 3(1). Where a hearing has been postponed or proceedings have been adjourned for more than 28 days, the registrar must send the person aggrieved notice of the date on which the General Council is to hold the postponed hearing or resume the hearing that has been adjourned, and the registrar may not fix a day for the postponed hearing and the General Council may not resume the hearing on any day earlier than the end of the period of 28 days beginning with the date on which the notice has been sent: Schedule para 3(2).

19 Ie in accordance with ibid r 3(1): see PARA 534 note 3 ante.

20 Ibid Schedule para 4.

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OSTEOPATHS/(4) PROFESSIONAL CONDUCT AND FITNESS TO PRACTISE/(v) Appeals/583.  
Procedure at the hearing.

### **583. Procedure at the hearing.**

The procedure of the General Council<sup>1</sup> at the hearing is as follows<sup>2</sup>:

- 782 (1) the registrar<sup>3</sup> presents the case in support of the relevant decision<sup>4</sup> and may call and question witnesses<sup>5</sup>, and may give evidence on his own behalf<sup>6</sup>;
- 783 (2) the registrar and any person called on his behalf may be cross-examined by the person aggrieved and, in the case of persons called on his behalf, may be re-examined by the registrar, and the registrar may give evidence a second time<sup>7</sup>;
- 784 (3) the person aggrieved may present the case against the relevant decision and may call and question witnesses, and may give evidence on his own behalf<sup>8</sup>;
- 785 (4) the person aggrieved and any person called on his behalf may be cross-examined by the registrar and, in the case of persons called on his behalf, may be re-examined by the person aggrieved, and the person aggrieved may give evidence a second time<sup>9</sup>;
- 786 (5) the registrar may address the General Council concerning the relevant decision<sup>10</sup>;
- 787 (6) the person aggrieved may address the General Council concerning the relevant decision<sup>11</sup>.

Members of the General Council present at the hearing, the legal assessor<sup>12</sup>, and the medical assessor<sup>13</sup> may, with the consent of the chairman of the General Council<sup>14</sup> or, where the chairman of the General Council is not present at the hearing, the consent of the person who is chairing the hearing, question any person giving evidence at the hearing<sup>15</sup>. The registrar must arrange for the proceedings of the General Council at an oral hearing of an appeal to be recorded<sup>16</sup>, and the person aggrieved must, on application to the registrar and on payment of a reasonable charge, be sent a transcript of the proceedings<sup>17</sup>.

The General Council decides in private whether to dismiss or allow the appeal<sup>18</sup>. The General Council has power to confirm, overturn in whole or in part, or vary the order of the registrar as it thinks fit<sup>19</sup>. The decision of the majority of the members of the General Council who are present at the hearing is the decision of the Council, but if the votes are equal, the appeal is to be decided in favour of the person aggrieved<sup>20</sup>. The decision of the General Council is given in writing and the registrar must: (a) as soon as practicable after the hearing, send<sup>21</sup> a copy of the decision and the reasons for the decision to the person aggrieved<sup>22</sup>; and (b) inform the person aggrieved of his right to appeal<sup>23</sup> on a point of law against the decision of the General Council<sup>24</sup>.

1 For the meaning of 'the General Council' see PARA 499 note 1 ante.

2 General Osteopathic Council (Fraud or Error and Appeals) Rules Order of Council 1999, SI 1999/1846, Schedule para 5(1).

3 As to the registrar see PARA 519 ante.

4 For the meaning of 'relevant decision' see PARA 582 note 2 ante.

5 As to the restriction on the calling of witnesses see PARA 582 note 15 ante.

6 General Osteopathic Council (Fraud or Error and Appeals) Rules Order of Council 1999, SI 1999/1846, Schedule para 5(1)(a). Where the registrar or the person aggrieved is legally represented, references in

Schedule para 5(1) to the registrar or the person aggrieved presenting the case, calling or questioning witnesses or addressing the General Council are to be read as references to the representative of the registrar or the person aggrieved as the case may be: Schedule para 5(2). Where it appears to the General Council necessary or expedient either for the proper or expeditious running of the hearing or for the convenience of a witness at the hearing that the procedure set out in Schedule para 5(1) should be changed, the General Council may, after consulting the legal assessor and giving the registrar and the person aggrieved or their representatives the opportunity to be heard on the matter, decide to change the procedure and in particular the General Council may decide that the order of the calling of the witnesses be different from that set out and that a witness may be recalled to give further evidence: Schedule para 5(4).

7 Ibid Schedule para 5(1)(b). See also note 6 supra.

8 Ibid Schedule para 5(1)(c). See also note 6 supra.

9 Ibid Schedule para 5(1)(d). See also note 6 supra.

10 Ibid Schedule para 5(1)(e). See also note 6 supra.

11 Ibid Schedule para 5(1)(f). See also note 6 supra.

12 For the meaning of 'legal assessor' see PARA 534 note 12 ante.

13 For these purposes, 'medical assessor' means a person appointed under the Osteopaths Act 1993 s 28 (see PARA 580 ante): General Osteopathic Council (Fraud or Error and Appeals) Rules Order of Council 1999, SI 1999/1846, Schedule para 2(1).

14 As to the chairman of the General Council see PARA 504 ante.

15 General Osteopathic Council (Fraud or Error and Appeals) Rules Order of Council 1999, SI 1999/1846, Schedule para 5(3).

16 Ibid Schedule para 7(1).

17 Ibid Schedule para 7(2).

18 Ibid Schedule para 6(1).

19 Ibid Schedule para 6(2).

20 Ibid Schedule para 6(3).

21 As to the service of documents see PARA 534 note 3 ante.

22 General Osteopathic Council (Fraud or Error and Appeals) Rules Order of Council 1999, SI 1999/1846, Schedule para 6(4)(a).

23 Ie in accordance with the Osteopaths Act 1993 s 29(4): see PARA 581 ante.

24 General Osteopathic Council (Fraud or Error and Appeals) Rules Order of Council 1999, SI 1999/1846, Schedule para 6(4)(b).

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OSTEOPATHS/(4) PROFESSIONAL CONDUCT AND FITNESS TO PRACTISE/(v) Appeals/584.  
Appeals against decisions of the health committee.

#### **584. Appeals against decisions of the health committee.**

Any person with respect to whom a decision of the health committee<sup>1</sup> is made<sup>2</sup> may, before the end of the period of 28 days beginning with the date on which notification of the decision is sent to him, appeal against it in accordance with the provisions described below<sup>3</sup>.

An appeal lies to an appeal tribunal, consisting of a chairman<sup>4</sup> and two other members<sup>5</sup>, established for the purposes of the appeal in accordance with rules<sup>6</sup> made by the General Council<sup>7</sup>. The rules must also make provision as to the procedure to be followed by an appeal tribunal hearing an appeal<sup>8</sup>. No decision against which such an appeal may be made may have effect before the expiry of the period within which an appeal may be made<sup>9</sup>, or the appeal is withdrawn or otherwise disposed of<sup>10</sup>. No person may be required by any rules to give any evidence or produce any document or other material at a hearing held by an appeal tribunal which he could not be compelled to give or produce in civil proceedings in any court in that part of the United Kingdom<sup>11</sup> in which the hearing takes place<sup>12</sup>.

The chairman of an appeal tribunal appoints a person approved by the members of the tribunal to act as clerk of the tribunal<sup>13</sup>. Subject to any provision made by the rules, an appeal tribunal sits in public<sup>14</sup>. On any appeal, the appeal is by way of a rehearing of the case<sup>15</sup>, the General Council is the respondent<sup>16</sup>, and the tribunal hearing the appeal has power to make any decision which the health committee had power to make<sup>17</sup>. An appeal tribunal has the same powers of interim suspension as the health committee<sup>18</sup>. An appeal tribunal has power to award costs<sup>19</sup>.

1 As to the health committee see PARA 515 ante.

2 Ie under the Osteopaths Act 1993 s 23 (as amended): see PARA 552 ante.

3 Ibid s 30(1). A notice of appeal must be in writing, must be given or sent to the registrar, and must contain a concise statement of the grounds of appeal on which the osteopath intends to rely: General Osteopathic Council (Health Committee) (Appeals) Rules Order of Council 2000, SI 2000/243, r 4. For the meaning of 'writing' see PARA 20 note 22 ante. In the General Osteopathic Council (Health Committee) (Appeals) Rules Order of Council 2000, SI 2000/243, a reference to the sending of a notice or other document to any person is a reference to it being sent:

144 (1) where the person is the registrar, to the principal address of the General Council (r 3(1)(a));

145 (2) where the person is a registered osteopath, to his address in the register or, if his last known address differs from the address in the register, his last known address (r 3(1)(b));

146 (3) in all other cases, to his last known address (r 3(1)(c)),

and if the notice or other document is sent by post, it is treated as having been sent on the day that it was posted (r 3(1)). Notices or documents referred to in Schedule paras 2(1)(b), 5, 11(2) (see PARAS 586-587 post) must be sent by delivering them by hand or by posting by registered post or recorded delivery service: r 3(2). In all other cases, communications to be sent for the purposes of the rules may be sent by post: r 3(3). As to the registrar see PARA 519 ante. For the meaning of 'registered osteopath' see PARA 503 note 4 ante. For the meaning of 'the register' see PARA 524 note 1 ante. For the meaning of 'the General Council' see PARA 499 note 1 ante.

4 The chairman of an appeal tribunal must be selected in accordance with rules made by the General Council, and be qualified as mentioned in the Osteopaths Act 1993 s 27(4) (see PARA 579 note 2 ante): s 30(6)(a), (b). As to the relevant provisions of the rules see PARA 585 post.



5 Each of the other two members of an appeal tribunal must be selected in accordance with rules made by the General Council, one of them being a fully registered osteopath and the other being a registered medical practitioner: *ibid* s 30(7)(a), (b). For the meaning of 'fully registered osteopath' see PARA 520 note 3 ante. For the meaning of 'registered medical practitioner' see PARA 4 ante. As to the relevant provisions of the rules see PARA 585 post.

6 The rules may not provide for the selection of any member of an appeal tribunal to be made by the General Council: *ibid* s 30(8). As to the relevant provisions of the rules see PARA 585 post. As to the making of rules generally see PARA 506 ante; and as to the effect of competition orders on rules see PARA 518 ante.

7 *Ibid* s 30(2). As to the rules that have been made see the General Osteopathic Council (Health Committee) (Appeals) Rules 2000, approved by the General Osteopathic Council (Health Committee) (Appeals) Rules Order of Council 2000, SI 2000/243.

8 Osteopaths Act 1993 s 30(3). The rules may, in particular, make similar provision to that made by virtue of s 26(2)(d), (f)-(j) (see PARA 555 ante): s 30(4). As to the relevant provisions of the rules see PARAS 586-587 post. A person who, without reasonable excuse, fails to comply with any requirement imposed by an appeal tribunal hearing an appeal under s 30 under rules corresponding to s 26(2)(h) made by virtue of s 30(4) is guilty of an offence: s 32(2)(c). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level five on the standard scale: s 32(3). As to the standard scale see PARA 185 note 11 ante.

9 *Ibid* s 30(5)(a).

10 *Ibid* s 30(5)(b).

11 For the meaning of 'United Kingdom' see PARA 1 note 3 ante. As to the part of the United Kingdom in which the hearing takes place see note 14 *infra*.

12 Osteopaths Act 1993 s 30(13). As to evidence in civil proceedings see CIVIL PROCEDURE vol 11 (2009) PARA 749 et seq. As to the production of documents in civil proceedings see CIVIL PROCEDURE vol 11 (2009) PARAS 538-583.

13 *Ibid* s 30(9). Any expenses reasonably incurred by a tribunal, including any incurred in connection with the appointment of a clerk, are to be met by the General Council: s 30(15).

14 *Ibid* s 30(10). As to the relevant provisions of the rules see PARA 586 post. The tribunal sits in Northern Ireland, in the case of an osteopath whose registered address is in Northern Ireland (s 30(10)(a)); in Scotland, in the case of an osteopath whose registered address is in Scotland (s 30(10)(b)); and in England or Wales, in any other case (s 30(10)(c)). For the meaning of 'registered address' see PARA 524 note 7 ante.

15 *Ibid* s 30(11)(a).

16 *Ibid* s 30(11)(b).

17 *Ie* under *ibid* s 23 (as amended) (see PARA 552 ante): s 30(11)(c).

18 *Ie* by virtue of *ibid* s 24(1)(b) (see PARA 553 ante): s 30(12) (amended by the Chiropractors Act 1994 s 42, Sch 2 para 7). The Osteopaths Act 1993 s 24(1)(b) has effect in relation to suspension orders made by appeal tribunals with the necessary modifications: s 30(12) (as so amended).

19 *Ibid* s 30(14).

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OSTEOPATHS/(4) PROFESSIONAL CONDUCT AND FITNESS TO PRACTISE/(v) Appeals/585.  
Selection of appeal tribunal.

### **585. Selection of appeal tribunal.**

The chairman of the tribunal<sup>1</sup> must be a properly qualified person<sup>2</sup> and is selected by the chairman of the General Council<sup>3</sup> or the Bar<sup>4</sup>, or the president of the Law Society. The osteopathic member of any tribunal is selected by the chairman of the tribunal from a list kept by the registrar<sup>6</sup> of fully registered osteopaths<sup>7</sup> who have indicated a willingness to undertake such duties<sup>8</sup>. The registered medical practitioner<sup>9</sup> is selected by the chairman of the tribunal from a list to be provided upon request by the General Medical Council or its successor<sup>10</sup>.

1 'Tribunal' means an appeal tribunal: General Osteopathic Council (Health Committee) (Appeals) Rules Order of Council 2000, SI 2000/243, r 2. As to the membership of a tribunal see PARA 584 ante.

2 As mentioned in the Osteopaths Act 1993 s 27(4): see PARA 579 note 2 ante.

3 As to the chairman of the General Council see PARA 504 ante. For the meaning of 'the General Council' see PARA 499 note 1 ante.

4 As to the chairman of the Bar see LEGAL PROFESSIONS vol 66 (2009) PARA 1043.

5 General Osteopathic Council (Health Committee) (Appeals) Rules Order of Council 2000, SI 2000/243, r 5(1). As to the president of the Law Society see LEGAL PROFESSIONS vol 65 (2008) PARA 612.

6 As to the registrar see PARA 519 ante.

7 For the meaning of 'fully registered osteopath' see PARA 520 note 3 ante.

8 General Osteopathic Council (Health Committee) (Appeals) Rules Order of Council 2000, SI 2000/243, r 5(2).

9 For the meaning of 'registered medical practitioner' see PARA 4 ante.

10 General Osteopathic Council (Health Committee) (Appeals) Rules Order of Council 2000, SI 2000/243, r 5(3). As to the General Medical Council see PARA 13 et seq ante.

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OSTEOPATHS/(4) PROFESSIONAL CONDUCT AND FITNESS TO PRACTISE/(v) Appeals/586.  
Procedure for determining appeals.

### **586. Procedure for determining appeals.**

Subject to such provisions as to the procedure for determining an appeal<sup>1</sup> as are otherwise specified<sup>2</sup>, the procedure is such as the tribunal<sup>3</sup> may decide<sup>4</sup>. As soon as practicable after receipt of a notice of appeal<sup>5</sup>, the chairman<sup>6</sup> must: (1) fix a day on which the tribunal will hear the case<sup>7</sup>; (2) direct the clerk<sup>8</sup> to send to the osteopath<sup>9</sup> a notice of the hearing<sup>10</sup>, stating the day on which and the time and place at which the hearing is to be held<sup>11</sup>; (3) invite the osteopath to state whether he proposes to attend the hearing<sup>12</sup>; and (4) inform the osteopath that he may be legally represented at the hearing<sup>13</sup>. The clerk must ensure that both parties to the hearing are provided with copies of all documents presented to the health committee<sup>14</sup> at any previous hearing, including copies of any medical reports and observations or other evidence submitted by or on behalf of the osteopath at such previous hearing<sup>15</sup>. Both the osteopath and the General Council may produce documentary evidence to the tribunal, may call witnesses, and may put questions to any person called as a witness<sup>16</sup>.

The tribunal sits in public but has the discretion to hold the hearing or any part of it in private while any information relating to the medical history or condition of any person is being given<sup>17</sup>. Any determination of the tribunal must be announced in public<sup>18</sup>. The tribunal, either of its motion or at the request of a party to the hearing, may postpone a hearing at any time before it begins, and may adjourn the proceedings from time to time as it thinks fit<sup>19</sup>.

1 'An appeal' means an appeal against a decision; and 'a decision' means a decision of the health committee pursuant to the Osteopaths Act 1993 s 23 (as amended) (see PARA 552 ante): General Osteopathic Council (Health Committee) (Appeals) Rules Order of Council 2000, SI 2000/243, r 2.

2 The Schedule to the General Osteopathic Council (Health Committee) (Appeals) Rules 2000 has effect with respect to the procedure for determining an appeal: General Osteopathic Council (Health Committee) (Appeals) Rules Order of Council 2000, SI 2000/243, r 6(1). As to the specified provisions see the text and notes infra; and PARA 587 post.

3 For the meaning of 'tribunal' see PARA 585 note 1 ante.

4 General Osteopathic Council (Health Committee) (Appeals) Rules Order of Council 2000, SI 2000/243, r 6(2).

5 As to notices of appeal, and as to the service of notices and other documents, see PARA 584 note 3 ante.

6 'Chairman' means a chairman of an appeal tribunal: see the General Osteopathic Council (Health Committee) (Appeals) Rules Order of Council 2000, SI 2000/243, r 2.

7 Ibid Schedule para 2(1)(a). The hearing must not be fixed for any date earlier than the end of the period of 28 days beginning with the date of posting of the notice of hearing (Schedule para 2(2)(a)), or for any date later than the end of the period of three months beginning with the date of posting of the notice of hearing, save with the agreement of the osteopath (Schedule para 2(2)(b)).

8 'The clerk' means the person appointed in accordance with the Osteopaths Act 1993 s 30(9) (see PARA 584 ante): General Osteopathic Council (Health Committee) (Appeals) Rules Order of Council 2000, SI 2000/243, r 2.

9 'The osteopath' means the osteopath appealing under the Osteopaths Act 1993 s 30(1) (see PARA 584 ante): General Osteopathic Council (Health Committee) (Appeals) Rules Order of Council 2000, SI 2000/243, r 2.

10 Such a notice, and any notice to be served under ibid Schedule para 5 (see note 19 infra), must be sent by delivering it by hand or by posting by registered post or recorded delivery service: r 3(2).

11 Ibid Schedule para 2(1)(b).

12 Ibid Schedule para 2(1)(c). Where the osteopath is neither present nor represented at the hearing, the tribunal may nevertheless proceed with the hearing if it is satisfied that all reasonable steps have been taken to serve the notice of the hearing on the osteopath: Schedule para 7.

13 Ibid Schedule para 2(1)(d). The General Council is a party to the proceedings, and both the General Council and the osteopath may appear before the tribunal at the hearing, and may be legally represented: Schedule para 2(3). For the meaning of 'the General Council' see PARA 499 note 1 ante.

14 As to the health committee see PARA 515 ante. As to the investigation of allegations by the health committee see PARA 552 ante. As to the procedure of the health committee see PARA 568 et seq ante.

15 General Osteopathic Council (Health Committee) (Appeals) Rules Order of Council 2000, SI 2000/243, Schedule para 2(4).

16 Ibid Schedule para 2(5). The osteopath and the General Council must each produce to the other a list of witnesses to be called before the beginning of the period of seven days ending with the date on which the hearing is to be held, failing which a witness may not be called except with the consent of the tribunal: Schedule para 2(6).

17 Ibid Schedule para 3(1).

18 Ibid Schedule para 3(2).

19 Ibid Schedule para 4. Where a hearing is postponed or proceedings are adjourned, the clerk must send the osteopath notice of the date on which the tribunal is to hold the postponed hearing or to resume the hearing that has been adjourned: Schedule para 5. As to the service of such a notice see note 10 supra. A postponed or resumed hearing must not be fixed for any date earlier than the end of the period of 14 days beginning with the date upon which notice of the postponed or resumed hearing is sent: Schedule para 6.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/4.  
OSTEOPATHS/(4) PROFESSIONAL CONDUCT AND FITNESS TO PRACTISE/(v) Appeals/587.  
Procedure at the hearing.

### **587. Procedure at the hearing.**

The osteopath<sup>1</sup> presents his appeal<sup>2</sup> and any case in support of it, and he may call and question witnesses<sup>3</sup>, and may give evidence on his own behalf<sup>4</sup>. The osteopath or any person called on his behalf may be cross-examined by the General Council<sup>5</sup> and, in the case of persons called on his behalf, may be re-examined by the osteopath, who may give evidence a second time<sup>6</sup>. The General Council may present a case in favour of the decision appealed against, and may call and question witnesses<sup>7</sup>. The General Council and any person called on its behalf may be cross-examined by the osteopath and, in the case of persons called on its behalf, may be re-examined by the General Council<sup>8</sup>. The General Council may address the tribunal concerning the decision appealed against<sup>9</sup>, and then the osteopath may address the tribunal concerning the decision appealed against<sup>10</sup>. Where it appears to the tribunal necessary or expedient, either for the proper or expeditious running of the hearing<sup>11</sup> or for the convenience of a witness at a hearing<sup>12</sup>, that the procedure described above should be changed, the tribunal may decide, after giving the General Council and the osteopath or their representatives the opportunity to be heard on the matter, to change the procedure<sup>13</sup>. Members of the tribunal may, with the consent of its chairman, question any person giving evidence at the hearing<sup>14</sup>.

The tribunal may, if satisfied that the interests of justice will not thereby be prejudiced and after giving the parties an opportunity to be heard on the question of admissibility<sup>15</sup>, admit into evidence, without strict proof, copies of documents which are themselves admissible, photographs, certificates of conviction and sentence<sup>16</sup>, the records and registers<sup>17</sup> of the General Council, notes of proceedings before the tribunal, or any other material; and the tribunal may take note, without strict proof, of the professional qualifications, registration, address and identity of the osteopath or of any other person<sup>18</sup>.

The tribunal may by summons require any person to attend at a time and place stated in the summons to give evidence or to produce any documents in his custody or under his control which relate to any matter in issue before the tribunal<sup>19</sup>. Both parties to the proceedings may seek an order of the tribunal requiring persons to attend and give evidence or to produce documents before the tribunal<sup>20</sup>.

The tribunal decides the appeal in private but must give its determination in public<sup>21</sup>. The reasons for any decision of the tribunal must be given in writing; and the clerk<sup>22</sup> to the tribunal must as soon as practicable after the hearing send a copy of the decision and reasons to the osteopath and to the registrar<sup>23</sup>, and inform the osteopath of his right to appeal against the decision of the tribunal<sup>24</sup>.

1 For the meaning of 'the osteopath' see PARA 586 note 9 ante.

2 For the meaning of 'appeal' see PARA 586 note 1 ante.

3 The tribunal has the power to administer oaths, and all evidence given orally must be on oath or be affirmed: General Osteopathic Council (Health Committee) (Appeals) Rules Order of Council 2000, SI 2000/243, Schedule para 9. Any person who is called as a witness to the proceedings must be excluded from them until he is called to give evidence, unless the tribunal gives him leave to be present, but this does not apply to the parties to the proceedings: Schedule para 10(5). For the meaning of 'tribunal' see PARA 585 note 1 ante. As to oaths and affirmations see CIVIL PROCEDURE vol 11 (2009) PARA 1021 et seq.

4 Ibid Schedule para 8(1)(a). Where the General Council or the osteopath is legally represented, references in Schedule para 8(1) to the General Council or to the osteopath presenting the case, calling or questioning

witnesses, cross-examining or re-examining witnesses, or addressing the tribunal are to be read as references to the representative of the General Council or the osteopath, as the case may be: Schedule para 8(2).

5 For the meaning of 'the General Council' see PARA 499 note 1 ante. As to the General Council as a party to the proceedings see PARA 586 note 13 ante.

6 General Osteopathic Council (Health Committee) (Appeals) Rules Order of Council 2000, SI 2000/243, Schedule para 8(1)(b). See also note 4 supra.

7 Ibid Schedule para 8(1)(c). See also notes 3, 4 supra.

8 Ibid Schedule para 8(1)(d). See also note 4 supra.

9 Ibid Schedule para 8(1)(e). See also note 4 supra.

10 Ibid Schedule para 8(1)(f). See also note 4 supra.

11 Ibid Schedule para 8(4)(a).

12 Ibid Schedule para 8(4)(b).

13 Ibid Schedule para 8(4). In particular, the tribunal may decide that the order of the calling of witnesses be different and that a witness may be recalled to give further evidence: Schedule para 8(4).

14 Ibid Schedule para 8(3).

15 As to the admissibility of evidence generally see CIVIL PROCEDURE vol 11 (2009) PARA 749 et seq.

16 As to certificates of conviction see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1500.

17 As to the register of osteopaths see PARA 525 ante.

18 General Osteopathic Council (Health Committee) (Appeals) Rules Order of Council 2000, SI 2000/243, Schedule para 10(1).

19 Ibid Schedule para 10(2). The tribunal must pay or tender the necessary expenses of attendance: Schedule para 10(2). Any person summoned to attend under these provisions must be informed of the offence under the Osteopaths Act 1993 s 32(2) (see PARA 584 note 8 ante) which may be committed in the event of non-compliance: General Osteopathic Council (Health Committee) (Appeals) Rules Order of Council 2000, SI 2000/243, Schedule para 10(3).

20 Ibid Schedule para 10(4).

21 Ie in accordance with ibid Schedule para 3 (see PARA 586 ante): Schedule para 11(1).

22 For the meaning of 'the clerk' see PARA 586 note 8 ante.

23 General Osteopathic Council (Health Committee) (Appeals) Rules Order of Council 2000, SI 2000/243, Schedule para 11(2)(a). Any notice or document referred to in Schedule para 11(2) must be sent by delivering it by hand or by posting by registered post or recorded delivery service: r 3(2). As to the registrar see PARA 519 ante.

24 Ie in accordance with the Osteopaths Act 1993 s 31(1)(b) (see PARA 588 post): General Osteopathic Council (Health Committee) (Appeals) Rules Order of Council 2000, SI 2000/243, Schedule para 11(2)(b). See also note 23 supra.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/4.  
OSTEOPATHS/(4) PROFESSIONAL CONDUCT AND FITNESS TO PRACTISE/(v) Appeals/588.  
Appeals against decisions of the professional conduct committee and appeal tribunals.

### **588. Appeals against decisions of the professional conduct committee and appeal tribunals.**

Any person with respect to whom: (1) a decision of the professional conduct committee<sup>1</sup> is made<sup>2</sup>; or (2) a decision is made by an appeal tribunal<sup>3</sup>, may, before the end of the period of 28 days beginning with the date on which notification of the decision is served on him, appeal against it to the relevant court<sup>4</sup>. No such decision has effect before the expiry of the period within which an appeal against the decision may be made<sup>5</sup>, or, where an appeal against the decision has been duly made, before the appeal is withdrawn or otherwise disposed of<sup>6</sup>. On an appeal, the General Council<sup>7</sup> is the respondent<sup>8</sup>. The court may, on an appeal: (a) dismiss the appeal<sup>9</sup>; (b) allow the appeal and quash the decision appealed against<sup>10</sup>; (c) substitute for the decision appealed against any other decision which could have been made by the professional conduct committee or, as the case may be, health committee<sup>11</sup>; or (d) remit the case to the committee or appeal tribunal concerned to dispose of the case in accordance with the directions of the court<sup>12</sup>. The court may make such order as to costs as it thinks fit<sup>13</sup>.

1 As to the professional conduct committee see PARA 514 ante.

2 I.e. under the Osteopaths Act 1993 s 8 (see PARA 531 ante) or s 22 (as amended) (see PARA 550 ante): s 31(1)(a) (amended by the Chiropractors Act 1994 s 42, Sch 2 para 8(a)).

3 I.e. hearing an appeal under the Osteopaths Act 1993 s 30 (see PARA 584 ante): s 31(1)(b).

4 Ibid s 31(1) (amended by the National Health Service Reform and Health Care Professions Act 2002 s 33(1), (6)(a)). 'The relevant court': (1) in the case of a person whose address in the register is (or if he were registered would be) in Scotland, means the Court of Session; (2) in the case of a person whose address in the register is (or if he were registered would be) in Northern Ireland, means the High Court of Justice in Northern Ireland; and (3) in the case of any other person, means the High Court of Justice in England and Wales: Osteopaths Act 1993 s 31(1A) (added by the National Health Service Reform and Health Care Professions Act 2002 s 33(1), (6)(b)). For the meaning of 'the register' see PARA 524 note 1 ante. For the meaning of 'registered' see PARA 524 note 3 ante. As to the High Court of Justice in England and Wales see COURTS. As to appeals generally see CPR Pt 52. An appeal is by way of re-hearing: Practice Direction--Appeals PD52 para 22.3(1)(g), (2). For a case which has gone to appeal see eg *Moody v General Osteopathic Council* [2004] EWHC 967 (Admin). See also the cases cited in PARAS 188 note 14, 478 notes 5, 6 ante.

5 Osteopaths Act 1993 s 31(2)(a).

6 Ibid s 31(2)(b).

7 For the meaning of 'the General Council' see PARA 499 note 1 ante.

8 Osteopaths Act 1993 s 31(6).

9 Ibid s 31(8)(a) (s 31(8) substituted by the National Health Service Reform and Health Care Professions Act 2002 s 33(1), (6)(d)).

10 Osteopaths Act 1993 s 31(8)(b) (as substituted: see note 9 supra).

11 Ibid s 31(8)(c) (as substituted: see note 9 supra). As to the powers of the professional conduct committee and the health committee in relation to a conditions of practice order or suspension order made under this provision see s 22(6)-(8) (as amended), s 23(4), (5); and PARAS 550, 552 ante. As to the health committee see PARA 515 ante.

12 Ibid s 31(8)(d) (as substituted: see note 9 supra).

13 Ibid s 31(8) (as substituted: see note 9 supra). As to costs generally see CIVIL PROCEDURE vol 12 (2009) PARA 1729 et seq.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/4.  
OSTEOPATHS/(5) LIABILITY AND OFFENCES/589. Negligence.

## **(5) LIABILITY AND OFFENCES**

### **589. Negligence.**

The principles governing the liability of osteopaths towards their patients are precisely the same as those which govern the liability of medical practitioners towards their patients<sup>1</sup>.

<sup>1</sup> For the principles governing the liability of medical practitioners see PARA 196 et seq ante. As to negligence generally see NEGLIGENCE.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/4. OSTEOPATHS/(5) LIABILITY AND OFFENCES/590. Offences.

**590. Offences.**

A person who, whether expressly or by implication, describes himself as an osteopath, osteopathic practitioner, osteopathic physician, osteopathist, osteotherapist, or any other kind of osteopath, is guilty of an offence unless he is a registered osteopath<sup>1</sup>. A person guilty of such an offence is liable on summary conviction to a fine<sup>2</sup>.

1 Osteopaths Act 1993 s 32(1). For the meaning of 'registered osteopath' see PARA 503 note 4 ante.

2 Ibid s 32(3). The penalty is a fine not exceeding level five on the standard scale: see s 32(3). As to the standard scale see PARA 185 note 11 ante. As to the application of the Rehabilitation of Offenders Act 1974 to osteopaths see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 687.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/5. CHIROPRACTORS/(1) THE GENERAL CHIROPRACTIC COUNCIL/(i) Constitution/591. The General Chiropractic Council.

## **5. CHIROPRACTORS**

### **(1) THE GENERAL CHIROPRACTIC COUNCIL**

#### **(i) Constitution**

##### **591. The General Chiropractic Council.**

The General Chiropractic Council ('the General Council')<sup>1</sup> is a body corporate<sup>2</sup>. It is the duty of the General Council to develop, promote and regulate the profession of chiropractic<sup>3</sup>, and the General Council has such other functions as are conferred on it by the Chiropractors Act 1994<sup>4</sup>. There are four statutory committees of the General Council<sup>5</sup>, known as the education committee<sup>6</sup>, the investigating committee<sup>7</sup>, the professional conduct committee<sup>8</sup>, and the health committee<sup>9</sup>. Each committee has the functions conferred on it by or under the Chiropractors Act 1994<sup>10</sup>. The General Council may establish such other committees as it considers appropriate in connection with the discharge of its functions<sup>11</sup>. At the request of the General Council, Her Majesty may by Order in Council<sup>12</sup> make such provision with respect to the constitution of the General Council, and with respect to the statutory committees, as Her Majesty considers appropriate in consultation with the General Council<sup>13</sup>.

1 In the Chiropractors Act 1994, the General Chiropractic Council is referred to as 'the General Council': ss 1(1), 43.

2 Ibid s 1(1). As to bodies corporate see COMPANIES; CORPORATIONS.

3 Ibid s 1(2).

4 Ibid s 1(3). As to the power of the General Council to regulate its procedure see PARA 597 post.

5 The four committees are referred to in the Chiropractors Act 1994 as 'the statutory committees': ss 1(6), 43. As to the statutory committees see PARAS 602-610 post.

6 Ibid s 1(5)(a). As to the education committee see PARA 607 post.

7 Ibid s 1(5)(b). As to the investigating committee see PARA 608 post.

8 Ibid s 1(5)(c). As to the professional conduct committee see PARA 609 post.

9 Ibid s 1(5)(d). As to the health committee see PARA 610 post.

10 See ibid s 1(7).

11 Ibid s 1(8). As to the power of the General Council to establish sub-committees of any of its committees, to regulate the procedure of any of its committees or their sub-committees, to abolish its committees or sub-committees, and to delegate functions to its committees see PARA 597 post.

12 As to Orders in Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 907.

13 Chiropractors Act 1994 s 1(10). Any provision under s 1(10) may be made either in substitution for, or as an addition to, that made by any provision of Sch 1: s 1(12). Any such Order in Council must be subject to annulment in pursuance of a resolution of either House of Parliament: s 1(11). As to the annulment of statutory instruments see STATUTES vol 44(1) (Reissue) PARA 1516. At the date at which this volume states the law no such order had been made.

**UPDATE****591-596 Constitution**

The General Chiropractic Council is now to be constituted as provided for by order of the Privy Council, subject to the Chiropractors Act 1994 Sch 1 (which relates to orders and powers of the General Council): s 1(4) (substituted by SI 2008/1774). For general provision as to membership see now the Chiropractors Act 1994 Sch 1 para 1A (Sch 1 paras 1A-1D substituted by SI 2008/1774). As to the matters which an order under the Chiropractors Act 1994 s 1(4) must include, see Sch 1 para 1B; as to the registration of members' private interests, see Sch1 para 1C; and as to the duties of co-operation, see Sch 1 para 1D.

**591 The General Chiropractic Council**

TEXT AND NOTE 3--Chiropractors Act 1994 s 1(2) amended: SI 2008/1774.

TEXT AND NOTES 12, 13--Chiropractors Act 1994 s 1(10)-(12) repealed: SI 2008/1774.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/5. CHIROPRACTORS/(1) THE GENERAL CHIROPRACTIC COUNCIL/(i) Constitution/592. Membership of the General Council.

## **592. Membership of the General Council.**

The General Council<sup>1</sup> consists of: (1) ten members elected by fully registered chiropractors<sup>2</sup>; (2) six members appointed by the Privy Council<sup>3</sup>; (3) three members appointed by the education committee<sup>4</sup>; and (4) one member appointed by the Secretary of State<sup>5</sup>. The quorum of the General Council is ten<sup>6</sup>. No person is prevented from being elected or from being appointed merely because he has previously been a member of the General Council<sup>7</sup>.

Each member's term of office is for a period of five years<sup>8</sup>. Where a member fails to complete his full term of office<sup>9</sup>: (a) in such circumstances as may be prescribed<sup>10</sup>, if the unexpired term<sup>11</sup> is less than the prescribed period<sup>12</sup>, the vacancy need not be filled before the end of that term<sup>13</sup>; (b) if the member's successor is elected or, as the case may be, appointed during the unexpired term, the successor's term of office is, subject as provided<sup>14</sup>, for the residue of the unexpired term<sup>15</sup>. Any member may at any time resign by notice in writing addressed to the registrar<sup>16</sup>, and every member must retire on reaching the age of 70<sup>17</sup>. The General Council must by rules make provision as to the grounds, such as repeated absence from meetings or unacceptable professional conduct<sup>18</sup>, on which any member may be removed from office and the procedure involved<sup>19</sup>.

1 For the meaning of 'the General Council' see PARA 591 note 1 ante.

2 Chiropractors Act 1994 s 1(4), Sch 1 para 1(a). As to the election of members by fully registered chiropractors see PARA 594 post. For the meaning of 'fully registered chiropractor' see PARA 615 note 2 post.

3 Ibid Sch 1 para 1(b). As to the appointment of members by the Privy Council see PARA 595 post. As to the exercise by the Privy Council of its powers under the Chiropractors Act 1994 see PARA 612 post. As to the Privy Council generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

4 Ibid Sch 1 para 1(c). As to the appointment of members by the education committee see PARA 595 post.

5 Ibid Sch 1 para 1(d). The member appointed by the Secretary of State must be a person appearing to him to be qualified to advise the General Council on matters relating to professional education: Sch 1 para 13. As to the Secretary of State see PARA 5 ante.

6 Ibid Sch 1 para 2.

7 Ibid Sch 1 para 8.

8 Ibid Sch 1 para 3. This provision is expressed to be subject to Sch 1 paras 4-7: see the text to notes 9-19 infra.

9 Ibid Sch 1 para 4(1).

10 'Prescribed' means prescribed by rules made by the General Council: ibid s 43. As to the making of rules see PARA 598 post.

11 'The unexpired term' means the period beginning with the date on which the member ceased to be a member and ending with the date on which his full term of office would have expired: ibid Sch 1 para 4(5).

12 Rules made by the General Council must not prescribe a period of more than 12 months: ibid Sch 1 para 4(4). The period of six months is prescribed for these purposes: General Chiropractic Council (Constitution and Procedure) Rules Order 1999, SI 1999/1537, r 6(1).

13 Chiropractors Act 1994 Sch 1 para 4(2). Schedule 1 para 4(2) has effect wherever the unexpired term of a member who fails to complete his full term of office is less than the period prescribed under the General

Chiropractic Council (Constitution and Procedure) Rules Order 1999, SI 1999/1537, r 6(1) (see note 12 *supra*) and the number of members of the Council remaining in office is not less than 13: General Chiropractic Council (Constitution and Procedure) Rules Order 1999, SI 1999/1537, r 6(2).

14    Ie subject to the Chiropractors Act 1994 Sch 1 paras 5-7: see the text to notes 16-19 *infra*.

15    Ibid Sch 1 para 4(3).

16    Ibid Sch 1 para 5. For the meaning of 'the registrar' see PARA 614 note 3 *post*. For the meaning of 'writing' see PARA 20 note 22 *ante*.

17    Ibid Sch 1 para 6.

18    For the meaning of 'unacceptable professional conduct' see PARA 646 note 2 *post*.

19    Chiropractors Act 1994 Sch 1 para 7. As to the rules that have been made see the General Chiropractic Council (Constitution and Procedure) Rules 1999, approved by the General Chiropractic Council (Constitution and Procedure) Rules Order 1999, SI 1999/1537. As to the removal of members from office see PARA 593 *post*.

## **UPDATE**

### **591-596 Constitution**

The General Chiropractic Council is now to be constituted as provided for by order of the Privy Council, subject to the Chiropractors Act 1994 Sch 1 (which relates to orders and powers of the General Council): s 1(4) (substituted by SI 2008/1774). For general provision as to membership see now the Chiropractors Act 1994 Sch 1 para 1A (Sch 1 paras 1A-1D substituted by SI 2008/1774). As to the matters which an order under the Chiropractors Act 1994 s 1(4) must include, see Sch 1 para 1B; as to the registration of members' private interests, see Sch 1 para 1C; and as to the duties of co-operation, see Sch 1 para 1D.

### **592 Membership of the General Council**

NOTES 12, 13, 19--SI 1999/1537 revoked: SI 2008/1774. See now the General Chiropractic Council (Constitution) Order 2008, SI 2008/3047.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/5. CHIROPRACTORS/(1) THE GENERAL CHIROPRACTIC COUNCIL/(i) Constitution/593. Removal of members from office.

### **593. Removal of members from office.**

A member of the Council<sup>1</sup> may be removed from office if:

- 788 (1) he has failed to attend three consecutive meetings of the Council<sup>2</sup>;
- 789 (2) he has been found guilty of unacceptable professional conduct<sup>3</sup> or of professional incompetence in accordance with the provisions of the Chiropractors Act 1994<sup>4</sup>;
- 790 (3) he has been adjudged bankrupt or has made a composition or arrangement with his creditors<sup>5</sup>;
- 791 (4) he is a patient for the purposes of the Mental Health Act 1983<sup>6</sup>, or is otherwise incapable, by reason of mental disorder, of properly managing his property or affairs<sup>7</sup>;
- 792 (5) he has disclosed to another person who is not a member of the Council, or of a committee or sub-committee of the Council, without the consent of the Council, any information which is known to him in confidence by reason of his membership of the Council<sup>8</sup>;
- 793 (6) he has been convicted in a court of law of a criminal offence relevant to his fitness to continue in office<sup>9</sup>;
- 794 (7) he has brought the Council into disrepute or has otherwise acted contrary to the best interests of the Council<sup>10</sup>; or
- 795 (8) not being a chiropractor, since becoming a member of the Council he has been found guilty of misconduct by another professional or regulatory body<sup>11</sup>.

A member may be removed by the Council only if it has concluded in accordance with the specified procedure<sup>12</sup> that the circumstances falling within heads (1) to (8) above in his case are sufficient to warrant his removal<sup>13</sup>. A decision by the Council to remove a member of the Council from office must be made by resolution of the Council passed at a meeting of the Council by a majority of the members of the Council present and voting<sup>14</sup>. Not later than the beginning of a period of 14 days ending with the day appointed for the meeting at which any such resolution is proposed to be passed, the chairman of the Council<sup>15</sup> must send to the member concerned a written statement of the grounds of the proposal, notice of the date, time and place of the meeting, and an invitation that he should, at the choice of the member concerned, either submit written representations for consideration at the meeting or attend the meeting for the purpose of being heard before the decision is taken<sup>16</sup>. The removal of a member under these provisions has effect from the time the resolution of removal is passed or, if the resolution specifies some later date, on that later date<sup>17</sup>.

1 'The Council' means the General Chiropractic Council: General Chiropractic Council (Constitution and Procedure) Rules Order 1999, SI 1999/1537, r 1(2). As to membership of the General Council see PARA 592 ante.

2 Ibid r 2(1)(a).

3 For the meaning of 'unacceptable professional conduct' see PARA 646 note 2 post.

4 General Chiropractic Council (Constitution and Procedure) Rules Order 1999, SI 1999/1537, r 2(1)(b). As to professional conduct and fitness to practise see PARA 645 et seq post.

- 5 Ibid r 2(1)(c). As to bankruptcy and arrangements and compositions with creditors see BANKRUPTCY AND INDIVIDUAL INSOLVENCY.
- 6 Ie the Mental Health Act 1983 Pt VII (ss 93-113): see MENTAL HEALTH vol 30(2) (Reissue) PARA 435.
- 7 General Chiropractic Council (Constitution and Procedure) Rules Order 1999, SI 1999/1537, r 2(1)(d).
- 8 Ibid r 2(1)(e).
- 9 Ibid r 2(1)(f). As to the application of the Rehabilitation of Offenders Act 1974 to chiropractors see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 687.
- 10 General Chiropractic Council (Constitution and Procedure) Rules Order 1999, SI 1999/1537, r 2(1)(g).
- 11 Ibid r 2(1)(h).
- 12 Ie the procedure in ibid r 3: see the text to notes 14-17 infra.
- 13 Ibid r 2(2).
- 14 Ibid r 3(1). For this purpose, the member proposed to be removed is not entitled to vote: r 3(1). No decision under r 3(1) may be taken unless at least 12 members of the Council (other than the member proposed to be removed) are present at the meeting concerned: r 3(4).
- 15 As to the chairman of the Council see PARA 596 post.
- 16 General Chiropractic Council (Constitution and Procedure) Rules Order 1999, SI 1999/1537, r 3(2). The written statement, notice and invitation may be sent by post to the address of the member concerned which appears in the register pursuant to the Chiropractors Act 1994 s 6(1)(b) (see PARA 619 post) or, if he is not a registered chiropractor, to his last known place of residence: General Chiropractic Council (Constitution and Procedure) Rules Order 1999, SI 1999/1537, r 3(5).
- 17 Ibid r 3(3).

## **UPDATE**

### **591-596 Constitution**

The General Chiropractic Council is now to be constituted as provided for by order of the Privy Council, subject to the Chiropractors Act 1994 Sch 1 (which relates to orders and powers of the General Council): s 1(4) (substituted by SI 2008/1774). For general provision as to membership see now the Chiropractors Act 1994 Sch 1 para 1A (Sch 1 paras 1A-1D substituted by SI 2008/1774). As to the matters which an order under the Chiropractors Act 1994 s 1(4) must include, see Sch 1 para 1B; as to the registration of members' private interests, see Sch 1 para 1C; and as to the duties of co-operation, see Sch 1 para 1D.

### **593 Removal of members from office**

TEXT AND NOTES--SI 1999/1537 revoked: SI 2008/1774. See now the General Chiropractic Council (Constitution) Order 2008, SI 2008/3047, r 6.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/5. CHIROPRACTORS/(1) THE GENERAL CHIROPRACTIC COUNCIL/(i) Constitution/594. Members elected by fully registered chiropractors.

#### **594. Members elected by fully registered chiropractors.**

In relation to the ten members of the General Council<sup>1</sup> elected by fully registered chiropractors<sup>2</sup>, each member must be a fully registered chiropractor at the time of his election<sup>3</sup>, and may be a registered medical practitioner<sup>4</sup>. Seven of the members must be elected by fully registered chiropractors whose registered addresses<sup>5</sup> are in England<sup>6</sup>, and one each of the remaining three must be elected by fully registered chiropractors whose registered addresses are in Wales, Scotland and Northern Ireland respectively<sup>7</sup>. The General Council must make further provision by rules<sup>8</sup> in relation to the election of the members and as to by-elections<sup>9</sup>.

1 For the meaning of 'the General Council' see PARA 591 note 1 ante. As to the membership of the Council see PARA 592 ante.

2 See the Chiropractors Act 1994 s 1(4), Sch 1 para 9(1). For the meaning of 'fully registered chiropractor' see PARA 615 note 2 post.

3 Ibid Sch 1 para 9(2)(a).

4 Ibid Sch 1 para 9(2)(b). For the meaning of 'registered medical practitioner' see PARA 4 ante.

5 For the meaning of 'registered address' see PARA 619 note 5 post.

6 Chiropractors Act 1994 Sch 1 para 9(3)(a).

7 See ibid Sch 1 para 9(3)(b)-(d).

8 As to the making of rules see PARA 598 post.

9 Chiropractors Act 1994 Sch 1 para 10. As to the rules that have been made see the General Chiropractic Council (Election of Members and Chairman of Council) Rules 2002, approved by the General Chiropractic Council (Election of Members and Chairman of Council) Rules Order 2002, SI 2002/1263.

### **UPDATE**

#### **591-596 Constitution**

The General Chiropractic Council is now to be constituted as provided for by order of the Privy Council, subject to the Chiropractors Act 1994 Sch 1 (which relates to orders and powers of the General Council): s 1(4) (substituted by SI 2008/1774). For general provision as to membership see now the Chiropractors Act 1994 Sch 1 para 1A (Sch 1 paras 1A-1D substituted by SI 2008/1774). As to the matters which an order under the Chiropractors Act 1994 s 1(4) must include, see Sch 1 para 1B; as to the registration of members' private interests, see Sch 1 para 1C; and as to the duties of co-operation, see Sch 1 para 1D.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/5. CHIROPRACTORS/(1) THE GENERAL CHIROPRACTIC COUNCIL/(i) Constitution/595. Members appointed by the Privy Council and the education committee.

### **595. Members appointed by the Privy Council and the education committee.**

Of the six members of the General Council<sup>1</sup> appointed by the Privy Council<sup>2</sup>, one must be a registered medical practitioner<sup>3</sup> at the time of his appointment and must be appointed after consultation with the Conference of Medical Royal Colleges and their Faculties in the United Kingdom<sup>4</sup>. Such member must not be a registered chiropractor<sup>5</sup>. The other five members must be persons who are not registered chiropractors at the time of their appointment<sup>6</sup>, but any of them may be a registered medical practitioner<sup>7</sup>.

The three members appointed by the education committee<sup>8</sup> must be persons appearing to the committee to be qualified to advise the General Council on matters relating to education and training in chiropractic<sup>9</sup>. Before making any such appointment, the committee must consult those institutions in the United Kingdom by which or under whose direction any relevant course of study<sup>10</sup> is given<sup>11</sup>, and such other bodies, if any, as the education committee considers appropriate<sup>12</sup>.

1 For the meaning of 'the General Council' see PARA 591 note 1 ante. As to the membership of the General Council see PARA 592 ante.

2 See the Chiropractors Act 1994 s 1(4), Sch 1 para 11(1). As to the exercise by the Privy Council of its powers under the Chiropractors Act 1994 see PARA 612 post. As to the Privy Council generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

3 For the meaning of 'registered medical practitioner' see PARA 4 ante.

4 Chiropractors Act 1994 Sch 1 para 11(1)(a). If the Conference of Medical Royal Colleges and their Faculties in the United Kingdom ceases to exist, the Privy Council must appoint the member in question after consultation with such other representative body or bodies as it thinks fit: Sch 1 para 11(2). For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

5 Ibid Sch 1 para 11(3). 'Registered chiropractor' means a person who is registered as a fully registered chiropractor, as a conditionally registered chiropractor or as a provisionally registered chiropractor: s 43. For the meanings of 'fully registered chiropractor' see PARA 615 note 2 post; for the meaning of 'conditionally registered chiropractor' see PARA 616 note 2 post; and for the meaning of 'provisionally registered chiropractor' see PARA 618 note 7 post.

6 Ibid Sch 1 para 11(1)(b).

7 Ibid Sch 1 para 11(4). If, under the Health and Social Care (Community Health and Standards) Act 2003 s 187, the Secretary of State has given a direction to a special health authority to exercise any function of a Minister of the Crown relating to the making of appointments to a body mentioned in s 187, the Privy Council may direct the special health authority to exercise to the extent specified in the direction its functions under the Chiropractors Act 1994 Sch paras 1, 11 in relation to the appointment of members of the General Council: Sch 1 para 11A(1), (2) (added by the Health and Social Care (Community Health and Standards) Act 2003 s 187(8), Sch 12 para 6). As to special health authorities see HEALTH SERVICES vol 54 (2008) PARA 136 et seq. As to the Secretary of State see PARA 5 ante.

8 As to the education committee see PARA 607 post.

9 Chiropractors Act 1994 Sch 1 para 12(1).

10 For the meaning of 'relevant course of study' see PARA 634 note 3 post: definition applied by Sch 1 para 12(3).

11 Ibid Sch 1 para 12(2)(a).

12 Ibid Sch 1 para 12(2)(b).

## **UPDATE**

### **591-596 Constitution**

The General Chiropractic Council is now to be constituted as provided for by order of the Privy Council, subject to the Chiropractors Act 1994 Sch 1 (which relates to orders and powers of the General Council): s 1(4) (substituted by SI 2008/1774). For general provision as to membership see now the Chiropractors Act 1994 Sch 1 para 1A (Sch 1 paras 1A-1D substituted by SI 2008/1774). As to the matters which an order under the Chiropractors Act 1994 s 1(4) must include, see Sch 1 para 1B; as to the registration of members' private interests, see Sch 1 para 1C; and as to the duties of co-operation, see Sch 1 para 1D.

### **595 Members appointed by the Privy Council and the education committee**

NOTE 7--1994 Act Sch 1 para 11A repealed: Health Act 2006 Sch 9.

TEXT AND NOTE 9--'Training' includes continuing professional development: Chiropractors Act 1994 s 43 (definition added by SI 2008/1774).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/5. CHIROPRACTORS/(1) THE GENERAL CHIROPRACTIC COUNCIL/(i) Constitution/596. The chairman.

### **596. The chairman.**

The members of the General Council<sup>1</sup> must elect a chairman from among themselves<sup>2</sup>. A person is not be prevented from being elected as chairman merely because he has previously been chairman, but if he has ceased to hold office by virtue of his having held the post for a period of seven years<sup>3</sup> he may not be elected as chairman until some other person has served as the elected chairman<sup>4</sup>. The chairman holds office until he resigns as chairman<sup>5</sup>, he ceases to be a member of the General Council<sup>6</sup>, he is removed by a majority vote of the other members of the Council<sup>7</sup>, or a period of seven years, beginning with his assuming office as chairman, has elapsed and no other person has been elected and served as chairman during that time<sup>8</sup>. The General Council must by rules<sup>9</sup> make further provision in relation to the election of a chairman<sup>10</sup>, and make provision for the appointment of an acting chairman in the event of a vacancy in the office of chairman or in such other circumstances as may be prescribed<sup>11</sup>.

The election of a chairman must take place at a meeting of the General Council, known as 'the relevant meeting'<sup>12</sup>. At least 28 days before the relevant meeting, the registrar must give notice to the members of the General Council inviting nominations for the office of chairman<sup>13</sup>. A nomination is not valid unless: (1) it is in writing and received by the registrar before the beginning of the period of 14 days ending with the day on which the relevant meeting is held<sup>14</sup>; (2) it is seconded in writing by another member of the General Council, and that seconding is received by the registrar before the beginning of that period<sup>15</sup>; (3) the person nominated has before the beginning of that period indicated his willingness to serve in writing to the registrar<sup>16</sup>. If only one person is validly nominated, at the relevant meeting the registrar must declare the nominee elected<sup>17</sup>. If more than one person is validly nominated, a ballot must be conducted by the registrar at the relevant meeting<sup>18</sup>.

In the event of: (a) there being a vacancy in the office of chairman of the General Council<sup>19</sup>; or (b) the chairman of the General Council being unable to attend to the business of his office by virtue of illness, absence or other substantial unavailability<sup>20</sup>, the General Council may appoint an acting chairman to exercise the functions of the office of chairman during the period of vacancy, illness, absence or other substantial unavailability<sup>21</sup>. If it appears to the General Council at any time that any such vacancy, illness, absence or other substantial unavailability as is mentioned in head (a) or head (b) above may occur, it may appoint an acting chairman designate under these provisions to take office as acting chairman upon the event concerned occurring<sup>22</sup>. The acting chairman, or acting chairman designate<sup>23</sup>, may be appointed at any meeting of the General Council, but so far as practicable the registrar must give notice of any proposed appointment to the members of the General Council, whether by including it on any agenda distributed before the meeting or in some other manner<sup>24</sup>.

1 For the meaning of 'the General Council' see PARA 591 note 1 ante. As to the membership of the General Council see PARA 592 ante.

2 Chiropractors Act 1994 s 1(4), Sch 1 para 14(1).

3 *Ie* by virtue of *ibid* Sch 1 para 14(3)(d): see the text to note 8 *infra*.

4 *Ibid* Sch 1 para 14(4).

5 *Ibid* Sch 1 para 14(3)(a). The chairman may resign the office of chairman at any time by notice in writing addressed to the registrar: Sch 1 para 14(2). For the meaning of 'the registrar' see PARA 614 note 3 post. For the meaning of 'writing' see PARA 20 note 22 ante.

6 Ibid Sch 1 para 14(3)(b).

7 Ibid Sch 1 para 14(3)(c).

8 Ibid Sch 1 para 14(3)(d).

9 As to the making of rules see PARA 598 post.

10 Chiropractors Act 1994 Sch 1 para 14(5)(a). As to the rules that have been made see the General Chiropractic Council (Election of Members and Chairman of Council) Rules 2002, approved by the General Chiropractic Council (Election of Members and Chairman of Council) Rules Order 2002, SI 2002/1263; and the text to notes 12-18 infra.

11 Chiropractors Act 1994 Sch 1 para 14(5)(b). As to the rules that have been made see the General Chiropractic Council (Constitution and Procedure) Rules 1999, approved by the General Chiropractic Council (Constitution and Procedure) Rules Order 1999, SI 1999/1537; and the text to notes 19-24 infra. For the meaning of 'prescribed' see PARA 592 note 10 ante.

12 See the General Chiropractic Council (Election of Members and Chairman of Council) Rules Order 2002, SI 2002/1263, r 11(1), (2).

13 Ibid r 12(1). A notice under r 12(1) may be given by sending it by post to a member's last known place of residence or (where the member is a registered chiropractor) to his registered address: r 12(5). For the meaning of 'registered address' see PARA 619 note 5 post.

14 Ibid r 12(2)(a).

15 Ibid r 12(2)(b).

16 Ibid r 12(2)(c).

17 Ibid r 12(3).

18 Ibid r 12(4). As to the ballot see r 13.

19 General Chiropractic Council (Constitution and Procedure) Rules Order 1999, SI 1999/1537, r 7(1)(a).

20 Ibid r 7(1)(b).

21 Ibid r 7(1).

22 Ibid r 7(3).

23 See ibid r 7(3).

24 Ibid r 7(2).

## **UPDATE**

### **591-596 Constitution**

The General Chiropractic Council is now to be constituted as provided for by order of the Privy Council, subject to the Chiropractors Act 1994 Sch 1 (which relates to orders and powers of the General Council): s 1(4) (substituted by SI 2008/1774). For general provision as to membership see now the Chiropractors Act 1994 Sch 1 para 1A (Sch 1 paras 1A-1D substituted by SI 2008/1774). As to the matters which an order under the Chiropractors Act 1994 s 1(4) must include, see Sch 1 para 1B; as to the registration of members' private interests, see Sch 1 para 1C; and as to the duties of co-operation, see Sch 1 para 1D.

### **596 The chairman**

NOTE 11--SI 1999/1537 revoked: SI 2008/1774. See now the General Chiropractic Council (Constitution) Order 2008, SI 2008/3047.

TEXT AND NOTES 19-24--SI 1999/1537 revoked: SI 2008/1774. See now SI 2008/3047 r 9.

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 CHIROPRACTORS/(1) THE GENERAL CHIROPRACTIC COUNCIL/ (ii) General Powers and  
 Finance/597. Powers of the General Council.

## **(ii) General Powers and Finance**

### **597. Powers of the General Council.**

Subject to any provision made by or under the Chiropractors Act 1994, the General Council<sup>1</sup> has power to do anything which is calculated to facilitate the discharge of its functions or which is incidental or conducive to the discharge of its functions<sup>2</sup>. In particular, the General Council has power: to borrow<sup>3</sup>; to appoint such staff as it may determine<sup>4</sup>; to pay its staff such salaries as it may determine<sup>5</sup>; to pay its staff, and the members of its committees and any of their sub-committees, such allowances and expenses as it may determine<sup>6</sup>; to make such provision for the payment of such pensions, allowances or gratuities, or such contributions or payments towards provision for such pensions, allowances or gratuities, to or in respect of its staff as it may determine<sup>7</sup>; to pay its members such allowances and expenses as it may determine<sup>8</sup>; to establish such sub-committees of any of its committees as it may determine<sup>9</sup>; subject to any provision made by or under the Act, to regulate the procedure of any of its committees or their sub-committees<sup>10</sup>; to abolish any of its committees, other than a statutory committee<sup>11</sup>, or any sub-committee of any of its committees<sup>12</sup>; to delegate to any of its committees any functions of the General Council other than any power to make rules<sup>13</sup>; subject to any provision made by or under the Act, to regulate its own procedure<sup>14</sup>.

The powers of the General Council may be exercised even though there is a vacancy among its members<sup>15</sup>. No proceedings of the General Council are invalidated by any defect in the election or appointment of a member<sup>16</sup>.

1 For the meaning of 'the General Council' see PARA 591 note 1 ante.

2 Chiropractors Act 1994 s 1(4), Sch 1 para 15(1). As to the functions of the General Council see PARA 591 ante.

3 Ibid Sch 1 para 15(2)(a).

4 Ibid Sch 1 para 15(2)(b).

5 Ibid Sch 1 para 15(2)(c).

6 Ibid Sch 1 para 15(2)(d). As to committees see PARA 591 ante.

7 Ibid Sch 1 para 15(2)(e).

8 Ibid Sch 1 para 15(2)(f). As to the membership of the General Council see PARA 592 ante.

9 Ibid Sch 1 para 15(2)(g).

10 Ibid Sch 1 para 15(2)(h).

11 For the meaning of 'statutory committee' see PARA 591 note 5 ante.

12 Chiropractors Act 1994 Sch 1 para 15(2)(i).

13 Ibid Sch 1 para 15(2)(j). As to the making of rules see PARA 598 post.

14 See ibid Sch 1 para 15(5).

15 Ibid Sch 1 para 15(3).

16 Ibid Sch 1 para 15(4).

## **UPDATE**

### **597-601 General Powers and Finance**

The General Chiropractic Council must publish an annual report that includes a description of the arrangements that it has in place to ensure that it adheres to good practice in relation to equality and diversity, a statistical report relating to its fitness to practice functions, and a strategic plan: see the Chiropractors Act 1994 s 41A (added by SI 2008/1774).

### **597 Powers of the General Council**

TEXT AND NOTES--Chiropractors Act 1994 Sch 1 para 15(2A) added, Sch 1 para 15(3), (4) repealed: SI 2008/1774.



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## **598. Rules.**

The approval of the Privy Council<sup>1</sup> is required for any exercise by the General Council<sup>2</sup> of a power to make rules under the Chiropractors Act 1994<sup>3</sup>. Any rules made by the General Council or by Order in Council<sup>4</sup> under the Act may make different provision with respect to different cases or classes of case and, in particular, different provision with respect to different categories of chiropractor or registered chiropractor<sup>5</sup>.

Nothing in any rules made under the Act is to be taken to oblige or entitle any person to act in breach of the law relating to confidentiality<sup>6</sup>.

1 As to the exercise by the Privy Council of its powers under the Chiropractors Act 1994 see PARA 612 post. As to the Privy Council generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

2 For the meaning of 'the General Council' see PARA 591 note 1 ante.

3 Chiropractors Act 1994 s 35(1).

4 As to Orders in Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 907.

5 Chiropractors Act 1994 s 35(2). For the meaning of 'registered chiropractor' see PARA 595 note 5 ante.

6 Ibid s 35(4). As to the law relating to confidentiality see CONFIDENCE AND DATA PROTECTION.

## **UPDATE**

### **597-601 General Powers and Finance**

The General Chiropractic Council must publish an annual report that includes a description of the arrangements that it has in place to ensure that it adheres to good practice in relation to equality and diversity, a statistical report relating to its fitness to practice functions, and a strategic plan: see the Chiropractors Act 1994 s 41A (added by SI 2008/1774).

## **598 Rules**

TEXT AND NOTES 4, 5--Chiropractors Act 1994 s 35(2) amended: SI 2008/1774.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/5. CHIROPRACTORS/(1) THE GENERAL CHIROPRACTIC COUNCIL/ (ii) General Powers and Finance/599. Financial provisions.

### **599. Financial provisions.**

The General Council<sup>1</sup> must keep proper accounts of all sums received or paid by it and proper records in relation to those accounts<sup>2</sup>. The accounts for each financial year of the General Council must be audited by persons appointed by it<sup>3</sup>. As soon as is reasonably practicable after the accounts have been audited, the General Council must cause them to be published, together with any report on them made by the auditors<sup>4</sup>, and send a copy of the accounts and of any such report to the Privy Council<sup>5</sup>. The Privy Council must lay any such copy sent to it before each House of Parliament<sup>6</sup>.

1 For the meaning of 'the General Council' see PARA 591 note 1 ante.

2 Chiropractors Act 1994 s 41(1).

3 Ibid s 41(2). No person may be appointed as an auditor unless he is eligible for appointment as a company auditor under the Companies Act 1989 s 25 (see COMPANIES vol 15 (2009) PARA 969) or the Companies (Northern Ireland) Order 1990, SI 1990/593 (NI 5), art 28: Chiropractors Act 1994 s 41(3).

4 Ibid s 41(4)(a).

5 Ibid s 41(4)(b). As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

6 Ibid s 41(5). As to the laying of documents before Parliament see PARLIAMENT vol 34 (Reissue) PARA 941.

## **UPDATE**

### **597-601 General Powers and Finance**

The General Chiropractic Council must publish an annual report that includes a description of the arrangements that it has in place to ensure that it adheres to good practice in relation to equality and diversity, a statistical report relating to its fitness to practice functions, and a strategic plan: see the Chiropractors Act 1994 s 41A (added by SI 2008/1774).

### **599 Financial provisions**

NOTE 3--1994 Act s 41(3) amended: SI 2008/948.

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#### **600. Professional indemnity insurance; requirement to insure.**

The General Council<sup>1</sup> may by rules<sup>2</sup> make provision requiring registered chiropractors<sup>3</sup> who are practising as chiropractors<sup>4</sup>, or prescribed<sup>5</sup> categories of registered chiropractors who are practising as chiropractors<sup>6</sup>, to secure that they are properly insured against liability to, or in relation to, their patients<sup>7</sup>. The rules may, in particular: (1) prescribe risks, or descriptions of risk, with respect to which insurance is required<sup>8</sup>; (2) prescribe the amount of insurance that is required either generally or with respect to prescribed risks<sup>9</sup>; (3) make such provision as the General Council considers appropriate for the purpose of securing, so far as is reasonably practicable, that the requirements of the rules are complied with<sup>10</sup>; (4) make provision with respect to failure to comply with their requirements, including provision for treating any failure as constituting unacceptable professional conduct<sup>11</sup>.

The rules that have been made provide that every registered chiropractor practising as a chiropractor in the United Kingdom<sup>12</sup> must, whilst in practice, secure and maintain insurance against liability to or in relation to his patients in respect of the prescribed risks<sup>13</sup>. The insurance secured and maintained must indemnify the chiropractor for an aggregate sum for each period of insurance<sup>14</sup> of not less than the prescribed amount<sup>15</sup>, being an aggregate sum indemnified in respect of all claims against the chiropractor for whom the insurance is effected which fall within the specified provision<sup>16</sup> and which are made against him during the period of insurance<sup>17</sup>. The insurance effected must provide perpetual cover in relation to things done or negligently omitted to be done after the policy of insurance concerned is first in effect, whether or not it is subsequently modified on any renewal, and which give rise to a liability comprising a prescribed risk, in a case where a chiropractor retires or dies while the policy is still in effect following its issue or any such renewal<sup>18</sup>.

1 For the meaning of 'the General Council' see PARA 591 note 1 ante.

2 As to the making of rules see PARA 598 ante.

3 For the meaning of 'registered chiropractor' see PARA 595 note 5 ante.

4 Chiropractors Act 1994 s 37(1)(a).

5 For the meaning of 'prescribed' see PARA 592 note 10 ante.

6 Chiropractors Act 1994 s 37(1)(b).

7 Ibid s 37(1). As to the rules that have been made see the General Chiropractic Council (Professional Indemnity Insurance) Rules 1999, approved by the General Chiropractic Council (Professional Indemnity Insurance) Rules Order 1999, SI 1999/3071; the text to notes 12-18 infra; and PARA 601 post. As to liability to patients see PARA 689 post.

8 Chiropractors Act 1994 s 37(2)(a).

9 Ibid s 37(2)(b).

10 Ibid s 37(2)(c).

11 Ibid s 37(2)(d). For the meaning of 'unacceptable professional conduct' see PARA 646 note 2 post.

12 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

13 General Chiropractic Council (Professional Indemnity Insurance) Rules Order 1999, SI 1999/3071, r 3(1). As to the prescribed risks see PARA 601 post.

14 Any period of insurance for these purposes must not exceed 12 months: *ibid* r 3(3).

15 'The prescribed amount' means, in respect of a period of insurance expiring on or before 31 December 2000, the amount of £1,000,000, and, in respect of a period of insurance expiring after that date, the amount of £3,000,000: *ibid* r 2.

16 The which fall within *ibid* r 3(5). For the purpose of calculating whether all or part of a claim in respect of a prescribed risk exceeds the limit of indemnity represented by the aggregate sum indemnified under r 3(2) or the total amount of indemnity under r 3(4) (see the text to note 18 *infra*), liabilities in respect of claims made against the chiropractor within the period of insurance in question, or (as the case may be) after death or retirement, and relating to any aspect of the chiropractor's practice (whether or not comprising prescribed risks), including public and product liability, may be taken into account and counted against the aggregate or total; and the policy of insurance may make provision to the effect that claims attributable to one source or original cause may be treated as a single claim: r 3(5).

17 *Ibid* r 3(2).

18 *Ibid* r 3(4). See also note 16 *supra*. However, the policy may limit the total amount of the indemnity afforded in respect of such perpetual cover to the expiring residue of the aggregate referred to in r 3(2) (see the text to notes 15-17 *supra*) for the last period of insurance (that is to say, to the aggregate for that period after deduction of any liabilities in respect of claims counting against the aggregate under that provision): r 3(4).

## **UPDATE**

### **597-601 General Powers and Finance**

The General Chiropractic Council must publish an annual report that includes a description of the arrangements that it has in place to ensure that it adheres to good practice in relation to equality and diversity, a statistical report relating to its fitness to practice functions, and a strategic plan: see the Chiropractors Act 1994 s 41A (added by SI 2008/1774).

### **600 Professional indemnity insurance; requirement to insure**

NOTES--SI 1999/3071 r 2 amended: SI 2007/3101.

NOTE 3--In the Chiropractors Act 1994 s 37(1), 'registered chiropractor' does not include a temporarily registered chiropractor: s 37(1A) (added by SI 2007/3101).

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 Finance/601. Prescribed risks, and compliance.

### **601. Prescribed risks, and compliance.**

The prescribed risks are<sup>1</sup>:

- 796 (1) any civil liability in respect of any negligent error, act or omission<sup>2</sup> incurred in the course of practice in providing professional services as a chiropractor in the United Kingdom<sup>3</sup>, other than a liability in respect of fines, penalties and punitive or exemplary damages<sup>4</sup> or a liability arising from the services being provided under the influence of intoxicants or narcotics<sup>5</sup>;
- 797 (2) any liability of the kind described in head (1) above attributable to an assistant or receptionist employed by the chiropractor or acting under his supervision<sup>6</sup>;
- 798 (3) any liability to pay costs, fees or expenses of or incidental to proceedings in claims for liability as set out in head (1) or head (2) above incurred with the consent of the insurer<sup>7</sup>.

The policy of insurance in respect of the prescribed risks may exclude liability in connection with acquired immune deficiency syndrome (AIDS) or human immunodeficiency virus (HIV), or any similar syndrome or condition, and in connection with ionising radiation or radioactivity, but not in connection with the use of x-ray equipment in the course of the chiropractor's practice<sup>8</sup>.

The registrar<sup>9</sup> may at any time require a registered chiropractor<sup>10</sup> practising as a chiropractor in the United Kingdom to provide the General Council<sup>11</sup> with evidence acceptable to the registrar that he has complied with these provisions<sup>12</sup>. A failure by a registered chiropractor to comply with these provisions constitutes unacceptable professional conduct<sup>13</sup>. If in the opinion of the registrar a chiropractor is in breach of the requirements of these provisions, the registrar must, unless he considers that the breach is insufficiently substantial to justify a reference, refer the matter to the investigating committee<sup>14</sup>, and the reference is to be treated as an allegation of unacceptable professional conduct<sup>15</sup> and must be dealt with accordingly<sup>16</sup>.

1 As to professional indemnity insurance and the requirement to insure see PARA 600 ante.

2 As to the liability of chiropractors to their patients in negligence see PARA 689 post.

3 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

4 As to exemplary damages see DAMAGES vol 12(1) (Reissue) PARAS 811, 1115 et seq.

5 General Chiropractic Council (Professional Indemnity Insurance) Rules Order 1999, SI 1999/3071, r 4(1)(a).

6 Ibid r 4(1)(b).

7 Ibid r 4(1)(c).

8 Ibid r 4(2).

9 For the meaning of 'the registrar' see PARA 614 note 3 post.

10 For the meaning of 'registered chiropractor' see PARA 595 note 5 ante.

11 For the meaning of 'the General Council' see PARA 591 note 1 ante.

12 In the provisions of the General Chiropractic Council (Professional Indemnity Insurance) Rules Order 1999, SI 1999/3071: r 5.

13 Ibid r 6(1). For the meaning of 'unacceptable professional conduct' see PARA 646 note 2 post.

14 As to the investigating committee see PARA 608 post.

15 In the provisions of the Chiropractors Act 1994 s 20(1)(a): see PARA 646 post.

16 General Chiropractic Council (Professional Indemnity Insurance) Rules Order 1999, SI 1999/3071, r 6(2).

## **UPDATE**

### **597-601 General Powers and Finance**

The General Chiropractic Council must publish an annual report that includes a description of the arrangements that it has in place to ensure that it adheres to good practice in relation to equality and diversity, a statistical report relating to its fitness to practice functions, and a strategic plan: see the Chiropractors Act 1994 s 41A (added by SI 2008/1774).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/5. CHIROPRACTORS/(1) THE GENERAL CHIROPRACTIC COUNCIL/ (iii) The Statutory Committees/602. Membership of the statutory committees.

### **(iii) The Statutory Committees**

#### **602. Membership of the statutory committees.**

The members of the statutory committees<sup>1</sup>, other than co-opted members<sup>2</sup>, must be appointed by the General Council<sup>3</sup> from among its members<sup>4</sup>. The General Council must make provision by rules<sup>5</sup> as to the procedure for such appointments<sup>6</sup>. A person is not prevented from being a member of a statutory committee merely because he has previously been a member of that committee<sup>7</sup>. Any member of a statutory committee, other than a co-opted member, holds office until he ceases to be a member of the General Council or, where he is a member of the committee by virtue of being chairman of the General Council<sup>8</sup>, until he ceases to be chairman of the General Council<sup>9</sup>. A person may be a member of more than one statutory committee<sup>10</sup>, but no member of the professional conduct committee<sup>11</sup> or the health committee<sup>12</sup> may take part in dealing with an allegation referred to either committee by another committee if he is also a member of the committee which referred the allegation<sup>13</sup>.

1 For the meaning of 'the statutory committees' see PARA 591 note 5 ante.

2 As to co-opted members see PARA 604 post.

3 For the meaning of 'the General Council' see PARA 591 note 1 ante.

4 Chiropractors Act 1994 s 1(9), Sch 1 para 16(1). As to the membership of the General Council see PARA 592 ante.

5 As to the making of rules see PARA 598 ante.

6 Chiropractors Act 1994 Sch 1 para 16(2). As to the rules that have been made see the General Chiropractic Council (Constitution and Procedure) Rules 1999, approved by the General Chiropractic Council (Constitution and Procedure) Rules Order 1999, SI 1999/1537; and PARA 603 post.

7 Chiropractors Act 1994 Sch 1 para 18.

8 As to the chairman of the General Council see PARA 596 ante.

9 Chiropractors Act 1994 Sch 1 para 19.

10 Ibid Sch 1 para 24(1).

11 As to the professional conduct committee see PARA 609 post.

12 As to the health committee see PARA 610 post.

13 Chiropractors Act 1994 Sch 1 para 24(2).

### **UPDATE**

#### **602 Membership of the statutory committees**

TEXT AND NOTES 1-6--Chiropractors Act 1994 Sch 1 para 16(1), (2) amended, Sch 1 para 16(3) added: SI 2008/1774.

NOTE 6--SI 1999/1537 revoked: SI 2008/1774.

TEXT AND NOTES 8, 9--Chiropractors Act 1994 Sch 1 para 19 repealed: SI 2008/1774.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/5. CHIROPRACTORS/(1) THE GENERAL CHIROPRACTIC COUNCIL/ (iii) The Statutory Committees/603. Appointment of ordinary members of statutory committees.

### **603. Appointment of ordinary members of statutory committees.**

The members, other than co-opted members<sup>1</sup>, of any statutory committee<sup>2</sup> of the General Council<sup>3</sup> from time to time in existence must be appointed in accordance with the following procedure<sup>4</sup>.

Before first appointing any members to the investigating committee<sup>5</sup>, professional conduct committee<sup>6</sup> or health committee<sup>7</sup>, the General Council must determine the number of members of the General Council of which the committee concerned is to be composed, subject always to the specified minimum number of such members<sup>8</sup>, and must from time to time review that number<sup>9</sup>. The appointment of members<sup>10</sup> to fill vacancies arising in relation to a statutory committee must take place at the next convenient meeting of the General Council after the vacancy arises, and those members are to be chosen from members nominated in writing to the registrar<sup>11</sup> before the meeting of the General Council concerned, or orally nominated at that meeting upon consideration of that item by the General Council<sup>12</sup>. Any member of the General Council may nominate another member, but a member may not nominate himself<sup>13</sup>. If the number of members nominated for appointment to a committee who are eligible candidates<sup>14</sup> in respect of the class of appointment<sup>15</sup> in question does not exceed the number of vacancies for that class the members so nominated are treated as duly appointed; and in any other case the appointment of members to the committee is determined between the members so nominated who are eligible candidates in respect of that class by ballot conducted by the registrar at the meeting of the General Council concerned<sup>16</sup>. At such a ballot, each member has a number of votes equal to the number of vacancies and a member may vote for himself, but no member may vote more than once for the same person in respect of the same ballot<sup>17</sup>. The persons appointed to a committee on a ballot are the eligible candidates, equal in number to the number of vacancies for the class of appointment in question, who have received in order the highest number of votes recorded<sup>18</sup>.

1 As to co-opted members see PARA 604 post.

2 For the meaning of 'statutory committee' see PARA 591 note 5 ante.

3 For the meaning of 'the General Council' see PARA 591 note 1 ante.

4 General Chiropractic Council (Constitution and Procedure) Rules Order 1999, SI 1999/1537, r 4(1).

5 As to the investigating committee see PARA 608 post.

6 As to the professional conduct committee see PARA 609 post.

7 As to the health committee see PARA 610 post.

8 I.e. the number specified in the Chiropractors Act 1994: see PARAS 608-610 post.

9 General Chiropractic Council (Constitution and Procedure) Rules Order 1999, SI 1999/1537, r 4(2).

10 I.e. other than co-opted members or the members of the education committee referred to in the Chiropractors Act 1994 Sch 1 para 25(1)(c), (d) (see PARA 607 post). Upon a person referred to in Sch 1 para 25(1)(c), (d) being appointed a member of the General Council, the person so appointed becomes, in accordance with Sch 1 para 25(1), a member of the education committee, and the registrar must report that fact to the next convenient meeting of the General Council: General Chiropractic Council (Constitution and Procedure) Rules Order 1999, SI 1999/1537, r 4(13). As to the education committee see PARA 607 post.

11 For the meaning of 'the registrar' see PARA 614 note 3 post.

12 General Chiropractic Council (Constitution and Procedure) Rules Order 1999, SI 1999/1537, r 4(3). However, where, at the time of an appointment to fill a vacancy in the health committee which must be filled by a person falling within the Chiropractors Act 1994 Sch 1 para 38(b) (see PARA 610 post) there is only one member of the General Council who does so, that member is deemed to be nominated in respect of the committee and the provisions of the General Chiropractic Council (Constitution and Procedure) Rules Order 1999, SI 1999/1537, r 4(8) (see the text to note 16 infra) treating him to be duly appointed in respect of that class of appointment have effect accordingly: r 4(9).

13 Ibid r 4(4). Any nomination must specify the committee with respect to which the nominee is nominated: r 4(4).

14 In the case of an appointment to the education committee, only members meeting the requirement for the class of appointment in question as to election or appointment provided for in the Chiropractors Act 1994 Sch 1 para 25(1)(a), (b) (see PARA 607 post) are eligible candidates in respect of that class: General Chiropractic Council (Constitution and Procedure) Rules Order 1999, SI 1999/1537, r 4(6). See note 15 infra. In the case of an appointment to the investigating committee, professional conduct committee or health committee:

147 (1) there must first (so far as relevant to the committee in question) be filled any vacancy which, to meet the requirement of the Chiropractors Act 1994 Sch 1 para 38(b) (see PARA 610 post), must be filled by a member falling within Sch 1 para 38(b), followed by any number of vacancies which, to meet the requirements of Sch 1 para 30 (see PARA 608 post), Sch 1 para 34 (see PARA 609 post) or Sch 1 para 38(a) (see PARA 610 post), must be filled by members appointed to the General Council by the Privy Council, and last any number of vacancies for which there is no such requirement (General Chiropractic Council (Constitution and Procedure) Rules Order 1999, SI 1999/1537, r 4(7)(a));

148 (2) only members meeting any such requirement are eligible candidates in respect of the class of appointment to which the requirement relates (r 4(7)(b));

149 (3) any member who is such an eligible candidate, but who fails to be appointed on a ballot or lot relating to that class, may be appointed for any other class relating to the committee in question for which he is an eligible candidate and for which an appointment remains to be made (r 4(7)(c)); and

150 (4) in respect of the class of appointment referred to in r 4(5)(b), (c) (see note 15 heads (2), (3) infra) for which there is no such requirement as is mentioned in those provisions, all members of the General Council who are duly nominated to the committee concerned are eligible candidates (r 4(7)(d)).

As to the Privy Council generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

15 For the purposes of ibid r 4(6)-(13) (see note 14 supra and the text to notes 16-18 infra):

151 (1) on appointing members to fill vacancies in the education committee, each of the two categories described in the Chiropractors Act 1994 Sch 1 para 25(1)(a), (b) (see PARA 607 post) are treated as giving rise to a separate class of appointment (General Chiropractic Council (Constitution and Procedure) Rules Order 1999, SI 1999/1537, r 4(5)(a));

152 (2) on appointing members to fill vacancies in the investigating committee or the professional conduct committee, vacancies which, to meet the requirements of the Chiropractors Act 1994 Sch 1 para 30 (see PARA 608 post) or Sch 1 para 34 (see PARA 609 post), must be filled by a member appointed to the General Council by the Privy Council are treated as giving rise to one class of appointment, and those for which there is no such requirement as giving rise to another class of appointment (General Chiropractic Council (Constitution and Procedure) Rules Order 1999, SI 1999/1537, r 4(5)(b)); and

153 (3) on appointing members to fill vacancies in the health committee, vacancies which, to meet the requirement of the Chiropractors Act 1994 Sch 1 para 38(a) (see PARA 610 post), must be filled by a member appointed to the General Council by the Privy Council are treated as giving rise to a separate class of appointment from a vacancy which, to meet the requirement of Sch 1 para 38(b) (see PARA 610 post), must be filled by a member falling within Sch 1 para 38(b), and those for which there is neither requirement are treated as giving rise to a further class of appointment (General Chiropractic Council (Constitution and Procedure) Rules Order 1999, SI 1999/1537, r 4(5)(c)).

16 Ibid r 4(8). The appointments treated as made under r 4(8) without a ballot, and those made by lot under Sch 4(11) (see the text to note 18 infra) are subject to ratification by resolution of the General Council passed

(following completion of appointments to committees under the provisions of r 4(1)-(11)) by a majority of those members of the General Council present and voting; and if any such appointment is not so ratified, the General Council must (without prejudice to those appointments which are duly ratified by such resolution) proceed with the appointment concerned afresh in accordance with r 4, but ignoring so far as necessary r 4(7)(a) (see note 14 head (1) supra): r 4(12).

17 Ibid r 4(10).

18 Ibid r 4(11). In the case of a tie between those having the lowest number of votes which would be capable of giving rise to appointment to the committee in respect of that class, the persons appointed are (subject to r 4(12): see note 16 supra) determined between them by lot conducted by the registrar at the meeting: r 4(11).

## **UPDATE**

### **603 Appointment of ordinary members of statutory committees**

TEXT AND NOTES--SI 1999/1537 revoked: SI 2008/1774. See now the General Chiropractic Council (Constitution of the Statutory Committees) Rules 2009, approved by the General Chiropractic Council (Constitution of the Statutory Committees) Rules Order of Council 2009, SI 2009/26 (amended by SI 2009/2738).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/5. CHIROPRACTORS/(1) THE GENERAL CHIROPRACTIC COUNCIL/ (iii) The Statutory Committees/604. Co-opted members.

#### **604. Co-opted members.**

The co-option of any person to any of the statutory committees<sup>1</sup> is subject to the approval of the General Council<sup>2</sup>. A co-opted member of any of the statutory committees may also be a member of the General Council<sup>3</sup>. The term of office of a co-opted member must not exceed the period of three years beginning with the date of his co-option<sup>4</sup>. The General Council must make further provision by rules<sup>5</sup> in relation to co-option, including provision as to the procedure involved<sup>6</sup>.

The approval of the co-option of a member to a statutory committee is sought by the submission by the committee concerned to the next convenient meeting of the General Council of a report and request for approval, incorporating a brief curriculum vitae of each proposed member and an explanation of the reasons for and factors in support of his co-option<sup>7</sup>. The approval is treated as granted if a resolution to that effect is passed by a majority of the members present and voting on the matter at the meeting of the General Council<sup>8</sup>. The co-option of a member to a statutory committee has effect from the day after the meeting of the General Council at which the co-option is so approved, and for such term<sup>9</sup> as is specified in the resolution of approval<sup>10</sup>.

1 For the meaning of 'the statutory committees' see PARA 591 note 5 ante.

2 Chiropractors Act 1994 s 1(9), Sch 1 para 17(1). For the meaning of 'the General Council' see PARA 591 note 1 ante.

3 Ibid Sch 1 para 17(2). As to the membership of the General Council see PARA 592 ante.

4 Ibid Sch 1 para 17(3).

5 As to the making of rules see PARA 598 ante.

6 Chiropractors Act 1994 Sch 1 para 17(4). As to the rules that have been made see the General Chiropractic Council (Constitution and Procedure) Rules 1999, approved by the General Chiropractic Council (Constitution and Procedure) Rules Order 1999, SI 1999/1537; and the text and notes 7-10 infra.

7 Ibid r 5(1).

8 Ibid r 5(1).

9 Ie subject to the Chiropractors Act 1994 Sch 1 para 17(3): see the text to note 4 supra.

10 General Chiropractic Council (Constitution and Procedure) Rules Order 1999, SI 1999/1537, r 5(2).

#### **UPDATE**

#### **604 Co-opted members**

TEXT AND NOTES 6-10--SI 1999/1537 revoked: SI 2008/1774. See now the General Chiropractic Council (Constitution of the Statutory Committees) Rules 2009, approved by the General Chiropractic Council (Constitution of the Statutory Committees) Rules Order of Council 2009, SI 2009/26 (amended by SI 2009/2738).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/5. CHIROPRACTORS/(1) THE GENERAL CHIROPRACTIC COUNCIL/ (iii) The Statutory Committees/605. Procedure and exercise of functions.

### **605. Procedure and exercise of functions.**

The General Council<sup>1</sup> must make rules<sup>2</sup> regulating the procedure of the statutory committees<sup>3</sup> and their sub-committees<sup>4</sup>, if any, including, in particular, provision as to rules of evidence to be observed in proceedings before any such committee or sub-committee<sup>5</sup>. Subject to any provision made by or under the Chiropractors Act 1994, each statutory committee and any sub-committee of such a committee may regulate its own procedure<sup>6</sup>. The powers of any statutory committee may be exercised even though there is a vacancy among its members<sup>7</sup>. No proceedings of a statutory committee are invalidated by any defect in the appointment of a member<sup>8</sup>.

If it appears to the General Council that any statutory committee is failing to perform its functions adequately, the General Council may give a direction as to the proper performance of those functions<sup>9</sup>. Where the General Council, having given such a direction, is satisfied that the committee has failed to comply with the direction, the General Council may exercise any power of that committee or do any act or other thing authorised to be done by that committee<sup>10</sup>.

1 For the meaning of 'the General Council' see PARA 591 note 1 ante.

2 As to the making of rules see PARA 598 ante.

3 For the meaning of 'the statutory committees' see PARA 591 note 5 ante.

4 As to the power of the General Council to establish sub-committees see PARA 597 ante.

5 Chiropractors Act 1994 s 1(9), Sch 1 para 21(1). As to the rules that have been made see the General Chiropractic Council (Investigating Committee) Rules 2000, approved by the General Chiropractic Council (Investigating Committee) Rules Order of Council 2000, SI 2000/2916 (see PARA 647 et seq post); the General Chiropractic Council (Professional Conduct Committee) Rules 2000, approved by the General Chiropractic Council (Professional Conduct Committee) Rules Order of Council 2000, SI 2000/3290 (see PARA 657 et seq post); and the General Chiropractic Council (Health Committee) Rules 2000, approved by the General Chiropractic Council (Health Committee) Rules Order of Council 2000, SI 2000/3291 (see PARA 665 et seq post).

6 Chiropractors Act 1994 Sch 1 para 21(2).

7 Ibid Sch 1 para 23(1). As to the membership of the statutory committees see PARA 602 ante.

8 Ibid Sch 1 para 23(2). As to the appointment of members of the statutory committees see PARAS 603-604 ante.

9 Ibid Sch 1 para 22(1).

10 Ibid Sch 1 para 22(2).

### **UPDATE**

### **605 Procedure and exercise of functions**

TEXT AND NOTES 1-5--Chiropractors Act 1994 Sch 1 para 21(1), (2) amended: SI 2008/1774.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/5. CHIROPRACTORS/(1) THE GENERAL CHIROPRACTIC COUNCIL/ (iii) The Statutory Committees/606. Sub-committees.

#### **606. Sub-committees.**

The General Council<sup>1</sup> may by rules<sup>2</sup> make provision with respect to any sub-committee<sup>3</sup> of a statutory committee<sup>4</sup> including, in particular, provision as to the functions and powers to be conferred on the sub-committee, its composition and its relationship with the statutory committee<sup>5</sup>.

1 For the meaning of 'the General Council' see PARA 591 note 1 ante.

2 As to the making of rules see PARA 598 ante.

3 As to the power of the General Council to establish sub-committees see PARA 597 ante.

4 For the meaning of 'statutory committee' see PARA 591 note 5 ante.

5 Chiropractors Act 1994 s 1(9), Sch 1 para 20. At the date at which this volume states the law no such rules had been made.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/5. CHIROPRACTORS/(1) THE GENERAL CHIROPRACTIC COUNCIL/ (iii) The Statutory Committees/607. The education committee.

### **607. The education committee.**

The education committee<sup>1</sup> consists of: (1) four of the members of the General Council<sup>2</sup> elected by fully registered chiropractors<sup>3</sup>; (2) two of the members of the General Council appointed by the Privy Council<sup>4</sup>; (3) the three members of the General Council appointed by the education committee<sup>5</sup>; and (4) the member of the General Council appointed by the Secretary of State<sup>6</sup>. In appointing the members of the committee, the General Council must secure, so far as is compatible with heads (1) to (4) above, that its chairman<sup>7</sup> is a member of the committee<sup>8</sup>. The committee may co-opt up to six further members<sup>9</sup>. The quorum of the committee is five, of whom at least three must be members of the General Council<sup>10</sup>. The members of the committee must elect a chairman from among themselves<sup>11</sup>. The chairman must not be the chairman of the General Council or a co-opted member of the committee<sup>12</sup>. In the event of a tie in any voting, the chairman of the committee has an additional casting vote<sup>13</sup>.

1 As to the education committee as one of the statutory committees see PARA 591 ante.

2 For the meaning of 'the General Council' see PARA 591 note 1 ante.

3 Chiropractors Act 1994 s 1(9), Sch 1 para 25(1)(a). For the meaning of 'fully registered chiropractor' see PARA 615 note 2 post. As to the members of the General Council elected by fully registered chiropractors see PARA 594 ante.

4 Ibid Sch 1 para 25(1)(b). As to the members of the General Council appointed by the Privy Council see PARA 595 ante. As to the exercise by the Privy Council of its powers under the Chiropractors Act 1994 see PARA 612 post. As to the Privy Council generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

5 Ibid Sch 1 para 25(1)(c). As to the members of the General Council appointed by the education committee see PARA 595 ante. The three members appointed to the General Council by the committee are not entitled to take part in the appointment of any of their successors: Sch 1 para 29(1). The member appointed to the General Council by the Secretary of State (see the text and note 6 infra) is also not entitled to take part in the appointment of any of the successors to those three members: see Sch 1 para 29(2). Where the chairman of the committee is prevented by Sch 1 para 29(1) or (2) from taking part in an appointment, the appointment must be made in accordance with rules made by the General Council: Sch 1 para 29(3). At the date at which this volume states the law no such rules had been made. As to the making of rules see PARA 598 ante.

6 Ibid Sch 1 para 25(1)(d). See also note 5 supra. As to the member of the General Council appointed by the Secretary of State see PARA 592 note 5 ante. As to the Secretary of State see PARA 5 ante.

7 As to the chairman of the General Council see PARA 596 ante.

8 Chiropractors Act 1994 Sch 1 para 25(2).

9 Ibid Sch 1 para 26. As to the co-option of members see PARA 604 ante.

10 Ibid Sch 1 para 28.

11 Ibid Sch 1 para 27(1).

12 Ibid Sch 1 para 27(2).

13 Ibid Sch 1 para 27(3).

### **UPDATE**

### **607 The education committee**

TEXT AND NOTES--Chiropractors Act 1994 Sch 1 para 25 substituted, Sch 1 paras 26-29 repealed: SI 2008/1774.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/5. CHIROPRACTORS/(1) THE GENERAL CHIROPRACTIC COUNCIL/ (iii) The Statutory Committees/608. The investigating committee.

### **608. The investigating committee.**

The investigating committee<sup>1</sup> consists of at least six members of the General Council<sup>2</sup>, of whom at least two must be members of the General Council appointed by the Privy Council<sup>3</sup>. The committee may co-opt up to six further members<sup>4</sup>. The quorum of the committee is five, of whom at least three must be members of the General Council<sup>5</sup>. The members of the committee elect a chairman from among themselves<sup>6</sup>. However, the chairman may not be the chairman of the General Council<sup>7</sup> or a co-opted member of the committee<sup>8</sup>. In the event of a tie in any voting, the chairman of the committee has an additional casting vote<sup>9</sup>.

1 As to the investigating committee as one of the statutory committees see PARA 591 ante. As to the investigation of allegations by the investigating committee see PARAS 646-648 post.

2 For the meaning of 'the General Council' see PARA 591 note 1 ante. As to the membership of the General Council see PARA 592 ante.

3 Chiropractors Act 1994 s 1(9), Sch 1 para 30. As to the members of the General Council appointed by the Privy Council see PARA 595 ante. As to the exercise by the Privy Council of its powers under the Chiropractors Act 1994 see PARA 612 post. As to the Privy Council generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

4 Ibid Sch 1 para 31. As to the co-option of members see PARA 604 ante.

5 Ibid Sch 1 para 33.

6 Ibid Sch 1 para 32(1).

7 As to the chairman of the General Council see PARA 596 ante.

8 Chiropractors Act 1994 Sch 1 para 32(2).

9 Ibid Sch 1 para 32(3). In the event of a tie in voting in respect of a decision under s 20(9)(c) (see PARA 647 post) or s 21(2) (see PARA 648 post), the chairman must cast his additional vote in favour of the chiropractor concerned: Sch 1 para 32(4).

### **UPDATE**

### **608 The investigating committee**

TEXT AND NOTES--Chiropractors Act 1994 Sch 1 para 30 substituted, Sch 1 paras 31-33 repealed: SI 2008/1774. Chiropractors Act 1994 Sch 1 para 30A added: SI 2009/1182.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/5. CHIROPRACTORS/(1) THE GENERAL CHIROPRACTIC COUNCIL/ (iii) The Statutory Committees/609. The professional conduct committee.

### **609. The professional conduct committee.**

The professional conduct committee<sup>1</sup> consists of at least five members of the General Council<sup>2</sup>, of whom at least two must be members of the General Council appointed by the Privy Council<sup>3</sup>. The committee may co-opt up to four further members<sup>4</sup>. The quorum of the committee is four, of whom at least three must be members of the General Council<sup>5</sup>. If the chairman of the General Council<sup>6</sup> is a member of the committee, he is chairman of the committee<sup>7</sup>. If he is not a member of the committee, the members elect a chairman from among those members who are not co-opted members<sup>8</sup>. In the event of a tie in any voting, the chairman of the committee has an additional casting vote<sup>9</sup>.

1 As to the professional conduct committee as one of the statutory committees see PARA 591 ante. As to the consideration of allegations by the professional conduct committee see PARA 649 et seq post.

2 For the meaning of 'the General Council' see PARA 591 note 1 ante. As to the membership of the General Council see PARA 592 ante.

3 Chiropractors Act 1994 s 1(9), Sch 1 para 34. As to the members of the General Council appointed by the Privy Council see PARA 595 ante. As to the exercise by the Privy Council of its powers under the Chiropractors Act 1994 see PARA 612 post. As to the Privy Council generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

4 Ibid Sch 1 para 35. As to the co-option of members see PARA 604 ante.

5 Ibid Sch 1 para 37.

6 As to the chairman of the General Council see PARA 596 ante.

7 Chiropractors Act 1994 Sch 1 para 36(1).

8 Ibid Sch 1 para 36(2).

9 Ibid Sch 1 para 36(3). In the event of a tie in voting in respect of a decision under s 22 (see PARA 649 post) or s 24 (see PARA 652 post), the chairman must cast his additional vote in favour of the chiropractor concerned: Sch 1 para 36(4).

### **UPDATE**

### **609 The professional conduct committee**

TEXT AND NOTES--Chiropractors Act 1994 Sch 1 para 34 substituted, Sch 1 paras 35-37 repealed: SI 2008/1774. Chiropractors Act 1994 Sch 1 para 34A added: SI 2009/1182.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/5. CHIROPRACTORS/(1) THE GENERAL CHIROPRACTIC COUNCIL/ (iii) The Statutory Committees/610. The health committee.

## **610. The health committee.**

The health committee<sup>1</sup> consists of at least six members of the General Council<sup>2</sup>, of whom at least two must be members of the General Council appointed by the Privy Council<sup>3</sup>, and at least one must be a registered medical practitioner<sup>4</sup> at the time of his appointment<sup>5</sup>. The committee may co-opt up to four further members<sup>6</sup>. The quorum of the committee is five, none of whom need be registered medical practitioners but at least three of whom must be members of the General Council<sup>7</sup>. If the chairman of the General Council<sup>8</sup> is a member of the committee, he is chairman of the committee<sup>9</sup>. If he is not a member of the committee, the members elect a chairman from among those members who are not co-opted members<sup>10</sup>. In the event of a tie in any voting, the chairman of the committee has an additional casting vote<sup>11</sup>.

1 As to the health committee as one of the statutory committees see PARA 591 ante. As to the consideration of allegations by the health committee see PARA 651 et seq post.

2 Chiropractors Act 1994 s 1(9), Sch 1 para 38. For the meaning of 'the General Council' see PARA 591 note 1 ante. As to the membership of the General Council see PARA 592 ante.

3 Ibid Sch 1 para 38(a). As to the members of the General Council appointed by the Privy Council see PARA 595 ante. As to the exercise by the Privy Council of its powers under the Chiropractors Act 1994 see PARA 612 post. As to the Privy Council generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

4 For the meaning of 'registered medical practitioner' see PARA 4 ante.

5 Chiropractors Act 1994 Sch 1 para 38(b).

6 Ibid Sch 1 para 39. As to the co-option of members see PARA 604 ante.

7 Ibid Sch 1 para 41.

8 As to the chairman of the General Council see PARA 596 ante.

9 Chiropractors Act 1994 Sch 1 para 40(1).

10 Ibid Sch 1 para 40(2).

11 Ibid Sch 1 para 40(3). In the event of a tie in voting in respect of a decision under s 23 (as amended) (see PARA 651 post) or s 24 (see PARA 652 post), the chairman must cast his additional vote in favour of the chiropractor concerned: Sch 1 para 40(4).

## **UPDATE**

### **610 The health committee**

TEXT AND NOTES--Chiropractors Act 1994 Sch 1 para 38 substituted, Sch 1 paras 39-41 repealed: SI 2008/1774. Chiropractors Act 1994 Sch 1 para 38A added: SI 2009/1182.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/5. CHIROPRACTORS/(1) THE GENERAL CHIROPRACTIC COUNCIL/ (iv) Powers of the Privy Council/611. Default powers of Privy Council.

#### **(iv) Powers of the Privy Council**

##### **611. Default powers of Privy Council.**

If it appears to the Privy Council<sup>1</sup> that the General Council<sup>2</sup> has failed to perform any functions<sup>3</sup> which, in the opinion of the Privy Council, should have been performed, the Privy Council may give the General Council such direction as the Privy Council considers appropriate<sup>4</sup>. If the General Council fails to comply with any such direction, the Privy Council may itself give effect to the direction<sup>5</sup>. For the purpose of enabling it to give effect to a direction, the Privy Council may exercise any power of the General Council<sup>6</sup> or do any act or other thing authorised to be done by the General Council<sup>7</sup>, and do, of its own motion, any act or other thing which it is otherwise authorised to do under the Chiropractors Act 1994 on the instigation of the General Council<sup>8</sup>.

1 As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

2 For the meaning of 'the General Council' see PARA 591 note 1 ante.

3 As to the functions of the General Council see PARA 591 ante. See also PARA 597 ante.

4 Chiropractors Act 1994 s 34(1). As to the exercise by the Privy Council of its powers under the Chiropractors Act 1994 see PARA 612 post.

5 Ibid s 34(2).

6 As to the powers of the General Council see PARA 597 ante.

7 Chiropractors Act 1994 s 34(3)(a).

8 Ibid s 34(3)(b).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/5.  
 CHIROPRACTORS/(1) THE GENERAL CHIROPRACTIC COUNCIL/ (iv) Powers of the Privy  
 Council/612. Exercise of powers of Privy Council.

## **612. Exercise of powers of Privy Council.**

Where the approval of the Privy Council<sup>1</sup> is required by the Chiropractors Act 1994 in respect of the making of any rules by the General Council<sup>2</sup>, it must be given by an order made by the Privy Council<sup>3</sup>. Any power of the Privy Council under the Act to make an order is exercisable by statutory instrument<sup>4</sup>. For the purposes of exercising any such powers, the quorum of the Privy Council is two<sup>5</sup>. Any act of the Privy Council under the Act is sufficiently signified by an instrument signed by the clerk of the Privy Council<sup>6</sup>. Any document purporting to be an instrument made by the Privy Council under the Act<sup>7</sup>, and signed by the clerk of the Privy Council<sup>8</sup>, is evidence of the fact that the instrument was so made and of its terms<sup>9</sup>.

1 As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

2 For the meaning of 'the General Council' see PARA 591 note 1 ante. As to the making of rules see PARA 598 ante.

3 Chiropractors Act 1994 s 36(1).

4 Ibid s 36(2). Any order approving rules made under s 5 (see PARA 618 post), s 8(8) (see PARA 629 post), s 17 (see PARA 640 post), s 30 (see PARA 681 post) is subject to annulment in pursuance of a resolution of either House of Parliament: s 36(3). As to the annulment of statutory instruments see STATUTES vol 44(1) (Reissue) PARA 1516.

5 Ibid s 36(4).

6 Ibid s 36(5).

7 Ibid s 36(6)(a).

8 Ibid s 36(6)(b).

9 Ibid s 36(6).

### **UPDATE**

## **612 Exercise of powers of Privy Council**

NOTE 4--Chiropractors Act 1994 s 36(3) amended: SI 2008/1774.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/5. CHIROPRACTORS/(1) THE GENERAL CHIROPRACTIC COUNCIL/(v) External Regulation of the Profession/613. External regulation of the profession.

## **(v) External Regulation of the Profession**

### **613. External regulation of the profession.**

The General Chiropractic Council<sup>1</sup> is subject to the oversight of the Council for the Regulation of Health Care Professionals<sup>2</sup> and must in the exercise of its functions co-operate with that Council<sup>3</sup>. The Council for the Regulation of Health Care Professionals has powers to refer certain decisions of the professional conduct committee<sup>4</sup> and of the General Chiropractic Council<sup>5</sup> to the High Court where it considers the decision to be unduly lenient, or that it should not have been made, and that it would be desirable for the protection of members of the public<sup>6</sup>.

Her Majesty may by Order in Council<sup>7</sup> make provision modifying the regulation of the profession of chiropractic so far as appears to be necessary or expedient for the purpose of securing or improving the regulation of the profession or the services which the profession provides or to which it contributes<sup>8</sup>, and modifying, as respects the General Chiropractic Council, the range of functions of that body in relation to which the Council for the Regulation of Health Care Professionals performs its functions<sup>9</sup>.

The provisions of the Competition Act 1998 prohibiting agreements which have as their object the prevention, restriction or distortion of competition within the United Kingdom apply to rules made by professional bodies<sup>10</sup>. The Enterprise Act 2002<sup>11</sup>, for the purposes of an enforcement order<sup>12</sup>, has effect in relation to a regulatory provision<sup>13</sup> as it has effect in relation to an agreement, but with the necessary modifications<sup>14</sup>; and an enforcement order may be made so as to have effect in relation to a regulatory provision even though that provision was properly made in exercise of functions conferred by the Chiropractors Act 1994<sup>15</sup>.

1 As to the General Chiropractic Council see PARA 591 et seq ante.

2 See the National Health Service Reform and Health Care Professions Act 2002 s 25(3)(e); and PARA 294 ante. As to the Council for the Regulation of Health Care Professionals, its duties and powers see PARA 294 et seq ante.

3 See *ibid* s 27(1); and PARA 304 ante. As to the power of the Council for the Regulation of Health Care Professionals to give directions requiring the General Chiropractic Council to make rules where it considers that it would be desirable to do so for the protection of members of the public see PARA 304 ante. As to the power of the Secretary of State to make provision in regulations about the investigation by the Council for the Regulation of Health Care Professionals of complaints made to it about the way in which the General Chiropractic Council has exercised any of its functions see PARA 305 ante. As to the Secretary of State see PARA 5 ante.

4 *Ie* any step taken by the committee under the Chiropractors Act 1994 s 22 (see PARA 649 post), including a final decision not to take any disciplinary measure under that provision: see the National Health Service Reform and Health Care Professions Act 2002 s 29(1), (2)(a); and PARA 306 ante. As to the professional conduct committee see PARA 609 ante.

5 *Ie* a decision of the General Chiropractic Council, or one of its committees or officers, to restore a person to the register following his removal from it in accordance with the Chiropractors Act 1994 s 22 (see PARA 649 post): see the National Health Service Reform and Health Care Professions Act 2002 s 29(2)(c); and PARA 306 ante.

6 See *ibid* s 29; and PARA 306 ante.

7 As to Orders in Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 907.

8 See the Health Act 1999 s 60(1)(a), (2); and PARA 291 ante.

9 See *ibid* s 60(1)(e); and PARA 291 ante. As to the scope of such orders and the procedure for making them see PARAS 292-293 ante.

10 See the Competition Act 1998 Ch 1 (ss 1-11); and COMPETITION vol 18 (2009) PARA 116 et seq.

11 *Ie* the Enterprise Act 2002 Sch 8 (provision that may be contained in enforcement orders). As to the Enterprise Act 2002 see COMPETITION vol 18 (2009) PARA 171 et seq.

12 'An enforcement order' means an order under *ibid* s 160 (orders following failure to fulfil final undertakings), or s 161 (final orders following market investigation reports): Chiropractors Act 1994 s 33(4) (substituted by the Enterprise Act 2002 s 278(1), Sch 25 para 31(1), (5)).

13 'Regulatory provision' means: (1) any rule made by the General Chiropractic Council; (2) any provision of the code of practice issued by the General Chiropractic Council under the Chiropractors Act 1994 s 19 (see PARA 645 post); and (3) any other advice or guidance given by the General Chiropractic Council, any of its committees or any sub-committee of such a committee: s 33(1)(a)-(c). As to the making of rules see PARA 598 ante.

14 *Ibid* s 33(2) (amended by the Enterprise Act 2002 Sch 25 para 31(1), (2)(a), (b)). The references to anything permitted by the Enterprise Act 2002 Sch 8 in ss 160(4)(a), 161(3)(a), 164(1) must be construed accordingly: Chiropractors Act 1994 s 33(2A) (added by the Enterprise Act 2002 Sch 25 para 31(1), (3)).

15 Chiropractors Act 1994 s 33(3) (amended by the Enterprise Act 2002 Sch 25 para 31(1), (4)). For the purposes of an enforcement order the Enterprise Act 2002 s 86(3) as applied by s 164(2)(a) (power to apply orders to existing agreements) has effect in relation to a regulatory provision as it has effect in relation to an agreement: Chiropractors Act 1994 s 33(5) (substituted by the Enterprise Act 2002 Sch 25 para 31(1), (6)).

## **UPDATE**

### **613 External regulation of the profession**

TEXT AND NOTES--Council for the Regulation of Health Care Professionals renamed as the Council for Healthcare Regulatory Excellence: see the Health and Social Care Act 2008 s 113(1).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/5.  
 CHIROPRACTORS/ (2) REGISTRATION/(i) The Registrar/614. The registrar of chiropractors.

## **(2) REGISTRATION**

### **(i) The Registrar**

#### **614. The registrar of chiropractors.**

The General Council<sup>1</sup> must appoint a person to be the registrar for the purposes of the Chiropractors Act 1994<sup>2</sup>. The person appointed is known as the registrar of chiropractors<sup>3</sup>, and it is his duty to establish and maintain a register of chiropractors<sup>4</sup> in accordance with the provisions of the Act<sup>5</sup>. The registrar has such other functions as the General Council may direct<sup>6</sup>.

The registrar holds office for such period and on such terms as the General Council may determine<sup>7</sup>. The terms on which the registrar holds office may, in addition to providing for his remuneration, include provision for the payment of such pensions, allowances or gratuities to or in respect of him, or such contributions or payments towards provision for such pensions, allowances or gratuities, as may be determined by the General Council<sup>8</sup>. Where the terms on which the registrar holds office include provision for the payment to him of any allowances or expenses, the rate at which those allowances or expenses are paid is to be determined by the General Council<sup>9</sup>.

1 For the meaning of 'the General Council' see PARA 591 note 1 ante.

2 Chiropractors Act 1994 s 2(1).

3 Ibid s 2(2). In the Chiropractors Act 1994, the registrar of chiropractors is referred to as 'the registrar': see ss 2(2), 43.

4 The register of chiropractors maintained by the registrar under ibid s 2 is known as 'the register': see s 43.

5 Ibid s 2(3). As to such provisions see PARA 615 et seq post.

6 Ibid s 2(4).

7 See ibid s 2(2).

8 Ibid s 2(6).

9 Ibid s 2(5).



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/5.  
CHIROPRACTORS/ (2) REGISTRATION/(ii) Registration and the Register/615. Full registration.

## **(ii) Registration and the Register**

### **615. Full registration.**

Subject to the provisions of the Chiropractors Act 1994, any person who satisfies the following conditions is entitled to be registered<sup>1</sup> as a fully registered chiropractor<sup>2</sup>. The conditions are that the application is made in the prescribed form and manner<sup>3</sup> and that the applicant<sup>4</sup>:

- 799 (1) has paid the prescribed fee<sup>5</sup>;
- 800 (2) satisfies the registrar<sup>6</sup> that he is of good character<sup>7</sup>;
- 801 (3) satisfies the registrar that he is in good health, both physically and mentally<sup>8</sup>;  
and
- 802 (4) has a recognised qualification<sup>9</sup>.

The General Council<sup>10</sup> may by rules<sup>11</sup> provide for treating a person who: (a) has obtained a qualification in chiropractic outside the United Kingdom<sup>12</sup>; (b) does not hold a recognised qualification<sup>13</sup>; but (c) satisfies the registrar that he has reached the required standard of proficiency<sup>14</sup>, as holding a recognised qualification for these purposes<sup>15</sup>.

1 'Registered' means registered in the register: Chiropractors Act 1994 s 43. For the meaning of 'the register' see PARA 614 note 4 ante.

2 Ibid s 3(1). 'Fully registered chiropractor' means a person who is registered with full registration: s 43. As to the provisions relating to applications for registration made during the transitional period, being the period of two years beginning on 15 June 1999: see s 3(3)-(5), (7); the General Chiropractic Council (Registration During Transitional Period) Rules 1999, approved by the General Chiropractic Council (Registration During Transitional Period) Rules Order of Council 1999, SI 1999/1857; and PARAS 616-617 post.

3 For the meaning of 'prescribed' see PARA 592 note 10 ante. For the provisions relating to the form and manner of applications see PARA 621 post.

4 Chiropractors Act 1994 s 3(2).

5 Ibid s 3(2)(a). As to the prescribed fee see PARA 621 note 6 post.

6 For the meaning of 'the registrar' see PARA 614 note 3 ante.

7 Chiropractors Act 1994 s 3(2)(b). As to the requirements relating to the proof of good character see PARA 621 post.

8 Ibid s 3(2)(c). As to the requirements relating to the proof of good health see PARA 621 post.

9 Ibid s 3(2)(d). For the meaning of 'recognised qualification' see PARA 636 note 2 post.

10 For the meaning of 'the General Council' see PARA 591 note 1 ante.

11 As to the making of rules see PARA 598 ante.

12 Chiropractors Act 1994 s 3(6)(a). For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

13 Ibid s 3(6)(b).

14 Ibid s 3(6)(c). For the meaning of 'the required standard of proficiency' see PARA 635 note 2 post.

15 Ibid s 3(6). As to the rules that have been made see the General Chiropractic Council (Registration of Chiropractors with Foreign Qualifications) Rules 2002, approved by the General Chiropractic Council (Registration of Chiropractors with Foreign Qualifications) Rules Order of Council 2002, SI 2002/2704; and PARAS 626-627 post.

## **UPDATE**

### **615-619 Full registration ... Registration: supplemental**

A person who is lawfully established as a chiropractor in another EEA state or Switzerland is entitled to be registered as a temporarily registered chiropractor: see the Chiropractors Act 1994 s 5A (added by SI 2007/3101).

### **615 Full registration**

TEXT AND NOTES--The General Council may by rules provide for treating a person who does not hold a recognised qualification but who, on an application made to the Registrar before 1 January 2011, satisfies the Registrar that the person (1) obtained a qualification in chiropractic in the United Kingdom before 15 June 2001; (2) practised as a chiropractor before 15 June 2001; (3) has not practised as a chiropractor in the United Kingdom on or after 15 June 2001; (4) has a good reason for not having made a successful application for registration during the transitional period; and (5) is capable of the competent and safe practice of chiropractic, as holding a recognised qualification for the purposes of the Chiropractors Act 1994: s 3(6A) (added by SI 2008/1774). As to the rules that have been made, see the General Chiropractic Council (Registration of Chiropractors with United Kingdom Qualifications) Rules Order of Council 2009, SI 2009/27.

NOTE 15--SI 2002/2704 amended: SI 2007/3101.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/5.  
CHIROPRACTORS/ (2) REGISTRATION/(ii) Registration and the Register/616. Conditional registration.

## **616. Conditional registration.**

Subject to the provisions of the Chiropractors Act 1994, any person who satisfies the following conditions is entitled to be registered<sup>1</sup> as a conditionally registered chiropractor<sup>2</sup>. The conditions are that the application was made in the prescribed<sup>3</sup> form and manner during the transitional period<sup>4</sup> and that the applicant<sup>5</sup>:

- 803 (1) has paid the prescribed fee<sup>6</sup>;
- 804 (2) satisfies the registrar<sup>7</sup> that he is of good character<sup>8</sup>;
- 805 (3) satisfies the registrar that he is in good health, both physically and mentally<sup>9</sup>;
- 806 (4) satisfies the registrar that for a period of at least four years, which need not be continuous, he has spent a substantial part of his working time in the lawful, safe and competent practice of chiropractic<sup>10</sup>;
- 807 (5) if required to do so by the registrar in accordance with rules<sup>11</sup> made by the General Council<sup>12</sup>, passes:
  - 150 212. (a) the prescribed test of competence<sup>13</sup>; or
  - 213. (b) such part of that test as the registrar may specify<sup>14</sup>; and
- 151 808 (6) gives the required undertaking<sup>15</sup>.

The General Council may by rules provide for the conversion, in prescribed circumstances and subject to the chiropractor concerned complying with such conditions, if any, as may be prescribed, of conditional registration into full registration<sup>16</sup>. Unless it is converted into full registration in accordance with the rules, any conditional registration ceases to have effect at the end of the period of five years beginning with the opening of the register<sup>17</sup>, or, where a shorter period has been specified by the registrar<sup>18</sup> in relation to the chiropractor in question, at the end of that shorter period<sup>19</sup>.

1 For the meaning of 'registered' see PARA 615 note 1 ante.

2 Chiropractors Act 1994 s 4(1). 'Conditionally registered chiropractor' means a person who is registered with conditional registration: s 43.

3 For the meaning of 'prescribed' see PARA 592 note 10 ante.

4 'Transitional period' means the period of two years beginning with the opening of the register: Chiropractors Act 1994 s 4(10). 'Opening of the register' means the date on which s 3 comes into force: s 43. Section 3 came into force on 15 June 1999: see the Chiropractors Act 1994 (Commencement No 3) Order 1999, SI 1999/1496.

5 Chiropractors Act 1994 s 4(2). As to rules made under s 4 see the General Chiropractic Council (Registration During Transitional Period) Rules 1999, approved by the General Chiropractic Council (Registration During Transitional Period) Rules Order of Council 1999, SI 1999/1857.

6 Chiropractors Act 1994 s 4(2)(a). See also note 5 supra.

7 For the meaning of 'the registrar' see PARA 614 note 3 ante.

8 Chiropractors Act 1994 s 4(2)(b).

9 Ibid s 4(2)(c).

10 Ibid s 4(2)(d). In the application of s 4(2)(d), in relation to any person, no account is to be taken of any work done by him before the beginning of the period of six years ending with the opening of the register: s 4(3). For the purposes of s 4(2)(d), the question whether the applicant has spent any part of his working time in the lawful, safe and competent practice of chiropractic is to be determined in accordance with such rules (if any) as may be made by the General Council: s 4(9). See also note 5 supra. For the meaning of 'the General Council' see PARA 591 note 1 ante.

In dealing with an application for registration made during the transitional period by a person unable to meet the requirement of s 4(2)(d), but having a qualification in chiropractic which, while not being a recognised qualification, has not been refused recognition by the General Council, the registrar had to refer the matter to the education committee: s 4(6). Where such a reference was made to the education committee, it was the duty of the committee to advise the General Council: s 4(7). If, after considering the advice of the education committee, the General Council was satisfied that it was appropriate to do so, it had to direct the registrar to disregard s 4(2)(d) in relation to the application in question: s 4(8). As to the education committee see PARA 607 ante. For the meaning of 'recognised qualification' see PARA 636 note 2 post.

11 As to the making of rules see PARA 598 ante.

12 See note 5 supra.

13 Chiropractors Act 1994 s 4(2)(e)(i). See also note 5 supra.

14 Ibid s 4(2)(e)(ii).

15 Ibid s 4(2)(f). 'Required undertaking' means an undertaking that the person giving it will, before the end of the period of five years beginning with the opening of the register or such shorter period as the registrar may specify in relation to the applicant: (1) complete such additional training and acquire such experience as may be specified by the registrar in accordance with rules made by the General Council (s 4(10)(a)); and (2) comply with such other conditions (if any) as may be imposed on him by the registrar in accordance with such rules (s 4(10)(b)). Rules made by virtue of s 4(10)(b) may, in particular, provide for the registrar to be able to impose, as a condition, the passing of a test of competence specified by the registrar: s 4(11). As to such rules see note 5 supra.

16 Ibid s 4(4). As to the conversion of conditional registration into full registration see PARA 617 post. As to full registration see PARA 615 ante.

17 Ibid s 4(5)(a).

18 Ie in accordance with ibid s 4(10): see note 15 supra.

19 Ibid s 4(5)(b).

## UPDATE

### 615-619 Full registration ... Registration: supplemental

A person who is lawfully established as a chiropractor in another EEA state or Switzerland is entitled to be registered as a temporarily registered chiropractor: see the Chiropractors Act 1994 s 5A (added by SI 2007/3101).

### 616 Conditional registration

NOTE 15--For the meaning of 'training' see PARA 595.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/5. CHIROPRACTORS/ (2) REGISTRATION/(ii) Registration and the Register/617. Conversion of conditional registration to full registration.

### **617. Conversion of conditional registration to full registration.**

The conditional registration<sup>1</sup> of a chiropractor is converted to full registration<sup>2</sup> upon the payment by the chiropractor of a fee of £250 and the making of an application in writing<sup>3</sup> to the registrar<sup>4</sup> signed by the applicant<sup>5</sup>, if: (1) he satisfies the registrar that for a period of at least five years before the application is made, which period need not be continuous, he has spent a substantial part of his working time in the lawful, safe and competent practice of chiropractic<sup>6</sup>; (2) he has acquired a recognised qualification<sup>7</sup>; or (3) he has fulfilled any required undertaking<sup>8</sup>.

For the purposes of head (1) above, no account is to be taken of any work done by the applicant before the beginning of the period of seven years ending with the opening of the register<sup>9</sup>, and the issue in head (1) above is to be determined by the registrar in accordance with the following provisions<sup>10</sup>. In determining that issue, the registrar is to have regard, amongst other matters, to the period during which the applicant has been registered on a chiropractic register<sup>11</sup> or maintained professional indemnity insurance in respect of a chiropractic practice, or during which he has in other circumstances carried out the work of a chiropractor, and to the nature and extent of his practice during any such period<sup>12</sup>. Where, during any period taken into account for these purposes, an applicant has practised chiropractic in a place outside the United Kingdom<sup>13</sup>, and the practice of chiropractic there was prohibited unless legal requirements relating to it were complied with, the applicant must satisfy the registrar that he has complied with those requirements in order to be treated as having spent that period in the lawful practice of chiropractic<sup>14</sup>. In determining whether the applicant has practised chiropractic safely, the registrar is to have regard to: any complaint made to a professional regulatory body on whose register, roll or list the applicant is or has been entered; any claim made under a contract of insurance providing professional indemnity to the applicant; proceedings, whether criminal or civil, brought against the applicant in connection with his practice of chiropractic; and any other matter which appears to the registrar to be relevant to the issue<sup>15</sup>. In determining whether an applicant has practised chiropractic competently, the registrar is to have regard to the provisions of the required standard of proficiency, together with any other matter which appears to the registrar to be relevant to the issue<sup>16</sup>. In determining whether an applicant has spent a part of his working time in the lawful, safe and competent practice of chiropractic, and if so, whether it is a substantial part, the registrar may if he thinks it desirable from time to time require from the applicant any information in addition to that provided with the application for registration and may require the applicant to be interviewed by the education committee or a sub-committee of the education committee<sup>17</sup>, or by a person nominated by the registrar, or to be visited at any place where he practises chiropractic by a person so nominated; and the registrar may obtain information from any other person or source as he considers appropriate<sup>18</sup>.

1 As to conditional registration see PARA 616 ante.

2 As to full registration see PARA 615 ante.

3 For the meaning of 'writing' see PARA 20 note 22 ante.

4 For the meaning of 'the registrar' see PARA 614 note 3 ante.

5 General Chiropractic Council (Registration During Transitional Period) Rules Order of Council 1999, SI 1999/1857, r 8(1).

6 Ibid r 8(1)(a). In connection with any application under r 8(1)(a), the applicant must provide evidence acceptable to the registrar that he meets the requirement of that provision: see r 8(3).

7 Ibid r 8(1)(b). In connection with any application under r 8(1)(b), the applicant must provide evidence of having acquired the recognised qualification comprising the document conferring it or an original certificate issued by the institution granting it that it has conferred the qualification on him: see r 8(4). For the meaning of 'recognised qualification' see PARA 636 note 2 post.

8 Ibid r 8(1)(c). 'Required undertaking' means the undertaking required by the Chiropractors Act 1994 s 4(2)(f) (see PARA 616 text to note 15 ante): General Chiropractic Council (Registration During Transitional Period) Rules Order of Council 1999, SI 1999/1857, r 2(1).

9 For the meaning of 'opening of the register' see PARA 616 note 4 ante.

10 See the General Chiropractic Council (Registration During Transitional Period) Rules Order of Council 1999, SI 1999/1857, r 8(2).

11 'Chiropractic register' means a register, roll or list kept by a professional regulatory body of persons practising chiropractic: ibid r 4(7). 'Professional regulatory body' means a body, whether incorporated or not, which keeps a register of persons who have satisfied the body (whether by the passing of an examination or by some other means) that they are competent to practise chiropractic: r 4(7).

12 Ibid rr 4(2), 8(2).

13 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

14 General Chiropractic Council (Registration During Transitional Period) Rules Order of Council 1999, SI 1999/1857, rr 4(3), 8(2).

15 Ibid rr 4(4), 8(2). As to the application of the Rehabilitation of Offenders Act 1974 to chiropractors see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 687.

16 General Chiropractic Council (Registration During Transitional Period) Rules Order of Council 1999, SI 1999/1857, rr 4(5), 8(2).

17 As to the education committee see PARA 607 ante. As to the establishment of sub-committees see PARA 597 ante.

18 General Chiropractic Council (Registration During Transitional Period) Rules Order of Council 1999, SI 1999/1857, rr 4(6), 8(2).

## **UPDATE**

### **615-619 Full registration ... Registration: supplemental**

A person who is lawfully established as a chiropractor in another EEA state or Switzerland is entitled to be registered as a temporarily registered chiropractor: see the Chiropractors Act 1994 s 5A (added by SI 2007/3101).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/5. CHIROPRACTORS/ (2) REGISTRATION/(ii) Registration and the Register/618. Provisional registration.

### **618. Provisional registration.**

As from a day to be appointed<sup>1</sup>, the General Council<sup>2</sup> may make rules<sup>3</sup> providing for all applicants for registration who are entitled to be registered<sup>4</sup> with full registration<sup>5</sup>, or all such applicants falling within a prescribed<sup>6</sup> class, to be registered initially with provisional registration<sup>7</sup>. Before making any such rules, the General Council must take such steps as are reasonably practicable to consult those who are registered chiropractors<sup>8</sup>.

The General Council may by rules provide for the conversion, in prescribed circumstances and subject to the chiropractor concerned complying with such conditions, if any, as may be prescribed, of provisional registration into full registration<sup>9</sup>. Unless it is converted into full registration in accordance with the rules, any provisional registration ceases to have effect at the end of the period of one year beginning with the date on which it is entered in the register<sup>10</sup>.

A provisionally registered chiropractor must not practise chiropractic except under the supervision of a fully registered chiropractor<sup>11</sup> who is approved by the General Council for the purpose<sup>12</sup>. The General Council must maintain a list of those fully registered chiropractors who are for the time being approved for this purpose<sup>13</sup>.

1 The Chiropractors Act 1994 s 5 is to come into force on such day as the Secretary of State may by order appoint: see s 44(3). At the date at which this volume states the law no such day had been appointed. As to the Secretary of State see PARA 5 ante.

2 For the meaning of 'the General Council' see PARA 591 note 1 ante.

3 As to the making of rules see PARA 598 ante.

4 For the meaning of 'registered' see PARA 615 note 1 ante.

5 As to full registration see PARA 615 ante.

6 For the meaning of 'prescribed' see PARA 592 note 10 ante.

7 Chiropractors Act 1994 s 5(1). At the date at which this volume states the law no such rules had been made. A person who is registered with provisional registration is to be known as a 'provisionally registered chiropractor': see s 43.

8 Ibid s 5(2). For the meaning of 'registered chiropractor' see PARA 595 note 5 ante.

9 Ibid s 5(3). At the date at which this volume states the law no such rules had been made.

10 Ibid s 5(4). For the meaning of 'the register' see PARA 614 note 4 ante.

11 For the meaning of 'fully registered chiropractor' see PARA 615 note 2 ante.

12 Chiropractors Act 1994 s 5(5).

13 Ibid s 5(6).

### **UPDATE**

### **615-619 Full registration ... Registration: supplemental**

A person who is lawfully established as a chiropractor in another EEA state or Switzerland is entitled to be registered as a temporarily registered chiropractor: see the Chiropractors Act 1994 s 5A (added by SI 2007/3101).



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CHIROPRACTORS/ (2) REGISTRATION/(ii) Registration and the Register/619. Registration:  
supplemental.

### **619. Registration: supplemental.**

The register<sup>1</sup> must show, in relation to each registered chiropractor<sup>2</sup>, whether he is registered<sup>3</sup> with full, conditional or provisional registration<sup>4</sup>, and the address at which he has his practice or principal practice or, if he is not practising, such address as may be prescribed<sup>5</sup>. The General Council<sup>6</sup> may make rules<sup>7</sup> in connection with registration and the register and as to the payment of fees<sup>8</sup>. The rules may, in particular, make provision as to:

- 809 (1) the form and keeping of the register<sup>9</sup>;
- 810 (2) the form and manner in which applications for registration are to be made<sup>10</sup>;
- 811 (3) the documentary and other evidence which is to accompany applications for registration<sup>11</sup>;
- 812 (4) the manner in which the registrar<sup>12</sup> is to satisfy himself as to the good character and competence of any person applying for registration and the procedure for so doing<sup>13</sup>;
- 813 (5) the manner in which the registrar is to satisfy himself as to the physical and mental health of any person applying for registration and the procedure for so doing<sup>14</sup>;
- 814 (6) the description of persons from whom references are to be provided for persons applying for registration<sup>15</sup>;
- 815 (7) in the case of an application for conditional registration, the conditions or kinds of condition which may be imposed on the chiropractor concerned<sup>16</sup>;
- 816 (8) the making, periodic renewal, and removal, of entries in the register<sup>17</sup>;
- 817 (9) the giving of reasons for any removal of, or refusal to renew, an entry in the register<sup>18</sup>;
- 818 (10) any failure on the part of a registered chiropractor to comply with any conditions subject to which his registration has effect, including provision for the registrar to refuse to renew his registration or for the removal of his name from the register<sup>19</sup>;
- 819 (11) the issue and form of certificates<sup>20</sup>;
- 820 (12) the content, assessment and conduct of any test of competence<sup>21</sup>;
- 821 (13) the meaning of 'principal practice'<sup>22</sup>.

The rules may also make provision: (a) prescribing the fee to be charged for making an entry in the register or restoring such an entry<sup>23</sup>; (b) prescribing the fee to be charged in respect of the retention in the register of any entry in any year following the year in which the entry was first made<sup>24</sup>; (c) providing for the entry in the register of qualifications, whether or not they are recognised qualifications<sup>25</sup>, possessed by registered chiropractors, and the removal of such an entry<sup>26</sup>; (d) prescribing the fee to be charged in respect of the making or removal of any entry of a kind mentioned in head (c) above<sup>27</sup>; (e) authorising the registrar to refuse to make an entry in the register or restore such an entry, until the prescribed fee has been paid<sup>28</sup>, and to remove from the register any entry relating to a person who, after the prescribed notice has been given, fails to pay the fee prescribed in respect of the retention of the entry<sup>29</sup>.

1 For the meaning of 'the register' see PARA 614 note 4 ante.

2 For the meaning of 'registered chiropractor' see PARA 595 note 5 ante.

- 3 For the meaning of 'registered' see PARA 615 note 1 ante.
- 4 Chiropractors Act 1994 s 6(1)(a). As to full registration see PARA 615 ante. As to conditional registration see PARA 616 ante. As to provisional registration see PARA 618 ante.
- 5 Ibid s 6(1)(b). The address which is entered in the register, in relation to the chiropractor in question in accordance with the requirements of s 6(1) is known as the 'registered address'; and this does not include any other address which may be entered in the register, in relation to him, by virtue of rules made under s 6(2) (see the text to notes 6-8 infra): see s 43. For the meaning of 'prescribed' see PARA 592 note 10 ante.
- 6 For the meaning of 'the General Council' see PARA 591 note 1 ante.
- 7 As to the making of rules see PARA 598 ante.
- 8 Chiropractors Act 1994 s 6(2). As to the rules that have been made see the General Chiropractic Council (Registration) Rules Order of Council 1999, approved by the General Chiropractic Council (Registration) Rules Order of Council 1999, SI 1999/1856; the General Chiropractic Council (Registration of Chiropractors with Foreign Qualifications) Rules 2002, approved by the General Chiropractic Council (Registration of Chiropractors with Foreign Qualifications) Rules Order of Council 2002, SI 2002/2704; and PARAS 626-627 post.
- 9 Chiropractors Act 1994s 6(3)(a).
- 10 Ibid s 6(3)(b).
- 11 Ibid s 6(3)(c).
- 12 For the meaning of 'the registrar' see PARA 614 note 3 ante.
- 13 Chiropractors Act 1994 s 6(3)(d).
- 14 Ibid s 6(3)(e).
- 15 Ibid s 6(3)(f).
- 16 Ibid s 6(3)(g).
- 17 Ibid s 6(3)(h).
- 18 Ibid s 6(3)(i).
- 19 Ibid s 6(3)(j).
- 20 Ibid s 6(3)(k).
- 21 Ie any test of competence imposed under ibid s 4 (see PARA 616 ante): s 6(3)(l).
- 22 Ie for the purposes of ibid s 6(1) (see the text to note 5 supra): s 6(3)(m).
- 23 Ibid s 6(4)(a).
- 24 Ibid s 6(4)(b).
- 25 For the meaning of 'recognised qualification' see PARA 636 note 2 post.
- 26 Chiropractors Act 1994 s 6(4)(c).
- 27 Ibid s 6(4)(d).
- 28 Ibid s 6(4)(e)(i).
- 29 Ibid s 6(4)(e)(ii).

## UPDATE

### 615-619 Full registration ... Registration: supplemental

A person who is lawfully established as a chiropractor in another EEA state or Switzerland is entitled to be registered as a temporarily registered chiropractor: see the Chiropractors Act 1994 s 5A (added by SI 2007/3101).

**619 Registration: supplemental**

NOTES--Chiropractors Act 1994 s 6 amended: SI 2007/3101.

NOTE 8--See also the General Chiropractic Council (Registration of Chiropractors with United Kingdom Qualifications) Rules Order of Council 2009, SI 2009/27. SI 1999/1856 amended: SI 2005/2114, SI 2007/3101. SI 2002/2704 amended: SI 2007/3101.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/5.  
CHIROPRACTORS/ (2) REGISTRATION/(ii) Registration and the Register/620. Form of register.

## **620. Form of register.**

There must be entered in the register<sup>1</sup> against each registered chiropractor<sup>2</sup>, in addition to his full name and the specified particulars<sup>3</sup>, the following: (1) the number of the certificate of registration<sup>4</sup>; (2) an indication of whether the chiropractor is male or female<sup>5</sup>; (3) the qualification of which the chiropractor is possessed which has led to his registration<sup>6</sup>. The entries for registered chiropractors must appear in the register in the alphabetical order of each chiropractor's surname<sup>7</sup>. The prescribed<sup>8</sup> address to be shown in the register in respect of a chiropractor who is not practising is his last known place of residence<sup>9</sup>. The register must also comprise within it separate tables showing: (a) the total number of each class of fully registered, conditionally registered and provisionally registered chiropractors<sup>10</sup> appearing in the register on 1 January immediately past<sup>11</sup>; and (b) the number of persons of each class added or removed from the register in the period of 12 months ending with 1 January immediately past<sup>12</sup>. The registrar<sup>13</sup> is not precluded by anything in these provisions from entering on the register any other information which is material to a person's registration or which is required by the Chiropractors Act 1994 to appear on the register<sup>14</sup>.

1 For the meaning of 'the register' see PARA 614 note 4 ante.

2 For the meaning of 'registered chiropractor' see PARA 595 note 5 ante.

3 Ie the particulars required by the Chiropractors Act 1994 s 6(1): see PARA 619 ante.

4 General Chiropractic Council (Registration) Rules Order of Council 1999, SI 1999/1856, r 3(1)(a). As to certificates of registration see PARA 621 post.

5 Ibid r 3(1)(b).

6 Ibid r 3(1)(c). 'Registration' means registration as a registered chiropractor in the register: r 2(1).

7 Ibid r 3(2).

8 For the meaning of 'prescribed' see PARA 592 note 10 ante.

9 General Chiropractic Council (Registration) Rules Order of Council 1999, SI 1999/1856, r 3(3).

10 For the meaning of 'fully registered chiropractor' see PARA 615 note 2 ante. For the meaning of 'conditionally registered chiropractor' see PARA 616 note 2 ante. For the meaning of 'provisionally registered chiropractor' see PARA 618 note 7 ante.

11 General Chiropractic Council (Registration) Rules Order of Council 1999, SI 1999/1856, r 3(4)(a).

12 Ibid r 3(4)(b).

13 For the meaning of 'the registrar' see PARA 614 note 3 ante.

14 See the General Chiropractic Council (Registration) Rules Order of Council 1999, SI 1999/1856, r 3(5).

## **UPDATE**

### **620 Form of register**

NOTE 11--SI 1999/1856 r 3(4)(a) amended: SI 2007/3101.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/5. CHIROPRACTORS/ (2) REGISTRATION/(ii) Registration and the Register/621. Applications for registration; certificates of registration.

## **621. Applications for registration; certificates of registration.**

An application for registration<sup>1</sup> must be made to the registrar<sup>2</sup> in writing<sup>3</sup> in the specified form<sup>4</sup>, must be signed by the applicant<sup>5</sup> and must be accompanied by the fee prescribed<sup>6</sup>. The applicant must provide the following in relation to any such application:

- 822 (1) a reference as to good character from a person unrelated to the applicant by birth or marriage<sup>7</sup>, being a person of good standing in the community who has known the applicant for at least four years and who is acceptable to the registrar<sup>8</sup>;
- 823 (2) a report, meeting the specified requirements<sup>9</sup>, as to the physical and mental health of the applicant<sup>10</sup>;
- 824 (3) evidence of the applicant having a recognised qualification<sup>11</sup> comprising the document conferring it or an original certificate issued by the institution granting it that it has conferred the qualification on the applicant<sup>12</sup>;
- 825 (4) so far as relevant, all the other particulars specified in the prescribed form<sup>13</sup>; and
- 826 (5) such other information or documents as the registrar may reasonably require for the purposes of determining the application<sup>14</sup>.

In order to satisfy himself about the good character of the applicant, the registrar must take account of the reference provided<sup>15</sup>, any criminal offence for which the applicant has been convicted, and any other matters which appear to the registrar to be relevant to the issue<sup>16</sup>. In order to satisfy himself about the physical and mental health of the applicant, the registrar must take account of any report provided<sup>17</sup>, and any other matters which appear to the registrar to be relevant to the issue<sup>18</sup>. In so satisfying himself<sup>19</sup>, the registrar may, if he thinks it desirable, require from the applicant any information in addition to that required with the application<sup>20</sup>; and, in relation to the physical and mental health of the applicant, the registrar may require the applicant to be examined by a registered medical practitioner nominated by the registrar<sup>21</sup>.

The registrar must, upon entering any person in the register<sup>22</sup>, issue to that person a certificate specifying whether he is fully, conditionally or provisionally registered, and the date of registration<sup>23</sup>.

The registrar must, if reasonably requested to do so, issue a certificate as to the status of a person's registration<sup>24</sup>.

1    Ie an application for registration made after the transitional period, being the period of two years beginning with 15 June 1999: see the General Chiropractic Council (Registration) Rules Order of Council 1999, SI 1999/1856, rr 2(1), 4(1). As to applications for registration made during the transitional period see the General Chiropractic Council (Registration During Transitional Period) Rules 1999, approved by the General Chiropractic Council (Registration During Transitional Period) Rules Order of Council 1999, SI 1999/1857; and PARAS 616-617 ante. For the meaning of 'registration' see PARA 620 note 6 ante.

2    For the meaning of 'the registrar' see PARA 614 note 3 ante.

3    For the meaning of 'writing' see PARA 20 note 22 ante.

4    Ie the form set out in the General Chiropractic Council (Registration) Rules Order of Council 1999, SI 1999/1856, Sch 1 Form A: see rr 2(2), 4(1).

5 'Applicant' means a person applying for registration under *ibid* r 4: r 2(1).

6 *Ibid* r 4(1). The fee prescribed is: (1) £100, in respect of an applicant who satisfies the registrar that, by virtue of sickness or other reason, he does not intend to engage in the practice of chiropractic within the United Kingdom, the Channel Islands, the Isle of Man or a European Economic Area state during the period ending 31 December in the year in which he will next be required to be sent documents under r 8(2) (see *PARA* 623 post) (r 4(1), Sch 2 para 1(a)); or (2) in any other case, £1,250 (Sch 2 para 1(b)). The registrar may refuse to make an entry in the register if any fee prescribed has not been paid: r 11(2). For the meaning of 'United Kingdom' see *PARA* 1 note 3 ante. 'European Economic Area state' means a member state, Norway, Liechtenstein, Iceland or Switzerland: Sch 2 para 6(a) (substituted by SI 2004/1947). For the meaning of 'member state' see the Interpretation Act 1978 s 5, Sch 1; and the European Communities Act 1972 s 1(2), Sch 1 Pt II.

7 Two people are to be treated as related by birth or marriage for these purposes if they are spouses of each other or if one or the spouse of one of them bears to the other or spouse of the other a relationship of lineal descendant, brother, sister, nephew, niece or first cousin; and 'spouse' for this purpose includes a former spouse and an unmarried partner of the same or the opposite sex: General Chiropractic Council (Registration) Rules Order of Council 1999, SI 1999/1856, r 2(3).

8 *Ibid* r 4(2)(a). Such persons include a solicitor, accountant, bank manager, justice of the peace, minister of the church, imam, rabbi, or similar religious official who appears to the registrar to be appropriate: r 4(2)(a).

9 The specified requirements are that the report given under *ibid* r 4(2)(b) must be given by the applicant's medical practitioner, who must not be related to the applicant by birth or marriage and must have known the applicant for a period of at least four years; but if the registrar is satisfied that, because these conditions cannot be met, no such report can be given, the registrar may satisfy himself as to the mental and physical health of the applicant (so far as he considers it necessary to do so having regard to any other information available under r 5(2) (see the text to note 17, 18 *infra*) or examination required under r 5(3) (see the text to note 19-21 *infra*)) by a report given by a registered medical practitioner who, in giving the report, relies on the medical records of the applicant made by registered medical practitioners of whom the applicant was a patient (or by partners of such practitioners) for a period in aggregate of at least four years: r 4(3). For the meaning of 'registered medical practitioner' see *PARA* 4 ante.

10 *Ibid* r 4(2)(b).

11 For the meaning of 'recognised qualification' see *PARA* 636 note 2 post.

12 General Chiropractic Council (Registration) Rules Order of Council 1999, SI 1999/1856, r 4(2)(c).

13 *Ibid* r 4(2)(d). As to the prescribed form see note 4 *supra*.

14 *Ibid* r 4(2)(e).

15 *Ie* under *ibid* r 4(2)(a): see the text to notes 7, 8 *supra*.

16 *Ibid* r 5(1). As to the application of the Rehabilitation of Offenders Act 1974 to chiropractors see *SENTENCING AND DISPOSITION OF OFFENDERS* vol 92 (2010) *PARA* 687.

17 *Ie* under the General Chiropractic Council (Registration) Rules Order of Council 1999, SI 1999/1856, r 4(2)(b): see the text to notes 9, 10 *supra*.

18 *Ibid* r 5(2).

19 *Ie* under *ibid* r 5(1) or (2): see the text to notes 15-18 *supra*.

20 *Ie* in addition to that required by *ibid* r 4: see the text to notes 1-14 *supra*.

21 *Ibid* r 5(3).

22 For the meaning of 'the register' see *PARA* 614 note 4 ante.

23 General Chiropractic Council (Registration) Rules Order of Council 1999, SI 1999/1856, r 6(2).

24 *Ie* a certificate as to the matters mentioned in the Chiropractors Act 1994 s 9(8) (see *PARA* 630 post): General Chiropractic Council (Registration) Rules Order of Council 1999, SI 1999/1856, r 6(1).

## UPDATE

## **621 Applications for registration; certificates of registration**

NOTES--SI 1999/1856 r 2(2A) added: SI 2007/3101.

NOTES 1-6--SI 1999/1856 r 6(2), Sch 2 para 6 revoked: SI 2007/3101. SI 1999/1856 Sch 2 para 1 amended: SI 2007/3101, SI 2009/2305. SI 1999/1856 r 4(1) amended, r 2(2), Sch 1 revoked: SI 2009/2305.

NOTE 7--SI 1999/1856 r 2(3) substituted: SI 2005/2114.

TEXT AND NOTES 8, 9--SI 1999/1856 r 4(2)(a), (3) amended: SI 2005/2114.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/5. CHIROPRACTORS/ (2) REGISTRATION/(ii) Registration and the Register/622. Amendments of the register.

## **622. Amendments of the register.**

A registered chiropractor<sup>1</sup> must notify the registrar<sup>2</sup> within one month of any change of the following particulars given in respect of him in the register<sup>3</sup>: (1) his name<sup>4</sup>; (2) the particulars as to his address which are to be shown in the register<sup>5</sup>; (3) any qualifications possessed by the chiropractor which may be material to his practice as a chiropractor<sup>6</sup>. The registrar must amend the register:

- 827 (a) so far as may be necessary in consequence of any such notification<sup>7</sup>;
- 828 (b) so far as may be necessary to give effect to the duty to suspend registration<sup>8</sup>;
- 829 (c) so far as may be necessary to give effect to a decision granting an application for restoration to the register<sup>9</sup>;
- 830 (d) so far as may be necessary to give effect to any decision relating to the fraudulent procurement or incorrect making of an entry in the register<sup>10</sup>;
- 831 (e) so far as may be necessary to give effect to any decision of a committee or court relating to fitness to practise<sup>11</sup>;
- 832 (f) so far as may be necessary to give effect to any decision on an appeal<sup>12</sup>; and
- 833 (g) so far as may be necessary to give effect to any other information which has come to the attention of the registrar and which in his opinion calls for such amendment in order to maintain the accuracy of the register<sup>13</sup>.

Before making any amendment under head (a) or head (g) above, the registrar must make such further enquiries, and may in a case where a duty to notify<sup>14</sup> arises require such further evidence from the chiropractor concerned, as appears to him to be necessary or appropriate<sup>15</sup>.

1 For the meaning of 'registered chiropractor' see PARA 595 note 5 ante.

2 For the meaning of 'the registrar' see PARA 614 note 3 ante.

3 General Chiropractic Council (Registration) Rules Order of Council 1999, SI 1999/1856, r 7(1). Any notification under r 7(1) must be in the form set out in Sch 1 Form B, and must be accompanied by the fee prescribed: r 7(4). The fee prescribed is £75: Sch 2 para 2. The registrar may refuse to make an entry in the register if any fee prescribed has not been paid: r 11(2). For the meaning of 'the register' see PARA 614 note 4 ante.

4 Ibid r 7(1)(a).

5 Ie pursuant to the Chiropractors Act 1994 s 6(1)(b) (see PARA 619 ante): General Chiropractic Council (Registration) Rules Order of Council 1999, SI 1999/1856, r 7(1)(b).

6 Ibid r 7(1)(c).

7 Ibid r 7(2)(a).

8 Ie the duty in the Chiropractors Act 1994 s 7(1), (2) (see PARA 628 post): General Chiropractic Council (Registration) Rules Order of Council 1999, SI 1999/1856, r 7(2)(b).

9 Ie a decision under the Chiropractors Act 1994 s 8 (see PARA 629 post): General Chiropractic Council (Registration) Rules Order of Council 1999, SI 1999/1856, r 7(2)(c).

10 Ie any decision under the Chiropractors Act 1994 s 10 (see PARA 631 post): General Chiropractic Council (Registration) Rules Order of Council 1999, SI 1999/1856, r 7(2)(d).

11    le any decision under the Chiropractors Act 1994 ss 22-25 (see PARAS 649-653 post): General Chiropractic Council (Registration) Rules Order of Council 1999, SI 1999/1856, r 7(2)(e).

12    le any decision under the Chiropractors Act 1994 ss 29-31 (see PARAS 676, 681, 688 post): General Chiropractic Council (Registration) Rules Order of Council 1999, SI 1999/1856, r 7(2)(f).

13    Ibid r 7(2)(g).

14    le the duty under ibid r 7(1): see the text to notes 1-6 supra.

15    Ibid r 7(3).

## **UPDATE**

### **622 Amendments of the register**

NOTES 1-3--SI 1999/1856 r 7(1) amended, r 7(4), Sch 1, Sch 2 para 2 revoked: SI 2009/2305.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/5. CHIROPRACTORS/ (2) REGISTRATION/(ii) Registration and the Register/623. Retention of registration.

### **623. Retention of registration.**

Subject to the provisions described below, any registration<sup>1</sup> made by the registrar<sup>2</sup> after 31 December 2000 has effect during the period beginning with the making of the relevant entry in the register<sup>3</sup> and ending with 31 December in the year in which that entry is made<sup>4</sup>.

Not later than 10 November in every year the registrar must send<sup>5</sup> to every registered chiropractor<sup>6</sup>: (1) a form of application<sup>7</sup> for the retention of the chiropractor's name in the register<sup>8</sup>; (2) a notification of the retention fee<sup>9</sup>; and (3) a warning that unless a duly completed application in the relevant form is made, accompanied by payment of the retention fee on or before 30 November in that year, his registration will be liable to be removed from the register<sup>10</sup>. If no such application and payment of the retention fee is received by the registrar by that date, he must send a notice of final warning to the registered chiropractor that, if no duly completed application for retention in the specified form with payment of the retention fee is made before the end of the period of 14 days beginning with the day on which the notice was issued, his registration will be removed<sup>11</sup>. If no such application and payment is so made, the registrar may remove the name of the chiropractor from the register<sup>12</sup>.

No application is required for the retention of an entry in the register in respect of a person: (a) who has received a notification in respect of an allegation relating to professional conduct or fitness to practise<sup>13</sup> and is subject to an investigation in respect of it<sup>14</sup> in connection with which all proceedings and appeals arising have not been completed or the time for all such appeals has not expired<sup>15</sup>; (b) whose registration is suspended<sup>16</sup>; or (c) who is not able to be sent the specified documents<sup>17</sup> because he is first registered on or after 10 November in the year in question<sup>18</sup>. Upon completion of any such investigation and of all proceedings and appeals arising from it, or as the case may be upon the expiry of the time for any such appeal without such appeal being made, where the decision is not one that the chiropractor's name be removed from the register or his registration suspended, or the ending of such a suspension, then unless there then remains less than three months<sup>19</sup> in the year, the registrar must send to the chiropractor the specified documents, treating the reference to 30 November in a year as a reference to the day 20 days after those matters are sent to the chiropractor<sup>20</sup>.

1 For the meaning of 'registration' see PARA 620 note 6 ante.

2 For the meaning of 'the registrar' see PARA 614 note 3 ante.

3 For the meaning of 'the register' see PARA 614 note 4 ante.

4 General Chiropractic Council (Registration) Rules Order of Council 1999, SI 1999/1856, r 8(1)(b). Any registration made by the registrar on or before 31 December 2000 had effect during the period beginning with the making of the relevant entry in the register and ending with 31 December 2000: see r 8(1)(a).

5 Any form, notification, warning or notice to be given by the registrar under *ibid* r 8(2), (3), (5) (see the text and notes 6-11, 19-20 *infra*) may be sent by post to the address of the chiropractor concerned which appears in the register pursuant to the Chiropractors Act 1994 s 6(1)(b) (see PARA 619 ante), and is treated as sent or issued at the time of its posting: General Chiropractic Council (Registration) Rules Order of Council 1999, SI 1999/1856, r 8(6).

6 For the meaning of 'registered chiropractor' see PARA 595 note 5 ante.

7 The form must be in the form set out in the General Chiropractic Council (Registration) Rules Order of Council 1999, SI 1999/1856, Sch 1 Form C: see r 8(2)(a).

8 Ibid r 8(2)(a).

9 Ibid r 8(2)(b). The retention fee is: (1) £100, in respect of an applicant who satisfies the registrar that, by virtue of sickness or other reason, he does not intend to engage in the practice of chiropractic within the United Kingdom, the Channel Islands, the Isle of Man or a European Economic Area state during the period of 12 months beginning on 1 January next after the year in which the notification in question under r 8(2)(b) is required to be sent (r 8(2)(b), Sch 2 para 3(a)); or (2) in any other case, £1,000 (Sch 2 para 3(b)). The registrar may refuse to retain an entry in the register if any fee prescribed has not been paid: r 11(2). For the meaning of 'United Kingdom' see PARA 1 note 3 ante. For the meaning of 'European Economic Area state' see PARA 621 note 6 ante.

10 Ibid r 8(2)(c).

11 Ibid r 8(3). See also note 5 supra.

12 Ibid r 8(3). As to removal from the register see PARA 624 post.

13 Ie under the Chiropractors Act 1994 s 20(9)(a): see PARA 647 post.

14 Ie under ibid ss 20, 22-24: see PARAS 646-647, 649-652 post.

15 See the General Chiropractic Council (Registration) Rules Order of Council 1999, SI 1999/1856, r 8(4)(a). As to appeals see PARA 676 et seq post.

16 Ibid r 8(4)(b). As to suspension of registration see PARA 628 post.

17 Ie the documents under ibid r 8(2): see the text to notes 5-10 supra.

18 Ibid r 8(4)(c).

19 For the meaning of 'month' see PARA 13 note 14 ante.

20 General Chiropractic Council (Registration) Rules Order of Council 1999, SI 1999/1856, r 8(5). See also note 5 supra. Rule 8(3) (see the text to notes 11, 12 supra) has effect accordingly: r 8(5).

## **UPDATE**

### **623 Retention of registration**

NOTES--SI 1999/1856 r 2(2A) added: SI 2007/3101. SI 1999/1856 r 8(2)(a), (3), (6) amended, r 8(4)(a), (b), (5), Sch 1 revoked: SI 2009/2305.

NOTE 9--SI 1999/1856 Sch 2 para 3 amended: SI 2007/3101, SI 2009/2305.

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#### **624. Removal from the register.**

Without prejudice to his powers to remove the name of a person from the register<sup>1</sup>, the registrar<sup>2</sup> may remove the name of a chiropractor from the register upon written<sup>3</sup> application made by or on behalf of the chiropractor stating the grounds of the application, accompanied by a statutory declaration<sup>4</sup> that the applicant is not aware of any matter which could give rise to an allegation<sup>5</sup> which might lead to the removal of his name from the register<sup>6</sup>.

Whenever the registrar removes the name of a chiropractor from the register<sup>7</sup>, he must notify the chiropractor in writing of the removal and of the reasons for it<sup>8</sup>.

1    Ie under the Chiropractors Act 1994 or under the General Chiropractic Council (Registration) Rules Order of Council 1999, SI 1999/1856, r 8 (see PARA 623 ante). For the meaning of 'the register' see PARA 614 note 4 ante.

2    For the meaning of 'the registrar' see PARA 614 note 3 ante.

3    For the meaning of 'written' see PARA 20 note 22 ante.

4    As to statutory declarations see the Statutory Declarations Act 1835 (as amended); and CIVIL PROCEDURE vol 11 (2009) PARA 1024.

5    Ie under the Chiropractors Act 1994 s 20: see PARAS 646-647 post.

6    General Chiropractic Council (Registration) Rules Order of Council 1999, SI 1999/1856, r 9(1).

7    Ie under the Chiropractors Act 1994 or the General Chiropractic Council (Registration) Rules Order of Council 1999, SI 1999/1856.

8    Ibid r 9(2).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/5. CHIROPRACTORS/ (2) REGISTRATION/(ii) Registration and the Register/625. Restoration of name to register.

### **625. Restoration of name to register.**

A person who has failed to renew his registration as a chiropractor<sup>1</sup> is entitled to have his entry restored to the register<sup>2</sup> on payment of the prescribed<sup>3</sup> fee<sup>4</sup>. The registrar<sup>5</sup> may require a person applying for restoration to the register to provide all or any of the information which is to be provided in connection with an application for retention<sup>6</sup>, and any application for such restoration must be accompanied by the prescribed fee<sup>7</sup>. An application for registration by a chiropractor who has had his name removed from the register<sup>8</sup> must be accompanied by the fee prescribed<sup>9</sup>, and by such evidence as the applicant concerned wishes the professional conduct committee<sup>10</sup> to consider in determining whether to grant the application for restoration<sup>11</sup>.

1 As to the renewal of registration see PARA 623 ante.

2 For the meaning of 'the register' see PARA 614 note 4 ante.

3 For the meaning of 'prescribed' see PARA 592 note 10 ante.

4 Chiropractors Act 1994 s 6(5). The fee prescribed is: (1) £100, in respect of an applicant who satisfies the registrar that, by virtue of sickness or other reason, he does not intend to engage in the practice of chiropractic within the United Kingdom, the Channel Islands, the Isle of Man or a European Economic Area state during the residue of the period of 12 months beginning on 1 January next after the year in which the documents under the General Chiropractic Council (Registration) Rules Order of Council 1999, SI 1999/1856, r 8(2) (see PARA 623 ante) to which he failed to respond were required to be sent (r 11(1), Sch 2 para 4(c)); or (2) in any other case, £1,250 (Sch 2 para 4(d)). For the meaning of 'United Kingdom' see PARA 1 note 3 ante. For the meaning of 'European Economic Area state' see PARA 621 note 6 ante.

5 For the meaning of 'the registrar' see PARA 614 note 3 ante.

6 *Ie* under the General Chiropractic Council (Registration) Rules Order of Council 1999, SI 1999/1856, r 8: see PARA 623 ante.

7 *Ibid* r 10(1). The registrar may refuse to restore an entry in the register if any fee prescribed has not been paid: r 11(2).

8 *Ie* an application under the Chiropractors Act 1994 s 8(1): see PARA 629 post.

9 The fee prescribed is: (1) £100, in respect of an applicant who satisfies the registrar that, by virtue of sickness or other reason, he does not intend to engage in the practice of chiropractic within the United Kingdom, the Channel Islands, the Isle of Man or a European Economic Area state during the period ending 31 December in the year in which the restoration would fall to be made (General Chiropractic Council (Registration) Rules Order of Council 1999, SI 1999/1856, Sch 2 para 5(a)); or (2) in any other case, £1,250 (Sch 2 para 5(b)).

10 As to the professional conduct committee see PARA 609 ante.

11 General Chiropractic Council (Registration) Rules Order of Council 1999, SI 1999/1856, r 10(2). See also note 7 *supra*.

### **UPDATE**

### **625 Restoration of name to register**

NOTES 4, 9--Chiropractors Act 1994 s 6(5) amended: SI 2007/3101. SI 1999/1856 Sch 2 paras 4, 5 amended: SI 2007/3101, SI 2009/2305.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/5. CHIROPRACTORS/ (2) REGISTRATION/(ii) Registration and the Register/626. Registration of chiropractors with foreign qualifications; cases where Community law does not apply.

**626. Registration of chiropractors with foreign qualifications; cases where Community law does not apply.**

The provisions described below apply where an applicant<sup>1</sup> is a person who: (1) has a relevant recognised qualification<sup>2</sup> or a relevant unrecognised qualification<sup>3</sup>; (2) does not have a recognised qualification<sup>4</sup> granted by an institution within the United Kingdom<sup>5</sup>; and (3) is not treated as having a recognised qualification<sup>6</sup>.

An application<sup>7</sup> must be made in accordance with the specified requirements<sup>8</sup>.

The registrar must, in considering an application by an applicant who has a relevant unrecognised qualification but not a relevant recognised qualification, treat the applicant as having a recognised qualification upon being satisfied that he has reached the required standard of proficiency<sup>9</sup> and has a satisfactory command of the English language<sup>10</sup>. In determining whether such an applicant has reached the required standard of proficiency, the registrar must require the applicant to take a test of competence<sup>11</sup>. The test of competence may, if the registrar so requires, include a test requiring a practical demonstration by the applicant<sup>12</sup>. The test of competence must be conducted by examiners appointed by the General Council<sup>13</sup>.

The registrar may, in considering an application by an applicant who has a relevant recognised qualification, before registering the applicant, require the applicant to satisfy him that he has a satisfactory command of the English language<sup>14</sup>.

1 'Applicant' means an applicant for registration as a fully registered chiropractor: General Chiropractic Council (Registration of Chiropractors with Foreign Qualifications) Rules Order of Council 2002, SI 2002/2704, r 2. For the meaning of 'fully registered chiropractor' see PARA 615 note 2 ante.

2 'Relevant recognised qualification' means a foreign qualification which has been recognised under the Chiropractors Act 1994 s 14(3) (see PARA 636 post): General Chiropractic Council (Registration of Chiropractors with Foreign Qualifications) Rules Order of Council 2002, SI 2002/2704, r 2. 'Foreign qualification' means a qualification in chiropractic granted by an institution outside the United Kingdom: r 2. For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

3 Ibid r 4(a). 'Relevant unrecognised qualification' means a foreign qualification which has not been recognised under the Chiropractors Act 1994 s 14(3) (see PARA 636 post) but which was awarded to the applicant: (1) following completion of a course of education or training in chiropractic normally requiring not less than 4,800 hours of study, tuition and clinical experience in chiropractic to be undertaken; or (2) following completion of a first degree in human science, and a course of education or training in chiropractic normally requiring not less than 2,200 hours of study, tuition and clinical experience in chiropractic to be undertaken: General Chiropractic Council (Registration of Chiropractors with Foreign Qualifications) Rules Order of Council 2002, SI 2002/2704, r 2.

4 For the meaning of 'recognised qualification' see PARA 636 note 2 post.

5 General Chiropractic Council (Registration of Chiropractors with Foreign Qualifications) Rules Order of Council 2002, SI 2002/2704, r 4(b).

6 Ie by virtue of the Chiropractors Act 1994 s 14(10)(a) (see PARA 636 post): General Chiropractic Council (Registration of Chiropractors with Foreign Qualifications) Rules Order of Council 2002, SI 2002/2704, r 4(c). Where a person is registered as a fully registered chiropractor by virtue of these provisions, the register must contain a note to that effect, in addition (so far as relevant) to the matters referred to in the General Chiropractic Council (Registration) Rules Order of Council 1999, SI 1999/1856, r 3(1) (see PARA 620 ante): General Chiropractic Council (Registration of Chiropractors with Foreign Qualifications) Rules Order of Council 2002, SI 2002/2704, r 3.



7 References in these provisions to an application are to be construed in accordance with *ibid* r 4(a)-(c) (see the text to notes 1-6 *supra*): see r 4.

8 The General Chiropractic Council (Registration) Rules Order of Council 1999, SI 1999/1856 (including the provisions relating to the payment of fees) (see PARA 621 *ante*) apply to an application for registration, subject to the following modifications with respect to the form of application and the provision of documents and other evidence: General Chiropractic Council (Registration of Chiropractors with Foreign Qualifications) Rules Order of Council 2002, SI 2002/2704, r 8(1). An application must be in the form set out in Schedule Form A (r 8(2)), and must be accompanied by the particulars specified in that form, instead of being accompanied by the particulars required by the General Chiropractic Council (Registration) Rules Order of Council 1999, SI 1999/1856, r 4(2)(d) (see PARA 621 *ante*) (General Chiropractic Council (Registration of Chiropractors with Foreign Qualifications) Rules Order of Council 2002, SI 2002/2704, r 8(3)). Where an application is made by an applicant who has a relevant unrecognised qualification but not a relevant recognised qualification, the application must, instead of being accompanied by evidence of a recognised qualification under the General Chiropractic Council (Registration) Rules Order of Council 1999, SI 1999/1856, r 4(2)(c) (see PARA 621 *ante*), be accompanied by evidence acceptable to the registrar that the applicant holds the relevant unrecognised qualification: General Chiropractic Council (Registration of Chiropractors with Foreign Qualifications) Rules Order of Council 2002, SI 2002/2704, r 8(4). For the meaning of 'the registrar' see PARA 614 note 3 *ante*.

9 For the meaning of 'the required standard of proficiency' see PARA 635 note 2 *post*.

10 General Chiropractic Council (Registration of Chiropractors with Foreign Qualifications) Rules Order of Council 2002, SI 2002/2704, r 5(1). In satisfying himself whether the applicant has a satisfactory command of the English language for the purposes of r 5, the registrar may require him to take a test, conducted orally or in writing (or both), in order to determine whether he has sufficient ability in spoken and written English to enable him to practise chiropractic in the United Kingdom safely and competently: r 7.

11 *Ibid* r 6(1). The test of competence must comprise a written or oral test (or both) covering the following heads (or such part of them as the registrar considers appropriate) for the purposes of determining whether the applicant meets the required standard of proficiency in relation to them: (1) knowledge and understanding of the ethical basis and holistic nature of the practice of chiropractic; (2) medical and scientific knowledge relevant to the practice of chiropractic; (3) clinical assessment, including physical examination before and during treatment, interview and case history; (4) diagnosis and clinical impression; (5) the selection of appropriate treatment; (6) the delivery of treatment and evaluation of the response to treatment; (7) the giving of advice concerning treatment, treatment dependence, minimisation of recurrence or the need for further treatment, and related matters; (8) the obtaining of consent to treatment; (9) communication with other chiropractors, general medical practitioners and other health professionals, including assessment of the need for second opinions or for referrals; and (10) record keeping: r 6(2)(a)-(j).

12 *Ibid* r 6(3).

13 *Ibid* r 6(4). Such examiners must be fully registered chiropractors of not less than five years experience who have successfully completed a course of training approved by the General Council in the methods of assessing a person undergoing such a test of competence: r 6(4). Any person appointed for the purpose of the General Chiropractic Council (Registration During Transitional Period) Rules 1999, SI 1999/1857, r 6(4) is deemed to be appointed also for the purposes of the General Chiropractic Council (Registration of Chiropractors with Foreign Qualifications) Rules Order of Council 2002, SI 2002/2704: r 6(4). For the meaning of 'the General Council' see PARA 591 note 1 *ante*.

14 *Ibid* r 5(2). See also note 10 *supra*.

## **UPDATE**

### **626 Registration of chiropractors with foreign qualifications; cases where Community law does not apply**

TEXT AND NOTES--SI 2002/2704 rr 5, 6 amended: SI 2007/3101.

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### **627. Registration of chiropractors with foreign qualifications; cases where Community law applies.**

The provisions described below apply where an applicant<sup>1</sup> is a person who does not have a recognised qualification<sup>2</sup> granted by an institution within the United Kingdom<sup>3</sup>, but is treated as having a recognised qualification<sup>4</sup>.

Except where otherwise provided<sup>5</sup>, the general requirements relating to applications for registration<sup>6</sup> do not apply to an application by such an applicant<sup>7</sup>. An application must be made in the specified form<sup>8</sup> and signed by the applicant<sup>9</sup>. It must be accompanied by: (1) the fee prescribed<sup>10</sup>; (2) the certificates or other documents duly issued by a competent authority<sup>11</sup> attesting to the applicant's qualification and, where appropriate, the professional experience relied on by the applicant<sup>12</sup>; (3) the specified documents relating to evidence of good character and as to health<sup>13</sup>; and (4) so far as relevant, all the other particulars in the specified form<sup>14</sup>.

In specified cases<sup>15</sup>, the applicant must supply the registrar<sup>16</sup> with: (a) a document duly issued by the competent authority of a relevant EEA state attesting to the applicant's good character and confirming that he has not been suspended or prohibited from pursuing the profession of chiropractic because of serious professional misconduct or the commission of a criminal offence<sup>17</sup>; or (b) where that authority does not issue such documents, a declaration on oath or a solemn declaration attesting to and confirming those matters<sup>18</sup>. In the specified cases, the applicant must also provide the document attesting to his physical or mental health required by the authorities which regulate the profession of chiropractic in a relevant EEA state<sup>19</sup>. Where no such document is required, the applicant must provide a report<sup>20</sup>.

These provisions<sup>21</sup> have effect without prejudice to the requirement for the applicant to provide acceptable evidence to the registrar that he has met any additional conditions specified by the General Council<sup>22</sup>.

1 For the meaning of 'applicant' see PARA 626 note 1 ante.

2 For the meaning of 'recognised qualification' see PARA 636 note 2 post.

3 General Chiropractic Council (Registration of Chiropractors with Foreign Qualifications) Rules Order of Council 2002, SI 2002/2704, r 9(1)(a). For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

4 I.e. by virtue of the Chiropractors Act 1994 s 14(10)(a) (see PARA 636 post): General Chiropractic Council (Registration of Chiropractors with Foreign Qualifications) Rules Order of Council 2002, SI 2002/2704, r 9(1)(b). Where a person is registered as a fully registered chiropractor by virtue of rr 9-13 (see infra), the register must contain a note to that effect, in addition (so far as relevant) to the matters referred to in the General Chiropractic Council (Registration) Rules Order of Council 1999, SI 1999/1856, r 3(1) (see PARA 620 ante): General Chiropractic Council (Registration of Chiropractors with Foreign Qualifications) Rules Order of Council 2002, SI 2002/2704, r 3. For the meaning of 'fully registered chiropractor' see PARA 615 note 2 ante. For the meaning of 'the register' see PARA 614 note 4 ante.

The General Council, being the designated authority for the profession of chiropractic in the United Kingdom, may not, on grounds of inadequate qualifications, refuse to authorise a national of a European Union member state, Iceland, Norway, Liechtenstein or Switzerland to practise the profession on the same conditions as apply to a United Kingdom applicant, if that person holds the diploma required to practise in another such state or can satisfy certain other conditions as to experience and qualifications: see the European Communities (Recognition of Professional Qualifications) (First General System) Regulations 2005, SI 2005/18, regs 4(1), 5, Sch 1 Pt 1. As to proof of experience and qualifications see further regs 6-9. A national of a European Union member state, Iceland, Norway, Liechtenstein or Switzerland who has been granted authorisation to practise has the right to use: (1) the professional title and designatory letters applicable to the profession of chiropractic in the United

Kingdom; and (2) the lawful academic title, and where appropriate its abbreviation, acquired by him in the relevant state in which he formerly qualified and in the language of that state: reg 10(1)(a), (b). Where a person makes use of an academic title, the General Council may require that the title be followed by the name and location of the establishment or examining board which awarded it: reg 10(2). For the meaning of 'the General Council' see PARA 591 note 1 ante.

5 le by the General Chiropractic Council (Registration of Chiropractors with Foreign Qualifications) Rules Order of Council 2002, SI 2002/2704, rr 11(2), 12(2), (3): see notes 15, 20 infra.

6 le the requirements of the General Chiropractic Council (Registration) Rules Order of Council 1999, SI 1999/1856, rr 4, 5: see PARA 621 ante.

7 See the General Chiropractic Council (Registration of Chiropractors with Foreign Qualifications) Rules Order of Council 2002, SI 2002/2704, r 10(1). References to an application are to be construed in accordance with r 9(1)(a), (b) (see the text to notes 1-4 supra): r 9(1).

8 le the form set out in *ibid* Schedule Form B.

9 *Ibid* r 10(2).

10 *Ibid* r 10(3)(a). The fee prescribed is that in the General Chiropractic Council (Registration) Rules Order of Council 1999, SI 1999/1856, Sch 2 para 1 (see PARA 621 note 6 ante): General Chiropractic Council (Registration of Chiropractors with Foreign Qualifications) Rules Order of Council 2002, SI 2002/2704, r 10(3)(a).

11 'Competent authority' means, in relation to any document, certificate, diploma or qualification, or period of professional experience, the authority, body or person in a state authorised under the laws, regulations or administrative provisions of that state to issue, award or recognise such document, certificate, diploma or qualification, or to certify any such period: *ibid* r 9(2).

12 *Ibid* r 10(3)(b). In cases where the Directive applies, such certificates or other documents must be issued by a competent authority of a relevant EEA state: r 10(4) (amended by SI 2004/1947). 'The Directive' means EC Council Directive 89/48 (OJ L19, 24.01.89, p 16) on a general system for the recognition of higher education diplomas awarded on completion of professional education and training of at least three years duration; 'relevant EEA state' means the applicant's EEA state of origin, the EEA state from which the applicant comes or the EEA state in which the applicant formerly qualified or practised; and 'EEA state' means a member state, Norway, Liechtenstein, Iceland or Switzerland: General Chiropractic Council (Registration of Chiropractors with Foreign Qualifications) Rules Order of Council 2002, SI 2002/2704, r 9(2) (amended by SI 2004/1947). For the meaning of 'member state' see the Interpretation Act 1978 s 5, Sch 1; and the European Communities Act 1972 s 1(2), Sch 1 Pt II.

13 le the documents mentioned in the General Chiropractic Council (Registration of Chiropractors with Foreign Qualifications) Rules Order of Council 2002, SI 2002/2704, rr 11, 12 (see the text to notes 15-20 infra): r 10(3)(c).

14 *Ibid* r 10(3)(d).

15 le in cases to which the Directive applies: *ibid* r 11(1). In cases to which the Directive does not apply, the provisions of the General Chiropractic Council (Registration) Rules Order of Council 1999, SI 1999/1856, rr 4(2)(a), 5(1), (3) (see PARA 621 ante) apply in so far as relevant: General Chiropractic Council (Registration of Chiropractors with Foreign Qualifications) Rules Order of Council 2002, SI 2002/2704, r 11(2).

16 For the meaning of 'the registrar' see PARA 614 note 3 ante.

17 General Chiropractic Council (Registration of Chiropractors with Foreign Qualifications) Rules Order of Council 2002, SI 2002/2704, r 11(1)(a) (rr 11(1)(a), (b)(i), 12(1) amended by SI 2004/1947).

18 General Chiropractic Council (Registration of Chiropractors with Foreign Qualifications) Rules Order of Council 2002, SI 2002/2704, r 11(1)(b). Such declaration must be made by the applicant before a competent judicial or administrative authority or (where appropriate) a notary or duly qualified professional body of a relevant EEA state, and must be authenticated by a certificate issued by the authority, notary or body: see r 11(1)(b)(i), (ii) (r 11(1)(b)(i) as amended: see note 17 supra).

19 *Ibid* r 12(1) (as amended: see note 17 supra).

20 le a report as required by the General Chiropractic Council (Registration) Rules Order of Council 1999, SI 1999/1856, r 4(2)(b) (see PARA 621 ante): General Chiropractic Council (Registration of Chiropractors with Foreign Qualifications) Rules Order of Council 2002, SI 2002/2704, r 12(2). This provision applies also to cases where the Directive does not apply: see r 12(2). In a case to which the Directive does not apply, the provisions

of the General Chiropractic Council (Registration) Rules Order of Council 1999, SI 1999/1856, r 5(2), (3) (see PARA 621 ante) also apply so far as relevant: see the General Chiropractic Council (Registration of Chiropractors with Foreign Qualifications) Rules Order of Council 2002, SI 2002/2704, r 12(3).

21     Ie *ibid* rr 10-12: see the text and notes 5-20 *supra*.

22     Ie additional conditions specified under the Chiropractors Act 1994 s 14(10)(b) (see PARA 636 post): General Chiropractic Council (Registration of Chiropractors with Foreign Qualifications) Rules Order of Council 2002, SI 2002/2704, r 13.

## **UPDATE**

### **627 Registration of chiropractors with foreign qualifications; cases where Community law applies**

TEXT AND NOTES--SI 2002/2704 rr 9, 10 amended, rr 11, 12 replaced: SI 2007/3101.

NOTE 4--SI 2005/18 replaced: European Communities (Recognition of Professional Qualifications) Regulations 2007, SI 2007/2781 (amended by SI 2008/2683, SI 2009/1587, SI 2009/1885).

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## **628. Suspension of registration.**

Where the registrar<sup>1</sup> suspends the registration of a chiropractor in accordance with any provision of the Chiropractors Act 1994<sup>2</sup>, the registrar must enter in the register<sup>3</sup> a note of the suspension<sup>4</sup>, the period of the suspension<sup>5</sup>, and the provision under which the suspension was made<sup>6</sup>. Where the period of the suspension is extended, the registrar must note the extension in the register<sup>7</sup>. Any chiropractor whose registration has been suspended ceases, for the period of his suspension, to be a registered chiropractor<sup>8</sup> for the purposes of the provisions relating to the unlawful use of titles and descriptions<sup>9</sup>.

1 For the meaning of 'the registrar' see PARA 614 note 3 ante.

2 For powers of suspension see the Chiropractors Act 1994 s 10(3) (see PARA 631 post), s 21(2) (see PARA 648 post), s 22(4)(c) (see PARA 649 post), s 23(2)(b), (4)(b) (see PARA 651 post), s 24(2) (see PARA 652 post), s 30(11)(c), (12) (see PARA 681 post), s 31(8)(c) (see PARA 688 post).

3 For the meaning of 'the register' see PARA 614 note 4 ante.

4 Chiropractors Act 1994 s 7(1)(a).

5 Ibid s 7(1)(b).

6 Ibid s 7(1)(c).

7 Ibid s 7(2).

8 For the meaning of 'registered chiropractor' see PARA 595 note 5 ante.

9 Ie for the purposes of the Chiropractors Act 1994 s 32(1) (see PARA 690 post): s 7(3).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/5. CHIROPRACTORS/ (2) REGISTRATION/(ii) Registration and the Register/629. Restoration to the register of chiropractors who have been struck off.

## **629. Restoration to the register of chiropractors who have been struck off.**

Where a person who has had his entry as a fully registered chiropractor<sup>1</sup> removed from the register<sup>2</sup> as the result of an order<sup>3</sup> wishes to have his entry restored to the register, he must make an application for registration to the registrar<sup>4</sup>. No such application may be made before the end of the period of ten months<sup>5</sup> beginning with the date on which the order was made<sup>6</sup>. Any application for restoration must be referred by the registrar to the professional conduct committee<sup>7</sup> for determination by that committee<sup>8</sup>. The committee must not grant an application for restoration unless it is satisfied that the applicant not only satisfies the specified requirements<sup>9</sup> but, having regard in particular to the circumstances which led to the making of the order, is also a fit and proper person to practise the profession of chiropractic<sup>10</sup>. On granting an application for restoration, the committee must direct the registrar to register the applicant as a fully registered chiropractor<sup>11</sup>, and may make a conditions of practice order<sup>12</sup> with respect to him<sup>13</sup>.

The General Council<sup>14</sup> may by rules<sup>15</sup> make provision in relation to the restoration to the register of conditionally registered chiropractors<sup>16</sup> or provisionally registered chiropractors<sup>17</sup>, and any such rules may provide for restoration, in prescribed<sup>18</sup> circumstances, as a fully registered chiropractor<sup>19</sup>.

1 For the meaning of 'fully registered chiropractor' see PARA 615 note 2 ante.

2 For the meaning of 'the register' see PARA 614 note 4 ante.

3 Ie as the result of an order under the Chiropractors Act 1994 s 22(4)(d) (see PARA 649 post).

4 Ibid s 8(1). Such an application is known as an 'application for restoration': see s 8(3). As to the making of such an application see PARA 625 ante. For the meaning of 'the registrar' see PARA 614 note 3 ante.

5 For the meaning of 'month' see PARA 13 note 14 ante.

6 Chiropractors Act 1994 s 8(2).

7 As to the professional conduct committee see PARA 609 ante.

8 Chiropractors Act 1994 s 8(3). For the purposes of determining an application for restoration, the committee exercise the registrar's functions under s 3 (see PARA 615 ante) (s 8(4)(a)); and s 3(2) (see PARA 615 ante) has effect as if s 3(2)(d) were omitted (s 8(4)(b)).

9 Ie the requirements of ibid s 3 (as modified): see note 8 supra.

10 Ibid s 8(5). As to the power of the Council for the Regulation of Health Care Professionals to refer to the court a decision to restore a person to the register see PARA 306 ante.

11 Ibid s 8(6)(a).

12 As to conditions of practice orders see PARA 649 post.

13 Chiropractors Act 1994 s 8(6)(b). The provisions of s 22 (see PARA 649 post) have effect in relation to such a conditions of practice order as they have effect in relation to one made by virtue of s 22(4)(b): s 8(7).

14 For the meaning of 'the General Council' see PARA 591 note 1 ante.

15 As to the making of rules see PARA 598 ante.

16 For the meaning of 'conditionally registered chiropractor' see PARA 616 note 2 ante.

17 For the meaning of 'provisionally registered chiropractor' see PARA 618 note 7 ante.

18 For the meaning of 'prescribed' see PARA 592 note 10 ante.

19 Chiropractors Act 1994 s 8(8). At the date at which this volume states the law s 8(8) is in force only so far as it relates to the restoration to the register of conditionally registered chiropractors: see the Chiropractors Act 1994 (Commencement No 4) Order 2000, SI 2000/2388, art 2, Schedule. At the date at which this volume states the law no such rules had been made for the purposes of the Chiropractors Act 1994 s 8(8).

## **UPDATE**

### **629 Restoration to the register of chiropractors who have been struck off**

NOTE 19--Chiropractors Act 1994 s 8(8) amended: SI 2007/3101.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/5. CHIROPRACTORS/ (2) REGISTRATION/(ii) Registration and the Register/630. Access to the register; the register as evidence.

### **630. Access to the register; the register as evidence.**

The General Council<sup>1</sup> must make the register<sup>2</sup> available for inspection by members of the public at all reasonable times<sup>3</sup>. Before the end of the period of 12 months which begins on the date on which the register is opened<sup>4</sup> and at least once in every subsequent period of 12 months which begins on the anniversary of that date<sup>5</sup>, the General Council must publish a list, known as the 'published register', giving the names and registered addresses<sup>6</sup> of those who, at the date of publication, are registered chiropractors<sup>7</sup>. The published register must also contain in respect of each registered chiropractor such other information derived from the register as may by rules<sup>8</sup> made by the General Council be determined to be appropriate for publication<sup>9</sup>. Any person who asks the General Council for a copy of the most recently published register is entitled to have one on payment of such reasonable fee as the General Council may determine<sup>10</sup>.

Any copy of, or extract from, the published register is evidence of the matters mentioned in it<sup>11</sup>. A certificate purporting to be signed by the registrar, certifying that a person: (1) is registered<sup>12</sup> in a specified category<sup>13</sup>; (2) is not registered<sup>14</sup>; (3) was registered in a specified category at a specified date or during a specified period<sup>15</sup>; (4) was not registered in a specified category, or in any category, at a specified date or during a specified period<sup>16</sup>; or (5) has never been registered<sup>17</sup>, is evidence of the matters certified<sup>18</sup>.

1 For the meaning of 'the General Council' see PARA 591 note 1 ante.

2 For the meaning of 'the register' see PARA 614 note 4 ante.

3 Chiropractors Act 1994 s 9(1).

4 Ibid s 9(2)(a). For the meaning of 'opening of the register' see PARA 616 note 4 ante.

5 Ibid s 9(2)(b).

6 For the meaning of 'registered address' see PARA 619 note 5 ante.

7 Chiropractors Act 1994 s 9(2). Any chiropractor whose registration has been suspended ceases, for the period of his suspension, to be a registered chiropractor for the purposes of s 9(2), (3) (see the text to notes 8, 9 infra); s 9(4). As to the suspension of registration see PARA 628 ante. For the meaning of 'registered chiropractor' see PARA 595 note 5 ante.

8 As to the making of rules see PARA 598 ante.

9 Chiropractors Act 1994 s 9(3). See also note 7 supra. At the date at which this volume states the law no such rules had been made.

10 Ibid s 9(5). Section 9(5) is not to be taken as preventing the General Council from providing copies of the published register free of charge whenever it considers it appropriate: s 9(6).

11 Ibid s 9(7).

12 For the meaning of 'registered' see PARA 615 note 1 ante.

13 Chiropractors Act 1994 s 9(8)(a).

14 Ibid s 9(8)(b).

15 Ibid s 9(8)(c).



16 Ibid s 9(8)(d).

17 Ibid s 9(8)(e).

18 Ibid s 9(8). As to the evidential effect of certificates admissible by statute see CIVIL PROCEDURE vol 11 (2009) PARA 897.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/5. CHIROPRACTORS/ (2) REGISTRATION/(ii) Registration and the Register/631. Fraud or error in relation to registration; investigation of allegations.

### **631. Fraud or error in relation to registration; investigation of allegations.**

The registrar<sup>1</sup> must investigate any allegation that an entry in the register<sup>2</sup> has been fraudulently procured or incorrectly made and report on the result of his investigation to the General Council<sup>3</sup>. The registrar may, at any time during his investigation, suspend the registration in question if he is satisfied that it is necessary to do so in order to protect members of the public<sup>4</sup>. The General Council must by rules<sup>5</sup> make provision in relation to any case where the registrar proposes to suspend a chiropractor's registration: (1) giving the chiropractor concerned an opportunity to appear before the investigating committee<sup>6</sup> and argue his case against suspension<sup>7</sup>; (2) allowing him to be legally represented<sup>8</sup>; and (3) for the registrar to be made a party to the proceedings<sup>9</sup>. The General Council may by rules make such further provision as it considers appropriate with respect to such suspensions including in particular provision as to their duration<sup>10</sup>.

If the registrar proposes to so suspend a chiropractor's registration, he must give the chiropractor an opportunity to appear before the investigating committee and argue his case against suspension, by the giving of notice<sup>11</sup> to the chiropractor providing the following information<sup>12</sup>: (a) a summary of the matters alleged with respect to the fraud or error concerned<sup>13</sup>; (b) a statement that the registrar proposes, pending completion of his investigation and the determination of the issue by the General Council, to suspend the chiropractor's registration in order to protect members of the public and that the chiropractor may, by giving notice in writing to the registrar before the end of the period of ten days beginning with the day on which the notice was served on him, appear before the investigating committee to argue his case<sup>14</sup>; and (c) a statement of his right to be legally represented at such a hearing<sup>15</sup>. If the registrar receives a request to appear before the investigating committee from the chiropractor after the expiry of the period of ten days mentioned in head (b) above, he must report the matter to the committee, and the committee may determine to hear the chiropractor to argue his case concerning the suspension notwithstanding the expiry of that period<sup>16</sup>. If the investigating committee does so determine to hear the chiropractor, the chiropractor must be given particulars by or on behalf of the committee of the date, time and place at which the committee will hear him<sup>17</sup>; and if the suspension has been imposed by the registrar, the registrar may if he thinks fit withdraw the suspension pending the decision of the committee, and must so withdraw it pending that decision if the committee so directs<sup>18</sup>. Without prejudice to its general powers of adjournment, the investigating committee may from time to time adjourn any proceedings before it at which the chiropractor is present under these provisions<sup>19</sup>. Without prejudice to the general power of the investigating committee to take legal advice from a legal assessor<sup>20</sup>, the committee may take legal advice from such a legal assessor on any question of law arising in such proceedings<sup>21</sup>.

1 For the meaning of 'the registrar' see PARA 614 note 3 ante.

2 For the meaning of 'the register' see PARA 614 note 4 ante.

3 Chiropractors Act 1994 s 10(1). For the meaning of 'the General Council' see PARA 591 note 1 ante.

An entry which has been restored to the register under s 6(5) (see PARA 625 ante) or s 8 (see PARA 629 ante), or under rules made by virtue of s 8(8) (see PARA 629 ante), may be treated for the purposes of s 10 as having been fraudulently procured or incorrectly made if any previous entry from which the restored entry is derived was fraudulently procured or incorrectly made: s 10(2).

4 Ibid s 10(3).

5 As to the making of rules see PARA 598 ante.

6 As to the investigating committee see PARA 608 ante.

7 Chiropractors Act 1994 s 10(4)(a). As to the tendering of advice by legal assessors in proceedings under s 10(4)(a) see PARA 674 text to notes 16-18 post. The General Chiropractic Council (Investigating Committee) Rules 2000, approved by the General Chiropractic Council (Investigating Committee) Rules Order of Council 2000, SI 2000/2916, have been made under the Chiropractors Act 1994 s 10(4), (12) (see the text to note 10 infra).

8 Ibid s 10(4)(b). See note 7 supra.

9 Ibid s 10(4)(c). See note 7 supra.

10 Ibid s 10(12). See note 7 supra.

11 Any notice or other matter or information to be given or sent to a chiropractor may be served by sending the same to the appropriate address of the chiropractor by a postal service in which delivery or receipt is recorded, or by leaving the same at that address: General Chiropractic Council (Investigating Committee) Rules Order of Council 2000, SI 2000/2916, r 8(1). 'The appropriate address' of a chiropractor is his address as appearing in the register pursuant to the Chiropractors Act 1994 s 6(1)(b) (see PARA 619 ante), save that if his last known place of residence differs from his address in the register and it appears to the investigating committee or registrar (as the case may be) that a letter sent to that place of residence is more likely to reach him, it includes his last known place of residence: General Chiropractic Council (Investigating Committee) Rules Order of Council 2000, SI 2000/2916, r 8(2).

12 Ibid r 7(1).

13 Ibid r 7(2)(a).

14 Ibid r 7(2)(b). A chiropractor who has indicated within the period mentioned in r 7(2)(b) that he wishes to appear before the investigating committee may so appear, and must be given particulars by or on behalf of the committee of the date, time and place at which the committee will hear him (which particulars may be included by the registrar in the notice given under r 7(1) (see the text to note 12 supra)): r 7(3). See also note 11 supra.

15 Ibid r 7(2)(c). At any appearance of a chiropractor before the investigating committee, the registrar is to be a party to the proceedings and he and the chiropractor may be legally represented: r 7(4).

16 Ibid r 7(5).

17 Ibid r 7(5)(a). See also note 11 supra.

18 Ibid r 7(5)(b).

19 *Ie* under *ibid* r 7: r 7(6).

20 *Ie* a legal assessor appointed under the Chiropractors Act 1994 s 27: see PARA 674 post.

21 General Chiropractic Council (Investigating Committee) Rules Order of Council 2000, SI 2000/2916, r 9(b).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/5. CHIROPRACTORS/ (2) REGISTRATION/(ii) Registration and the Register/632. Fraud or error in relation to registration; orders.

### **632. Fraud or error in relation to registration; orders.**

If, having considered any report of the registrar<sup>1</sup>, the General Council<sup>2</sup> is satisfied that the entry in question in the register<sup>3</sup> has been fraudulently procured or incorrectly made, it may order the registrar to remove the entry<sup>4</sup>. Where such an order is made, the registrar must without delay notify the person whose entry is to be removed of the order<sup>5</sup>, and of the right of appeal<sup>6</sup>. Where such an order is made, the person whose entry is to be removed may appeal to a county court<sup>7</sup>. Any such appeal must be brought before the end of the period of 28 days beginning with the date on which notification of the order was served<sup>8</sup>. On an appeal, the court may: (1) dismiss the appeal<sup>9</sup>; (2) allow the appeal and quash the order appealed against<sup>10</sup>; or (3) remit the case to the General Council to dispose of the case in accordance with the directions of the court<sup>11</sup>. The court may make such order as to costs as it thinks fit<sup>12</sup>.

1 As to reports of the registrar see PARA 631 ante. For the meaning of 'the registrar' see PARA 614 note 3 ante.

2 For the meaning of 'the General Council' see PARA 591 note 1 ante.

3 For the meaning of 'the register' see PARA 614 note 4 ante.

4 See the Chiropractors Act 1994 s 10(5).

5 Ibid s 10(6)(a).

6 ie the right of appeal given by ibid s 10(7) (as amended) (see the text to note 7 infra); s 10(6)(b).

7 Ibid s 10(7) (amended by the National Health Service Reform and Health Care Professions Act 2002 s 34(1), (2)(a)). On such an appeal, the General Council is the respondent: Chiropractors Act 1994 s 10(9). As to county courts see COURTS.

8 Ibid s 10(8) (substituted by the National Health Service Reform and Health Care Professions Act 2002 s 34(1), (2)(b)).

9 Chiropractors Act 1994 s 10(11)(a) (s 10(11) substituted by the National Health Service Reform and Health Care Professions Act 2002 s 34(1), (2)(d)).

10 Chiropractors Act 1994 s 10(11)(b) (as substituted: see note 9 supra).

11 Ibid s 10(11)(c) (as substituted: see note 9 supra).

12 Ibid s 10(11) (as substituted: see note 9 supra). As to costs generally see CIVIL PROCEDURE vol 12 (2009) PARA 1729 et seq.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/5.  
 CHIROPRACTORS/(3) PROFESSIONAL EDUCATION/(i) Standards of Education and Training/633.  
 Promotion of standards of education and training.

### **(3) PROFESSIONAL EDUCATION**

#### **(i) Standards of Education and Training**

##### **633. Promotion of standards of education and training.**

The education committee<sup>1</sup> has the general duty of promoting high standards of education and training in chiropractic and keeping the provision made for that education and training under review<sup>2</sup>. Where it considers it to be necessary in connection with the discharge of its general duty, the committee may itself provide, or arrange for the provision of, education or training<sup>3</sup>. The General Council<sup>4</sup> must consult the education committee on matters relating to education, training, examinations or tests of competence<sup>5</sup>. It is the duty of the committee to give advice to the General Council on such matters, either on being consulted by the Council or where it considers it appropriate to do so<sup>6</sup>.

1 As to the education committee see PARA 607 ante.

2 Chiropractors Act 1994 s 11(1).

3 Ibid s 11(2).

4 For the meaning of 'the General Council' see PARA 591 note 1 ante.

5 Chiropractors Act 1994 s 11(3).

6 Ibid s 11(4).

#### **UPDATE**

##### **633 Promotion of standards of education and training**

TEXT AND NOTES--For the meaning of 'training' see PARA 595.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/5.  
CHIROPRACTORS/(3) PROFESSIONAL EDUCATION/(i) Standards of Education and Training/634.  
Visitors.

### **634. Visitors.**

The education committee<sup>1</sup> may appoint persons as visitors<sup>2</sup> to visit any place at which or institution by which or under whose direction: (1) any relevant course of study<sup>3</sup> is, or is proposed to be, given<sup>4</sup>; (2) any examination is, or is proposed to be, held in connection with any such course<sup>5</sup>; (3) any test of competence is, or is proposed to be, conducted in connection with any such course or for any other purpose connected with the Chiropractors Act 1994<sup>6</sup>. No person appointed as a visitor may exercise his functions as a visitor in relation to any place at which he regularly gives instruction in any subject<sup>7</sup>, or any institution with which he has a significant connection<sup>8</sup>. A person is not prevented from being appointed as a visitor merely because he is a member of the General Council<sup>9</sup> or any of its committees<sup>10</sup>.

Where a visitor visits any place or institution in the exercise of his functions as a visitor, he must report to the education committee on the nature and quality of the instruction given or to be given, and the facilities provided or to be provided, at that place or by that institution<sup>11</sup>, and on such other matters, if any, as he was required to report on by the committee<sup>12</sup>. Where a visitor reports to the education committee, the committee must on receipt of the report send a copy of it to the institution concerned<sup>13</sup>, and notify that institution of the period within which it may make observations on, or raise objections to, the report<sup>14</sup>.

The General Council may pay fees, allowances and expenses to persons appointed as visitors<sup>15</sup>, or treat any such person<sup>16</sup> as a member of its staff<sup>17</sup>. In the case of a visitor who is also a member of the General Council or any of its committees, any payment made to him in his capacity as a visitor is in addition to any to which he is entitled as such a member<sup>18</sup>.

1 As to the education committee see PARA 607 ante.

2 A person appointed under the Chiropractors Act 1994 s 12 is known as a 'visitor': s 43.

3 'Relevant course of study' means any course of study which forms, or is intended to form, part of: (1) the complete course of study required in order to obtain a recognised qualification or a qualification for which recognition is being sought (ibid s 12(2)(a)); or (2) any training which a registered chiropractor may be required to undergo after registration (s 12(2)(b)). For the meaning of 'recognised qualification' see PARA 636 note 2 post. For the meaning of 'registered chiropractor' see PARA 595 note 5 ante. As to post registration training see PARA 640 post.

4 Ibid s 12(1)(a).

5 Ibid s 12(1)(b).

6 Ibid s 12(1)(c). As to circumstances in which a test of competence may be required see PARAS 616, 626 ante, 649 post.

7 Ibid s 12(3)(a).

8 Ibid s 12(3)(b).

9 Ibid s 12(4)(a). For the meaning of 'the General Council' see PARA 591 note 1 ante. As to the membership of the General Council see PARA 592 ante.

10 Ibid s 12(4)(b). As to the committees see PARAS 591, 602 et seq ante.

11 Ibid s 12(5)(a).

12 Ibid s 12(5)(b). Requirements of the kind mentioned in s 12(5)(b) may be imposed by the education committee generally in relation to all visits, generally in relation to all visits made to a specified kind of place or institution, or specifically in relation to a particular visit: s 12(6)(a)-(c).

13 Ibid s 12(7)(a).

14 Ibid s 12(7)(b). The period specified by the committee in a notice given under s 12(7)(b) must not be less than one month beginning with the date on which a copy of the report is sent to the institution under s 12(7)(a) (see the text to note 13 supra): s 12(8). The committee must not take any steps in the light of any report before the end of the specified period: s 12(9). As to the withdrawal of recognition of a qualification as a result of a visitor's report see PARA 639 post. For the meaning of 'month' see PARA 13 note 14 ante.

15 Ibid s 12(10)(a).

16 Ie for the purposes of ibid Sch 1 para 15(2)(c)-(e): see PARA 597 ante.

17 Ibid s 12(10)(b).

18 Ibid s 12(11). As to the power of the General Council to make payments to its members and members of its committees generally see PARA 597 ante.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/5.  
CHIROPRACTORS/(3) PROFESSIONAL EDUCATION/(i) Standards of Education and Training/635.  
The standard of proficiency.

### **635. The standard of proficiency.**

The General Council<sup>1</sup> must from time to time determine the standard of proficiency which, in its opinion, is required for the competent and safe practice of chiropractic<sup>2</sup>. The General Council must publish a statement of the standard of proficiency so determined by it<sup>3</sup>. If the General Council at any time varies the standard so determined, it must publish a statement of the revised standard, accompanied by a statement of the differences between that standard and the standard as it was immediately before the revision<sup>4</sup>. No variation of the standard has effect before the end of the period of one year beginning with the date on which the General Council publishes such statements in connection with that variation<sup>5</sup>.

1 For the meaning of 'the General Council' see PARA 591 note 1 ante.

2 Chiropractors Act 1994 s 13(1). The standard determined by the General Council under s 13 is known as 'the required standard of proficiency': s 43.

3 Ibid s 13(2).

4 Ibid s 13(3).

5 Ibid s 13(4).



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/5. CHIROPRACTORS/(3) PROFESSIONAL EDUCATION/(ii) Qualifications/636. Recognition of qualifications.

## **(ii) Qualifications**

### **636. Recognition of qualifications.**

A qualification is a 'recognised qualification' if it is recognised by the General Council<sup>1</sup> under the provisions described below<sup>2</sup>.

Before deciding whether or not to recognise a qualification, the General Council must consult the education committee<sup>3</sup>. The General Council may by rules<sup>4</sup> make provision requiring the education committee to publish a statement indicating matters on which the committee will wish to be satisfied before advising the General Council to recognise a qualification granted, or proposed to be granted, by an institution in the United Kingdom<sup>5</sup>, and matters which may cause the committee to advise the General Council not to recognise such a qualification<sup>6</sup>.

Where the General Council is satisfied that:

- 834 (1) a qualification granted by an institution in the United Kingdom is evidence of having reached the required standard of proficiency<sup>7</sup>; or
- 835 (2) a qualification which such an institution proposes to grant will be evidence of having reached that standard<sup>8</sup>,

it may, with the approval of the Privy Council<sup>9</sup>, recognise that qualification for the purposes of the Chiropractors Act 1994<sup>10</sup>. Where the General Council is satisfied that a qualification granted by an institution outside the United Kingdom is evidence of having reached the required standard of proficiency, or of reaching a comparable standard, it may, with the approval of the Privy Council, recognise that qualification for those purposes<sup>11</sup>. Where, by virtue of Community law<sup>12</sup>, a person is to be authorised to practise the profession of chiropractic on the same conditions as a person who holds a recognised qualification, that person is treated for the purposes of the Chiropractors Act 1994 as having a recognised qualification<sup>13</sup>; but the General Council may, subject to Community law, require him to satisfy specified additional conditions before being registered<sup>14</sup>.

Where an application is made by any institution for the recognition of a qualification, the General Council must notify the institution of the result of its application as soon as is reasonably practicable after the General Council determines the application<sup>15</sup>. Where the General Council refuses such an application, it must, when notifying the institution concerned, give reasons for its refusal<sup>16</sup>.

The General Council must maintain and publish a list of the qualifications which are for the time being recognised under these provisions<sup>17</sup>.

1 For the meaning of 'the General Council' see PARA 591 note 1 ante.

2 Chiropractors Act 1994 s 14(1). For the purposes of the Chiropractors Act 1994, 'recognised qualification' has the meaning given by s 14(1): s 43. As to limited and conditional recognition of qualifications see PARA 637 post. As to the withdrawal of recognition see PARA 639 post.

3 Ibid s 14(6). As to the education committee see PARA 607 ante.

4 As to the making of rules see PARA 598 ante.

5 le under the Chiropractors Act 1994 s 14(2) (see the text to notes 7-10 infra): s 14(9)(a). See also note 6 infra. For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

6 Ibid s 14(9)(b). At the date at which this volume states the law no such rules had been made.

7 Ibid s 14(2)(a).

8 Ibid s 14(2)(b).

9 As to the exercise by the Privy Council of its powers under the Chiropractors Act 1994 see PARA 612 ante. As to the Privy Council generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

10 Ibid s 14(2). When requesting the approval of the Privy Council for the purposes of s 14(2) or (3) (see the text to note 11 infra), the General Council must make available to the Privy Council the information provided to it by the education committee, or where the Privy Council considers it appropriate, a summary of that information: s 14(7)(a), (b). The Privy Council must have regard to such information made available to it before deciding whether or not to give its approval: s 14(8).

11 Ibid s 14(3). See also note 10 supra. The General Council may by rules:

154 (1) impose additional conditions for registration (s 14(4)(a)); or

155 (2) provide for any provision made by the Chiropractors Act 1994 in relation to conditions for registration to have effect subject to prescribed modifications (s 14(4)(b)),

in the case of any application for registration based on a person's holding a qualification which is recognised under s 14(3): s 14(4). For the meaning of 'prescribed' see PARA 592 note 10 ante. As to the rules that have been made see the General Chiropractic Council (Registration of Chiropractors with Foreign Qualifications) Rules 2002, approved by the General Chiropractic Council (Registration of Chiropractors with Foreign Qualifications) Rules Order of Council 2002, SI 2002/2704; and PARA 626 ante.

12 'Community law' means any enforceable Community right or any enactment giving effect to a Community obligation: Chiropractors Act 1994 s 14(11). As to the meaning of 'enforceable Community right' see the European Communities Act 1972 s 2(1); and the Interpretation Act 1978 s 5, Sch 1. For the meaning of 'Community obligation' see the European Communities Act 1972 Sch 1; and the Interpretation Act 1978 s 5, Sch 1.

13 Chiropractors Act 1994 s 14(10)(a).

14 Ibid s 14(10)(b). As to the registration of chiropractors with foreign qualifications where Community law applies see PARA 627 ante.

15 Ibid s 15(8).

16 Ibid s 15(9).

17 Ibid s 14(5).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/5. CHIROPRACTORS/(3) PROFESSIONAL EDUCATION/(ii) Qualifications/637. Limited and conditional recognition of qualifications.

### **637. Limited and conditional recognition of qualifications.**

A qualification may be recognised by the General Council<sup>1</sup>: (1) only in respect of awards of that qualification made after a specified date<sup>2</sup>; (2) only in respect of awards made before a specified date<sup>3</sup>; or (3) only in respect of awards made after a specified date but before another specified date<sup>4</sup>. Where the General Council recognises a qualification in one or other of the limited ways allowed in heads (1) to (3) above, the limitation must be specified in the published list of qualifications issued by the General Council<sup>5</sup>.

The General Council may, in recognising a qualification, direct that the qualification is to remain a recognised qualification<sup>6</sup> only so long as such conditions as the General Council sees fit to impose are complied with in relation to the qualification<sup>7</sup>. Any such condition may at any time be removed by the General Council<sup>8</sup>. Any institution which is, or is likely to be, affected by such a direction must be notified by the General Council of the direction as soon as is reasonably practicable<sup>9</sup>.

<sup>1</sup> *Ie* under the Chiropractors Act 1994 s 14: see PARA 636 ante. For the meaning of 'the General Council' see PARA 591 note 1 ante.

<sup>2</sup> *Ibid* s 15(1)(a). Any date specified under s 15(1) may be earlier than the date on which the Chiropractors Act 1994 is passed: s 15(2). The Chiropractors Act 1994 was passed on 5 July 1994.

<sup>3</sup> *Ibid* s 15(1)(b). See also note 2 *supra*.

<sup>4</sup> *Ibid* s 15(1)(c). See also note 2 *supra*.

<sup>5</sup> *Ie* the list issued under *ibid* s 14(5) (see PARA 636 ante): s 15(3).

<sup>6</sup> For the meaning of 'recognised qualification' see PARA 636 note 2 ante.

<sup>7</sup> Chiropractors Act 1994 s 15(4). The General Council may not exercise any of its functions under s 15(4), (5) (see the text to note 8 *infra*) without the approval of the Privy Council: s 15(6). As to the withdrawal of recognition where a condition is not complied with see PARA 639 post. As to the exercise by the Privy Council of its powers under the Chiropractors Act 1994 see PARA 612 ante. As to the Privy Council generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

<sup>8</sup> *Ibid* s 15(5). See also note 7 *supra*.

<sup>9</sup> *Ibid* s 15(7).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/5. CHIROPRACTORS/(3) PROFESSIONAL EDUCATION/(ii) Qualifications/638. Provision of information by institutions.

### **638. Provision of information by institutions.**

The following provisions apply to any institution by which, or under whose direction: (1) any relevant course of study<sup>1</sup> is, or is proposed to be, given<sup>2</sup>; (2) any examination is, or is proposed to be, held in connection with any such course<sup>3</sup>; or (3) any test of competence is, or is proposed to be, conducted in connection with any such course or for any other purpose connected with the Chiropractors Act 1994<sup>4</sup>.

Whenever required to do so by the education committee<sup>5</sup>, any such institution must give to the committee such information as the committee may reasonably require in connection with the exercise of its functions<sup>6</sup>. The matters with respect to which the committee may require information include: (a) the requirements which must be met by any person pursuing the course of study, undergoing the course of training or taking the examination or test in question<sup>7</sup>; (b) the financial position of the institution<sup>8</sup>; (c) the efficiency of the institution's management<sup>9</sup>. Where an institution refuses any reasonable request for information made by the committee, the committee may recommend to the General Council that recognition of the qualification in question be either refused<sup>10</sup> or withdrawn<sup>11</sup>. Where such a recommendation is made, the General Council may refuse<sup>12</sup> to recognise the qualification<sup>13</sup>, or<sup>14</sup> give a direction, with the required approval of the Privy Council, in respect of the qualification<sup>15</sup>.

1 For the meaning of 'relevant course of study' see PARA 634 note 3 ante; definition applied by the Chiropractors Act 1994 s 18(2).

2 Ibid s 18(1)(a).

3 Ibid s 18(1)(b).

4 Ibid s 18(1)(c). As to circumstances in which a test of competence may be required see PARAS 616, 626 ante, 649 post.

5 As to the education committee see PARA 607 ante.

6 Chiropractors Act 1994 s 18(3). As to the duty of the education committee to promote high standards of education and training see PARA 633 ante. As to the role of the education committee in advising the General Council in connection with the recognition of qualifications see PARA 636 ante. For the meaning of 'the General Council' see PARA 591 note 1 ante.

7 Ibid s 18(4)(a).

8 Ibid s 18(4)(b).

9 Ibid s 18(4)(c).

10 Ibid s 18(5)(a).

11 Ibid s 18(5)(b).

12 Ie in a case to which ibid s 18(5)(a) applies: see the text to note 10 supra.

13 Ie under ibid s 14 (see PARA 636 ante): s 18(6)(a).

14 Ie in a case to which ibid s 18(5)(b) applies: see the text to note 11 supra.

15     le under *ibid* s 16(2) (see PARA 639 post): s 18(6)(b). As to the exercise by the Privy Council of its powers under the Chiropractors Act 1994 see PARA 612 ante. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/5. CHIROPRACTORS/(3) PROFESSIONAL EDUCATION/(ii) Qualifications/639. Withdrawal of recognition.

### **639. Withdrawal of recognition.**

Where, as a result of any visitor's report<sup>1</sup> or other information acquired by the education committee<sup>2</sup>, the committee is of the opinion: (1) that a recognised qualification<sup>3</sup> is no longer, or will no longer be, evidence of having reached the required standard of proficiency<sup>4</sup>; (2) that a proposed qualification which has yet to be granted, but which was recognised<sup>5</sup>, will not be evidence of having reached that standard<sup>6</sup>; or (3) that a condition for the continued recognition of a qualification<sup>7</sup> has not been complied with<sup>8</sup>, it must refer the matter to the General Council<sup>9</sup>. In considering any matter so referred to it, the General Council must have regard to the information on which the education committee formed its opinion together with any other relevant information which the General Council may have<sup>10</sup>.

If the General Council is satisfied that the circumstances of the case are as mentioned in head (1), (2) or (3) above, it may, with the approval of the Privy Council<sup>11</sup>, direct that the qualification is no longer to be a recognised qualification for the purposes of the Chiropractors Act 1994<sup>12</sup>. Such a direction has effect from the date of the direction or from such later date as may be specified in the direction<sup>13</sup>.

Where the recognition of any qualification is withdrawn under these provisions, the General Council must use its best endeavours to secure that any person who is studying for that qualification at any place at the time when recognition is withdrawn is given the opportunity to study at that or any other place for a qualification which is recognised<sup>14</sup>. The withdrawal under these provisions of recognition from any qualification does not affect the entitlement of any person to be registered<sup>15</sup> by reference to an award of that qualification made to him before the date on which the direction withdrawing recognition had effect<sup>16</sup>.

1 For the meaning of 'visitor' see PARA 634 note 2 ante. As to visitor's reports see PARA 634 ante.

2 As to the education committee see PARA 607 ante. As to the provision of information by institutions see PARA 638 ante.

3 For the meaning of 'recognised qualification' see PARA 636 note 2 ante.

4 Chiropractors Act 1994 s 16(1)(a). For the meaning of 'the required standard of proficiency' see PARA 635 note 2 ante.

5 Ie by virtue of *ibid* s 14(2)(b): see PARA 636 ante.

6 *Ibid* s 16(1)(b).

7 Ie a condition imposed under *ibid* s 15(4): see PARA 637 ante.

8 *Ibid* s 16(1)(c).

9 *Ibid* s 16(1). For the meaning of 'the General Council' see PARA 591 note 1 ante.

10 *Ibid* s 16(4).

11 As to the exercise by the Privy Council of its powers under the Chiropractors Act 1994 see PARA 612 ante. As to the Privy Council generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

12 Chiropractors Act 1994 s 16(2). When requesting the approval of the Privy Council for these purposes, the General Council must make available to the Privy Council the information to which it had regard under s 16(4)

(see the text to note 10 *supra*): s 16(5). The Privy Council must have regard to the information made available to it under s 16(5) before deciding whether or not to give its approval: s 16(6).

13    *Ibid* s 16(3).

14    *Ibid* s 16(7).

15    As to registration see *PARA 615 et seq ante*.

16    Chiropractors Act 1994 s 16(8).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/5. CHIROPRACTORS/(3) PROFESSIONAL EDUCATION/(ii) Qualifications/640. Post registration training.

#### **640. Post registration training.**

The General Council<sup>1</sup> may make rules<sup>2</sup> requiring registered chiropractors<sup>3</sup> to undertake further courses of training<sup>4</sup>. The rules may, in particular, make provision with respect to registered chiropractors who fail to comply with any requirements of the rules, including provision for their registration to cease to have effect<sup>5</sup>. Before making or varying any such rules, the General Council must take such steps as are reasonably practicable to consult those who are registered chiropractors and such other persons as it considers appropriate<sup>6</sup>.

1 For the meaning of 'the General Council' see PARA 591 note 1 ante.

2 As to the making of rules see PARA 598 ante.

3 For the meaning of 'registered chiropractor' see PARA 595 note 5 ante.

4 Chiropractors Act 1994 s 17(1). As to the rules that have been made see the General Chiropractic Council (Continuing Professional Development) Rules 2004, approved by the General Chiropractic Council (Continuing Professional Development) Rules Order 2004, SI 2004/1877; and PARAS 641-644 post. As to visitors to places where such training is, or is proposed, to be given see PARA 634 ante.

5 Chiropractors Act 1994 s 17(2). As to registration see PARA 615 et seq ante.

6 Ibid s 17(3).

#### **UPDATE**

#### **640 Post registration training**

TEXT AND NOTES--As to the effect of the Chiropractors Act 1994 s 17(1), (2) to a temporarily registered chiropractor, see s 17(2A)-(2D) (added by SI 2007/3101; 1994 Act s 17(2B) amended by SI 2008/1774).

TEXT AND NOTES 1-4--Chiropractors Act 1994 s 17(1) amended: SI 2008/1774.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/5. CHIROPRACTORS/(3) PROFESSIONAL EDUCATION/(ii) Qualifications/641. Continuing professional development requirement for registered chiropractors.

#### **641. Continuing professional development requirement for registered chiropractors.**

Save in the case of chiropractors affected by exceptional circumstances<sup>1</sup>, every registered chiropractor<sup>2</sup>, whether practising full-time or part-time, or non-practising, or whose registration is or has been suspended<sup>3</sup> under any provision of the Chiropractors Act 1994, must complete the CPD requirement<sup>4</sup> during the course of a CPD year<sup>5</sup>.

The CPD requirement consists<sup>6</sup> of: (1) the completion of at least 30 hours of CPD<sup>7</sup>, of which at least 15 hours must involve the verifiable<sup>8</sup> participation of the registered chiropractor in learning with others<sup>9</sup>; and (2) the completion of at least one learning cycle which must entail the completion of CPD that counts towards the 30 hours total in head (1) above<sup>10</sup>. For these purposes, a learning cycle consists of the following four stages: (a) reflecting on and assessment by a registered chiropractor of his learning needs and interests within the context of his professional practice<sup>11</sup>; (b) planning how the registered chiropractor intends to meet those learning needs or interests and recording this in a personal development plan which may be revised as necessary during the CPD year<sup>12</sup>; (c) undertaking CPD in accordance with the personal development plan<sup>13</sup>; and (d) evaluating CPD undertaken and its effectiveness in meeting the learning needs or interests identified in the personal development plan<sup>14</sup>. A registered chiropractor must keep an up to date record of CPD undertaken during a CPD year, known as a 'CPD record'<sup>15</sup>; and must produce the CPD record to the General Chiropractic Council on demand<sup>16</sup>. The CPD record must include a record of each stage of the registered chiropractor's learning cycle and be in such format as the Council may from time to time specify<sup>17</sup>.

Any chiropractor who first becomes registered<sup>18</sup>, or whose name is restored to the register<sup>19</sup>, after 1 September 2004<sup>20</sup> must complete at least two and a half hours of CPD for each whole month in the period between the date on which he first becomes registered or the date of restoration to the register, as the case may be<sup>21</sup>, and the end of the CPD year in which that date falls<sup>22</sup>.

Where the registrar<sup>23</sup> is satisfied that a person has been unable to comply with the CPD requirement for any CPD year for reasons of ill health, bereavement or other exceptional circumstances, he may extend the time for the person concerned to comply with the CPD requirement, without affecting the CPD requirement for the following CPD year, or may reduce the number of hours of CPD to be completed in any CPD year<sup>24</sup>.

<sup>1</sup> See the General Chiropractic Council (Continuing Professional Development) Rules Order 2004, SI 2004/1877, r 10; and the text to notes 23, 24 *infra*.

<sup>2</sup> For the meaning of 'registered chiropractor' see PARA 595 note 5 *ante*.

<sup>3</sup> As to the suspension of registration see PARA 628 *ante*. As to registration generally see PARA 615 *et seq* *ante*.

<sup>4</sup> 'CPD requirement' is to be construed in accordance with the General Chiropractic Council (Continuing Professional Development) Rules Order 2004, SI 2004/1877, r 4 (see the text and notes 5-14 *infra*): r 2.

<sup>5</sup> *Ibid* r 4(1). A CPD year runs from 1 September to 31 August; and 'CPD year' is to be construed accordingly: see rr 2, 3.

<sup>6</sup> *le* subject to *ibid* rr 9, 10: see the text to notes 18-24 *infra*.

7 'CPD' means training which comprises lectures, seminars, courses, practical sessions, individual study or other activities undertaken by a registered practitioner which could reasonably be expected to advance his professional development as a chiropractor or contribute to the development of the profession of chiropractic: *ibid* r 2.

8 *Ie* by or on behalf of the General Chiropractic Council. As to the General Chiropractic Council see PARA 591 *et seq ante*.

9 General Chiropractic Council (Continuing Professional Development) Rules Order 2004, SI 2004/1877, r 4(2)(a). 'Learning with others' means any CPD other than individual study: r 2.

10 *Ibid* r 4(2)(b).

11 *Ibid* r 4(3)(a).

12 *Ibid* r 4(3)(b).

13 *Ibid* r 4(3)(c).

14 *Ibid* r 4(3)(d).

15 *Ibid* r 5(1)(a). 'CPD record' is to be construed in accordance with r 5: r 2.

16 *Ibid* r 5(1)(b).

17 *Ibid* r 5(2).

18 For the meaning of 'registered' see PARA 615 note 1 *ante*.

19 *Ie* other than under the General Chiropractic Council (Continuing Professional Development) Rules Order 2004, SI 2004/1877, r 7: see PARA 643 *post*. As to restoration to the register see PARA 625 *ante*.

20 *Ie* the day on which the General Chiropractic Council (Continuing Professional Development) Rules Order 2004, SI 2004/1877, came into force: see rr 1, 9(1).

21 *Ibid* r 9(1)(a).

22 *Ibid* r 9(1)(b). At least one and a quarter hours of CPD for each month of such period must be CPD which involves the verifiable participation of the registered chiropractor in learning with others (*ie* verifiable by or on behalf of the General Chiropractic Council): r 9(2).

23 For the meaning of 'the registrar' see PARA 614 note 3 *ante*.

24 General Chiropractic Council (Continuing Professional Development) Rules Order 2004, SI 2004/1877, r 10.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/5. CHIROPRACTORS/(3) PROFESSIONAL EDUCATION/(ii) Qualifications/642. Compliance with continuing professional development requirement.

#### **642. Compliance with continuing professional development requirement.**

The registrar<sup>1</sup> must send<sup>2</sup> to every registered chiropractor<sup>3</sup> annually<sup>4</sup>: (1) a summary sheet to be completed by the registered chiropractor showing the CPD<sup>5</sup> he has undertaken<sup>6</sup>; (2) a notice requiring the registered chiropractor to complete the summary sheet and return it to the registrar by the date specified in the notice ('the return date'), which must be at least 28 days after the date of the sending of the notice<sup>7</sup>; and (3) a warning that unless the completed summary sheet is received by the registrar by the return date, the registered chiropractor's name may be removed from the register<sup>8</sup>. Where the completed summary sheet is not received by the registrar by the return date, he must send a notice of final warning to the registered chiropractor warning him that, if the completed summary sheet is not provided before the end of the period of 14 days beginning with the day on which the notice was issued ('the final warning date'), his name may be removed from the register<sup>9</sup>. If the completed summary sheet is not received by the final warning date, the registrar may remove the name of the registered chiropractor from the register<sup>10</sup>.

Where the registrar is not satisfied from the information provided in the summary sheet or otherwise that the registered chiropractor has complied with the CPD requirement<sup>11</sup>, he must send a notice to the registered chiropractor which must include: (a) a statement of the reasons why he is not satisfied that the registered chiropractor has complied with the CPD requirement<sup>12</sup>; (b) an invitation to the registered chiropractor to submit his observations on the matter by the date specified in the notice, which must be at least 14 days after the date of the sending of the notice<sup>13</sup>; and (c) a request that the registered chiropractor produce within the same period his CPD record<sup>14</sup> for the relevant year<sup>15</sup>. Where the registered chiropractor fails to produce his CPD record by the date specified in such a notice<sup>16</sup>, or after considering any such observations submitted by the registered chiropractor and the contents of the CPD record, the registrar remains of the view that the registered chiropractor has not complied with the CPD requirement for the year in question<sup>17</sup>, the registrar may remove the name of the registered chiropractor from the register<sup>18</sup>.

Whenever the registrar removes the name of a chiropractor from the register under these provisions, he must notify the chiropractor in writing<sup>19</sup> of the removal and of the reasons for it<sup>20</sup>.

1 For the meaning of 'the registrar' see PARA 614 note 3 ante.

2 Any summary sheet, demand, warning or notice to be given by the registrar under the General Chiropractic Council (Continuing Professional Development) Rules Order 2004, SI 2004/1877, may be sent by post to the address of the chiropractor concerned which appears in the register pursuant to the Chiropractors Act 1994 s 6(1)(b) (see PARA 619 ante), and is treated as sent or issued at the time of its posting: General Chiropractic Council (Continuing Professional Development) Rules Order 2004, SI 2004/1877, r 11.

3 For the meaning of 'registered chiropractor' see PARA 595 note 5 ante.

4 General Chiropractic Council (Continuing Professional Development) Rules Order 2004, SI 2004/1877, r 6(1). The registrar must not send the documents mentioned in r 6(1) (see the text to notes 5-8 infra) to a person:

156 (1) who has received notification under the Chiropractors Act 1994 s 20(9)(a) (see PARA 647 post) and is subject to an investigation under ss 20, 22, 23 (see PARAS 647, 649-651 post) in connection with which all proceedings and appeals arising have not been completed or the time for all such appeals has not expired (General Chiropractic Council (Continuing Professional Development) Rules Order 2004, SI 2004/1877, r 6(6)(a)); or

157 (2) whose registration is suspended (r 6(6)(b)),

until the relevant event set out in r 6(7) occurs, at which time the registrar must send to the chiropractor the documents mentioned in r 6(1); and the provisions of r 6(2)-(6) have effect accordingly (r 6(6)). The event mentioned in r 6(6) is: (a) completion of any investigation referred to in r 6(6)(a) (see head (1) supra) and of all proceedings and appeals arising from it, or, as the case may be, upon the expiry of the time for any such appeal without such appeal being made, where the decision is not one that the chiropractor's name be removed from the register or his registration suspended (r 6(7)(a)); or (b) the ending of the suspension referred to in r 6(6)(b) (see head (2) supra) (r 6(7)(b)). As to the suspension of registration see PARA 628 ante.

5 For the meaning of 'CPD' see PARA 641 note 7 ante.

6 General Chiropractic Council (Continuing Professional Development) Rules Order 2004, SI 2004/1877, r 6(1)(a).

7 Ibid r 6(1)(b).

8 Ibid r 6(1)(c). For the meaning of 'the register' see PARA 614 note 4 ante.

9 Ibid r 6(2).

10 Ibid r 6(3). See also the text to notes 19-20 infra. As to appeals from decisions of the registrar see PARA 644 post.

11 For the meaning of 'CPD requirement' see PARA 641 note 4 ante.

12 General Chiropractic Council (Continuing Professional Development) Rules Order 2004, SI 2004/1877, r 6(4)(a).

13 Ibid r 6(4)(b).

14 For the meaning of 'CPD record' see PARA 641 note 15 ante.

15 General Chiropractic Council (Continuing Professional Development) Rules Order 2004, SI 2004/1877, r 6(4)(c).

16 Ibid r 6(5)(a).

17 Ibid r 6(5)(b).

18 Ibid r 6(5). As to appeals from decisions of the registrar see PARA 644 post.

19 For the meaning of 'writing' see PARA 20 note 22 ante.

20 General Chiropractic Council (Continuing Professional Development) Rules Order 2004, SI 2004/1877, r 6(8). As to the service of notices see note 2 ante.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/5. CHIROPRACTORS/(3) PROFESSIONAL EDUCATION/(ii) Qualifications/643. Restoration to the register following removal for non-compliance.

### **643. Restoration to the register following removal for non-compliance.**

Any person whose name has been removed from the register<sup>1</sup> by the registrar<sup>2</sup> may apply to have his name restored to the register<sup>3</sup>. Subject as provided<sup>4</sup>, the application must be accompanied by evidence that the applicant has undertaken: (1) any CPD<sup>5</sup> necessary to satisfy the CPD requirement<sup>6</sup> for the CPD year<sup>7</sup> in relation to which his name was removed from the register<sup>8</sup>; and (2) at least two and a half hours of CPD for each whole month in the period beginning with the day after the end of the CPD year in relation to which his name was removed from the register and ending with the date of receipt by the registrar of his application for restoration<sup>9</sup>. The maximum amount of CPD for which any applicant may be required to provide evidence to the registrar is 150 hours<sup>10</sup>, and an applicant may not be required to satisfy the provisions described above in so far as they relate to a period more than five years before the date of his application for registration<sup>11</sup>. Whenever the registrar refuses an application made under these provisions, he must notify the applicant in writing of his decision and the reasons for it<sup>12</sup>.

<sup>1</sup> For the meaning of 'the register' see PARA 614 note 4 ante.

<sup>2</sup> *Ie* under the General Chiropractic Council (Continuing Professional Development) Rules Order 2004, SI 2004/1877, r 6; see PARA 642 ante. For the meaning of 'the registrar' see PARA 614 note 3 ante.

<sup>3</sup> *Ibid* r 7(1). The General Chiropractic Council (Registration) Rules Order of Council 1999, SI 1999/1856, r 10(1) (see PARA 625 ante) applies to any such application as if it were an application for restoration to the register under the Chiropractors Act 1994 s 6(5) (see PARA 625 ante): General Chiropractic Council (Continuing Professional Development) Rules Order 2004, SI 2004/1877, rr 2, 7(2).

<sup>4</sup> *Ie* subject to *ibid* r 7(3) (see the text to note 10 *infra*), r 10 (see PARA 641 text to notes 23, 24 ante): r 7(2).

<sup>5</sup> For the meaning of 'CPD' see PARA 641 note 7 ante.

<sup>6</sup> *Ie* as set out in the General Chiropractic Council (Continuing Professional Development) Rules Order 2004, SI 2004/1877, r 4(2)(a): see PARA 641 ante. For the meaning of 'CPD requirement' see PARA 641 note 4 ante.

<sup>7</sup> For the meaning of 'CPD year' see PARA 641 note 5 ante.

<sup>8</sup> General Chiropractic Council (Continuing Professional Development) Rules Order 2004, SI 2004/1877, r 7(2)(a)(i).

<sup>9</sup> *Ibid* r 7(2)(a)(ii). In respect of the CPD mentioned in r 7(2)(a)(ii), at least one and a quarter hours for each such month must be CPD which involves the verifiable participation of the applicant in learning with others (*ie* verifiable by or on behalf of the General Chiropractic Council): r 7(2)(b). For the meaning of 'learning with others' see PARA 641 note 9 ante. As to the General Chiropractic Council see PARA 591 *et seq* ante.

<sup>10</sup> *Ibid* r 7(3).

<sup>11</sup> *Ibid* r 7(4).

<sup>12</sup> *Ibid* r 7(5). As to the service of notices see PARA 642 note 2 ante. As to appeals from decisions of the registrar see PARA 644 *post*.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/5. CHIROPRACTORS/(3) PROFESSIONAL EDUCATION/(ii) Qualifications/644. Appeals from decisions of the registrar.

#### **644. Appeals from decisions of the registrar.**

A person may appeal to the General Chiropractic Council<sup>1</sup> from a decision made by the registrar<sup>2</sup> to remove him from the register<sup>3</sup> or to refuse an application for restoration to the register<sup>4</sup>. Such an appeal must be made before the end of the period of 28 days beginning with the date on which notice of the registrar's decision is sent to the person concerned<sup>5</sup>.

1 As to the General Chiropractic Council see PARA 591 et seq ante.

2 For the meaning of 'the registrar' see PARA 614 note 3 ante.

3 I.e. a decision under the General Chiropractic Council (Continuing Professional Development) Rules Order 2004, SI 2004/1877, r 6: see PARA 642 ante. For the meaning of 'the register' see PARA 614 note 4 ante.

4 I.e. a decision under *ibid* r 7 (see PARA 643 ante): r 8. Such an appeal is subject to the rules set out in the General Chiropractic Council (Appeals Against Decisions of the Registrar) Rules Order 2000, SI 2000/2265 (see PARAS 677-680 post) as if it were an appeal under the Chiropractors Act 1994 s 29 (see PARA 676 post): General Chiropractic Council (Continuing Professional Development) Rules Order 2004, SI 2004/1877, r 8(a).

5 *Ibid* r 8(b). As to the service of notices see PARA 642 note 2 ante.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/5. CHIROPRACTORS/(4) PROFESSIONAL CONDUCT AND FITNESS TO PRACTISE/(i) Code of Practice/645. The code of practice.

## **(4) PROFESSIONAL CONDUCT AND FITNESS TO PRACTISE**

### **(i) Code of Practice**

#### **645. The code of practice.**

The General Council<sup>1</sup> must prepare, and from time to time publish, a code of practice laying down standards of conduct and practice expected of registered chiropractors<sup>2</sup>, and giving advice in relation to the practice of chiropractic<sup>3</sup>. It is the duty of the General Council to keep the code under review and to vary its provisions whenever it considers it appropriate to do so<sup>4</sup>. Before issuing the code or varying it, the General Council must consult such representatives of practising chiropractors as it considers appropriate<sup>5</sup>. Any person who asks the General Council for a copy of the code is entitled to have one on payment of such reasonable fee as the General Council may determine<sup>6</sup>.

Where any person is alleged to have failed to comply with any provision of the code, that failure is not to be taken, of itself, to constitute unacceptable professional conduct<sup>7</sup> on his part<sup>8</sup>, but is to be taken into account in any proceedings against him under the Chiropractors Act 1994<sup>9</sup>.

1 For the meaning of 'the General Council' see PARA 591 note 1 ante.

2 Chiropractors Act 1994 s 19(1)(a). For the meaning of 'registered chiropractor' see PARA 595 note 5 ante.

3 Ibid s 19(1)(b). The General Chiropractic Council Code of Practice and Standard of Proficiency for the Safe and Competent Practice of Chiropractic was issued in 1999, but it is to be replaced by a new version as from 1 June 2005. As to the code of practice in relation to competition and anti-competitive practices see PARA 613 ante.

4 Chiropractors Act 1994 s 19(2).

5 Ibid s 19(3).

6 Ibid s 19(5). Section 19(5) is not to be taken as preventing the General Council from providing copies of the code free of charge whenever it considers it appropriate: s 19(6).

7 For the meaning of 'unacceptable professional conduct' see PARA 646 note 2 post.

8 Chiropractors Act 1994 s 19(4)(a).

9 Ibid s 19(4)(b). As to proceedings under the Chiropractors Act 1994 see PARA 646 et seq post. For a case relating to breaches of the code see *Gage v General Chiropractic Council* [2004] EWHC 2762 (Admin), [2004] All ER (D) 14 (Nov).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/5. CHIROPRACTORS/(4) PROFESSIONAL CONDUCT AND FITNESS TO PRACTISE/(ii) The Investigating Committee/646. Reference of allegations to the investigating committee.

## (ii) The Investigating Committee

### 646. Reference of allegations to the investigating committee.

The following provisions apply where any allegation is made against a registered chiropractor<sup>1</sup> to the effect that: (1) he has been guilty of conduct which falls short of the standard required of a registered chiropractor<sup>2</sup>; (2) he has been guilty of professional incompetence<sup>3</sup>; (3) he has been convicted at any time in the United Kingdom<sup>4</sup> of a criminal offence<sup>5</sup>; or (4) his ability to practise as a chiropractor is seriously impaired because of his physical or mental condition<sup>6</sup>.

Where an allegation<sup>7</sup> is made to the General Council<sup>8</sup> or to any of its committees<sup>9</sup>, other than the investigating committee<sup>10</sup>, it is the duty of the General Council or committee to refer the allegation to the investigating committee<sup>11</sup>. The General Council may make rules requiring any allegation which is made or referred to the investigating committee to be referred for preliminary consideration to a person appointed by the General Council in accordance with the rules<sup>12</sup>. Any person to whom an allegation is referred by the investigating committee in accordance with such rules must consider the allegation with a view to establishing whether, in his opinion, power is given by the Chiropractors Act 1994 to deal with it if it proves to be well founded<sup>13</sup>; and if he considers that such power is given, he must give the investigating committee a report of the result of his consideration<sup>14</sup>. Where there are such rules in force, the investigating committee must investigate any allegation with respect to which it is given a report by a person appointed under the rules<sup>15</sup>. Where there are no such rules in force, the investigating committee must investigate any allegation which is made or referred to it<sup>16</sup>.

1 For the meaning of 'registered chiropractor' see PARA 595 note 5 ante.

2 Chiropractors Act 1994 s 20(1)(a). Conduct which falls short of the standard required of a registered chiropractor is referred to as 'unacceptable professional conduct': ss 20(2), 43. As to the code of practice laying down standards of conduct see PARA 645 ante. As to the effect of failure to comply with any code of practice see PARA 645 ante. For cases on professional misconduct see the cases cited in the notes to paras 143, 456 ante.

3 Ibid s 20(1)(b). As to the standard required for the safe and competent practice of chiropractic see PARA 635 ante.

4 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

5 Chiropractors Act 1994 s 20(1)(c). The purpose of giving a disciplinary committee powers over a professional man who has been convicted of crime is not to punish him for a second time for the same offence but to protect the public who may come to him as patients and to maintain the high standards and good reputation of an honourable profession: *Zideman v General Dental Council* [1976] 2 All ER 334, [1976] 1 WLR 330, PC. The maxim that a person ought not to be punished twice for the same offence does not apply to proceedings before a disciplinary committee: *R v Statutory Committee of the Pharmaceutical Society of Great Britain, ex p Pharmaceutical Society of Great Britain* [1981] 2 All ER 805, [1981] 1 WLR 886, DC. If the disciplinary committee is considering removal of a person's name from the register, it must satisfy itself that the criminal offence is of so grave a character as to show that the professional man is unfit to continue to practise: *Zideman v General Dental Council* supra. As to the application of the Rehabilitation of Offenders Act 1974 to chiropractors see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 687.

6 Chiropractors Act 1994 s 20(1)(d).

7 'Allegation' means an allegation of a kind mentioned in ibid s 20(1) (see the text to notes 1-6 supra): s 20(14).

8 For the meaning of 'the General Council' see PARA 591 note 1 ante.



9 As to the committees of the General Council see PARAS 591, 602 et seq ante.

10 As to the investigating committee see PARA 608 ante.

11 Chiropractors Act 1994 s 20(3). The General Council must by rules make provision as to the procedure to be followed by the investigating committee in any investigation carried out by it under s 20: s 20(10). As to the rules that have been made see the General Chiropractic Council (Investigating Committee) Rules 2000, approved by the General Chiropractic Council (Investigating Committee) Rules Order of Council 2000, SI 2000/2916; and PARAS 647-648 post. As to the making of rules see PARA 598 ante.

12 Chiropractors Act 1994 s 20(4). Any rules made under s 20(4) may allow for the appointment of persons who are members of the General Council, but may not allow for the appointment of the registrar: s 20(5). As to the membership of the General Council see PARA 592 ante. For the meaning of 'the registrar' see PARA 614 note 3 ante. At the date at which this volume states the law no such rules had been made.

13 Ibid s 20(6)(a).

14 Ibid s 20(6)(b).

15 Ibid s 20(7). As to the investigation of allegations by the investigating committee see PARA 647 post.

16 Ibid s 20(8). See also note 15 supra.

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#### **647. Investigation of allegations.**

Where the investigating committee<sup>1</sup> is required to investigate any allegation<sup>2</sup>, it must: (1) notify the registered chiropractor<sup>3</sup> concerned of the allegation and invite him to give it his observations before the end of the period of 28 days beginning with the day on which notice of the allegation is sent to him<sup>4</sup>; (2) take such steps as are reasonably practicable to obtain as much information as possible about the case<sup>5</sup>; and (3) consider, in the light of the information which it has been able to obtain and any observations duly made to it by the registered chiropractor concerned, whether in its opinion there is a case to answer<sup>6</sup>.

Where an allegation to be investigated by the investigating committee relates to misconduct or professional incompetence<sup>7</sup>, the committee must<sup>8</sup> invite the person making the allegation and any other person appearing to it to have information relevant to the question whether there is a case to answer, to make a statement of evidence by statutory declaration or affidavit as to the matters giving rise to the allegation<sup>9</sup>. Where an allegation to be investigated by the investigating committee appears to the committee to raise an issue relating to a chiropractor's physical or mental condition<sup>10</sup>, the committee may, if it thinks fit: (a) invite the chiropractor to attend before a medical assessor<sup>11</sup> with a view to that assessor examining him and reporting on his physical or mental condition or, if the information received by the committee includes reports on the chiropractor by medical practitioners who have recently examined him, and it appears to the committee that such reports afford sufficient medical evidence that the chiropractor's ability to practise as a chiropractor may be seriously impaired because of his physical or mental condition, so inform him<sup>12</sup>; and (b) inform the chiropractor that it is open to him to nominate other medical practitioners to examine him at his own expense and report to the committee on his ability to practise<sup>13</sup>. Where the committee receives such a report from a medical assessor or other medical practitioner, the committee must send a copy of the report to the chiropractor concerned and invite him to submit observations in writing to the committee within such period as may be specified in the invitation<sup>14</sup>. Where the committee has invited observations<sup>15</sup> from the chiropractor concerned on a statement or report, it must not reach a decision on the question whether there is a case to answer until the period specified in the invitation as the period within which the chiropractor may submit his observations has expired, unless it has received those observations or the chiropractor has indicated that he does not propose to make any observations<sup>16</sup>.

Where the investigating committee concludes that there is a case to answer, it must notify both the chiropractor concerned and the person making the allegation of its conclusion<sup>17</sup>, and refer the allegation, as formulated by the investigating committee<sup>18</sup>, to the health committee<sup>19</sup> in the case of an allegation of impairment because of physical or mental condition<sup>20</sup>, or to the professional conduct committee<sup>21</sup> in the case of an allegation of any other kind<sup>22</sup>. Where the investigating committee concludes that there is no case to answer, it must notify both the chiropractor concerned and the person making the allegation<sup>23</sup>.

1 As to the investigating committee see PARA 608 ante.

2 As to the reference of allegations to the investigating committee see PARA 646 ante. For the meaning of 'allegation' see PARA 646 note 7 ante.

3 For the meaning of 'registered chiropractor' see PARA 595 note 5 ante.

4 Chiropractors Act 1994 s 20(9)(a). Any such notification and invitation must be made by notice in writing given on behalf of the committee by the registrar, and a copy must be given to the chairman: General Chiropractic Council (Investigating Committee) Rules Order of Council 2000, SI 2000/2916, r 3(1). As to the service of such notices see PARA 631 note 11 ante. For the meaning of 'the registrar' see PARA 614 note 3 ante. 'The chairman' means the chairman of the General Council or an acting chairman appointed under the General Chiropractic Council (Constitution and Procedure) Rules 1999, SI 1999/1537, r 7 (see PARA 596 ante): see the General Chiropractic Council (Investigating Committee) Rules Order of Council 2000, SI 2000/2916, r 2. As to the chairman of the General Council see PARA 596 ante.

Where an allegation of a kind mentioned in the Chiropractors Act 1994 s 20(1)(c) (allegation that a registered chiropractor has been convicted of a criminal offence: see PARA 646 ante) falls within a class determined by the General Council as one unlikely to have material relevance to a person's fitness to practise chiropractic, the notice given must so state (but must nonetheless invite observations as to whether it has such relevance in that case): General Chiropractic Council (Investigating Committee) Rules Order of Council 2000, SI 2000/2916, r 3(2).

5 Chiropractors Act 1994 s 20(9)(b). Nothing in the General Chiropractic Council (Investigating Committee) Rules Order of Council 2000, SI 2000/2916, r 4 (see the text to notes 7-14 infra) prejudices the power of the committee to make such further investigations as it considers are reasonably practicable for the purposes of fulfilling its functions under the Chiropractors Act 1994 s 20(9)(b): General Chiropractic Council (Investigating Committee) Rules Order of Council 2000, SI 2000/2916, r 5(2). Rule 5(2) includes the power for the committee to obtain an expert report. Any such report must be disclosed to the person under investigation: *Gage v General Chiropractic Council* [2004] EWHC 2762 (Admin), [2004] All ER (D) 14 (Nov).

6 Chiropractors Act 1994 s 20(9)(c). As to the use by the chairman of the committee of his casting vote in relation to a decision under s 20(9)(c) see PARA 608 note 9 ante.

7 Ie allegations of a kind mentioned in *ibid* s 20(1)(a), (b): see PARA 646 ante.

8 Ie before the beginning of the period of three weeks ending with the day on which notice is served under the General Chiropractic Council (Investigating Committee) Rules Order of Council 2000, SI 2000/2916, r 3(1): see note 4 supra.

9 *Ibid* r 4(1). The committee may also invite such evidence in any other case: r 4(1). A copy of any statement of evidence provided to the committee under r 4(1) must be sent to the chiropractor concerned with the notice given under r 3(1) (see note 4 supra), or as soon as practicable thereafter, and (if not sent with that notice) must be accompanied by an invitation to submit observations within such period (expiring not less than 14 days after the day on which the invitation was served) as may be specified in the invitation: r 4(2). As to the service of such notices see PARA 631 note 11 ante. 'Affidavit' includes affirmation and declaration: Interpretation Act 1978 s 5, Sch 1. As to affirmations and statutory declarations see CIVIL PROCEDURE vol 11 (2009) PARAS 1023-1024. As to affidavits see CIVIL PROCEDURE vol 11 (2009) PARA 989 et seq.

10 Ie an allegation mentioned in the Chiropractors Act 1994 s 20(1)(d): see PARA 646 ante.

11 Ie as appointed under *ibid* s 28: see PARA 675 post.

12 General Chiropractic Council (Investigating Committee) Rules Order of Council 2000, SI 2000/2916, r 4(3) (a). An invitation under r 4(3)(a) to attend before a medical assessor must contain a statement that if the chiropractor fails to attend for an examination without good reason, the committee will take that into account and may conclude that there is a case to answer: r 4(4). As to the service of such invitations see PARA 631 note 11 ante.

13 *Ibid* r 4(3)(b). Such report may, as the committee thinks fit, be in place of or in addition to any report from a medical assessor under r 4(3)(a) (see the text to note 12 supra): r 4(3)(b).

14 *Ibid* r 4(5). The period specified must expire not less than 14 days after the day on which the invitation was served: r 4(5). If, in the opinion of the committee, any report of a medical practitioner required to be sent to the chiropractor concerned contains material which is not relevant to the present ability to practise of the chiropractor and which it would not be in the best interests of the chiropractor to see, the committee may exclude such material from the documents sent to the chiropractor, in which case the excluded material must not be taken into account by the committee: r 4(6). As to the service of such reports see PARA 631 note 11 ante.

15 Ie under *ibid* r 4(2) (see note 9 supra), r 4(5) (see the text to note 14 supra).

16 *Ibid* r 5(1).

17 Chiropractors Act 1994 s 20(12)(a).

18 Without prejudice to the general power of the committee to take legal advice from a legal assessor appointed under *ibid* s 27 (see PARA 674 post), the investigating committee may take legal advice from such a legal assessor on any question of law arising in connection with its investigation of an allegation and, if it concludes that there is a case to answer, in formulating the terms of the allegation to be referred to the health committee (see note 19 *infra*) or the professional conduct committee (see note 21 *infra*), as the case may be: General Chiropractic Council (Investigating Committee) Rules Order of Council 2000, SI 2000/2916, r 9(a).

19 As to the health committee see PARA 610 ante. As to the consideration of allegations by the health committee see PARA 651 et seq post.

20 In an allegation of a kind mentioned in the Chiropractors Act 1994 s 20(1)(d) (see PARA 646 ante): s 20(12)(b)(i).

21 As to the professional conduct committee see PARA 609 ante. As to the consideration of allegations by the professional conduct committee see PARA 649 et seq post.

22 Chiropractors Act 1994 s 20(12)(b)(ii).

23 *Ibid* s 20(13). In the case of an allegation of a kind mentioned in s 20(1)(c) (see PARA 646 ante), the investigating committee may conclude that there is no case to answer if it considers that the criminal offence in question has no material relevance to the fitness of the chiropractor concerned to practise chiropractic: s 20(11).

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#### **648. Interim suspension powers of the investigating committee.**

Where the investigating committee<sup>1</sup> is investigating an allegation<sup>2</sup> against a registered chiropractor<sup>3</sup>, if the committee is satisfied that it is necessary to do so in order to protect members of the public, it may order the registrar<sup>4</sup> to suspend the chiropractor's registration<sup>5</sup>. Before making an order, the committee must give the chiropractor concerned an opportunity to appear before it and to argue his case against the making of the proposed order<sup>6</sup>. The opportunity to be given to a chiropractor to appear before the committee must be offered by the giving of written notice<sup>7</sup> by or on behalf of the committee to the chiropractor<sup>8</sup>. Without prejudice to its general powers of adjournment, the committee may from time to time adjourn any proceedings before it at which the chiropractor is present under these provisions<sup>9</sup>.

An order must specify the period of the suspension, which must not exceed two months<sup>10</sup> beginning with the date on which the order is made<sup>11</sup>. The committee must not make an order in any case after it has referred the allegation in question to the professional conduct committee<sup>12</sup> or the health committee<sup>13</sup>, or make more than one order in respect of the same allegation<sup>14</sup>.

1 As to the investigating committee see PARA 608 ante.

2 I.e. under the Chiropractors Act 1994 s 20: see PARAS 646-647 ante.

3 Ibid s 21(1). For the meaning of 'registered chiropractor' see PARA 595 note 5 ante.

4 For the meaning of 'the registrar' see PARA 614 note 3 ante.

5 Chiropractors Act 1994 s 21(2). As to the use by the chairman of the committee of his casting vote in relation to a decision under s 21(2) see PARA 608 note 9 ante. As to registration generally see PARA 615 et seq ante.

6 Ibid s 21(5). At any such hearing, the chiropractor is entitled to be legally represented: s 21(6). Without prejudice to the general power of the committee to take legal advice from a legal assessor appointed under s 27 (see PARA 674 post), the investigating committee may take legal advice from such a legal assessor on any question of law arising in proceedings under s 21(5): General Chiropractic Council (Investigating Committee) Rules Order of Council 2000, SI 2000/2916, r 9(b).

7 As to the giving of such notice see PARA 631 note 11 ante. For the meaning of 'written' see PARA 20 note 22 ante.

8 General Chiropractic Council (Investigating Committee) Rules Order of Council 2000, SI 2000/2916, r 6(1). Such notice must: (1) inform the chiropractor that he may so appear (r 6(1)(a)); (2) if he wishes so to appear, require him to notify the chairman of the committee in writing to that effect before the end of the period of ten days beginning with the day on which the notice was served on him (r 6(1)(b)); and (c) inform him that at any such hearing he may be legally represented (r 6(1)(c)). Where a chiropractor is to be heard, the chiropractor must be given particulars by or on behalf of the committee of the day, time and place at which the committee will hear him (which particulars may be included in the notice given under r 6): r 6(2).

9 Ibid r 6(3).

10 For the meaning of 'month' see PARA 13 note 14 ante.

11 Chiropractors Act 1994 s 21(3).

12 As to the professional conduct committee see PARA 609 ante. As to the consideration of allegations by the professional conduct committee see PARA 649 et seq post.

13 Chiropractors Act 1994 s 21(4)(a). As to the health committee see PARA 610 ante. As to the consideration of allegations by the health committee see PARA 651 et seq post.

14 Ibid s 21(4)(b).

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### **(iii) The Professional Conduct Committee and the Health Committee**

#### **A. CONSIDERATION OF ALLEGATIONS**

##### **649. Consideration of allegations by the professional conduct committee.**

Where an allegation has been referred to the professional conduct committee<sup>1</sup>, it is the duty of the committee to consider the allegation<sup>2</sup>. If, having considered it, the committee is satisfied that the allegation is well founded, it must proceed as follows<sup>3</sup>.

If the allegation relates to the conviction of a chiropractor of a criminal offence<sup>4</sup>, the committee may take no further action if it considers that the criminal offence in question has no material relevance to the fitness of the chiropractor concerned to practise chiropractic<sup>5</sup>. Otherwise, the committee must take one of the following steps: (1) admonish the chiropractor<sup>6</sup>; (2) make an order imposing conditions with which he must comply while practising as a chiropractor (a 'conditions of practice order')<sup>7</sup>; (3) order the registrar<sup>8</sup> to suspend the chiropractor's registration for such period as may be specified in the order (a 'suspension order')<sup>9</sup>; or (4) order the registrar to remove the chiropractor's name from the register<sup>10</sup>.

A conditions of practice order must specify one or both<sup>11</sup> of the period for which the order is to have effect<sup>12</sup>, and a test of competence which must be taken by the chiropractor<sup>13</sup>. A conditions of practice order ceases to have effect: (a) if a period is specified in the order, when that period ends<sup>14</sup>; (b) if no such period is specified but a test of competence is so specified, when the chiropractor concerned passes the test<sup>15</sup>; or (c) if both a period and a test are so specified, when the period ends or when the chiropractor concerned passes the test, whichever is the later to occur<sup>16</sup>. At any time while a conditions of practice order is in force<sup>17</sup>, the committee may, whether or not of its own motion: (i) extend, or further extend, the period for which the order has effect<sup>18</sup>; (ii) revoke or vary any of the conditions<sup>19</sup>; (iii) require the chiropractor concerned to pass a test of competence specified by the committee<sup>20</sup>; (iv) reduce the period for which the order has effect<sup>21</sup>; or (v) revoke the order<sup>22</sup>. At any time while a suspension order is in force<sup>23</sup>, the committee may, whether or not of its own motion: (A) extend, or further extend, the period of suspension<sup>24</sup>; and (B) make a conditions of practice order with which the chiropractor must comply if he resumes the practice of chiropractic after the end of his period of suspension<sup>25</sup>. The period specified in a conditions of practice order or in a suspension order, and any extension of a specified period<sup>26</sup>, must not in each case exceed three years<sup>27</sup>. In exercising its powers with regard to conditions of practice orders and suspension orders<sup>28</sup>, the committee must ensure that the conditions imposed on the chiropractor concerned are, or the period of suspension imposed on him is, the minimum which it considers necessary for the protection of members of the public<sup>29</sup>.

Before exercising its powers described above<sup>30</sup>, the committee must give the chiropractor concerned an opportunity to appear before it and to argue his case<sup>31</sup>. At any such hearing, the chiropractor is entitled to be legally represented<sup>32</sup>.

<sup>1</sup> ie under the Chiropractors Act 1994 s 20 (see PARAS 646, 647 ante) or by virtue of any rule made under s 26(2)(a) (see PARA 654 post). As to the professional conduct committee see PARA 609 ante.

2 Ibid s 22(1). As to the use by the chairman of the professional conduct committee of his casting vote in respect of any decision of the committee under s 22 (as amended) see PARA 609 note 9 ante. As to the tendering of advice by legal assessors in proceedings under s 22 (as amended) see PARA 674 post. The standard of proof before the committee is the civil standard of proof subject to one qualification that the more serious an allegation of professional misconduct the stronger must be the evidence before that allegation is proved on the balance of probabilities: *Gage v General Chiropractic Council* [2004] EWHC 2762 (Admin), [2004] All ER (D) 14 (Nov). As to the civil standard of proof see CIVIL PROCEDURE vol 11 (2009) PARA 775.

3 Chiropractors Act 1994 s 22(2). As to the power of the Council for the Regulation of Health Care Professionals to refer to the court any step taken by the professional conduct committee under s 22 (as amended), or a final decision of the committee not to take any disciplinary measure under that provision, see PARAS 306-307 ante.

4 It is of a kind mentioned in ibid s 20(1)(c): see PARA 646 ante. As to the application of the Rehabilitation of Offenders Act 1974 to chiropractors see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 687.

5 Chiropractors Act 1994 s 22(3).

6 Ibid s 22(4)(a).

7 Ibid s 22(4)(b).

8 For the meaning of 'the registrar' see PARA 614 note 3 ante.

9 Chiropractors Act 1994 s 22(4)(c). As to the suspension of registration see PARA 628 ante. As to the formulation by the committee of a suspension order see *Gage v General Chiropractic Council* [2004] EWHC 2762 (Admin), [2004] All ER (D) 14 (Nov), in which a court on appeal was unable to extend a suspension order for a period ending on a specified date with the result that the practitioner served no period of suspension at all.

10 Chiropractors Act 1994 s 22(4)(d). As to the restoration to the register of chiropractors whose names have been removed from the register as a result of such an order see PARA 629 ante.

11 Ibid s 22(5).

12 Ibid s 22(5)(a).

13 Ibid s 22(5)(b).

14 Ibid s 22(6)(a).

15 Ibid s 22(6)(b).

16 Ibid s 22(6)(c).

17 It is under ibid s 22 (as amended) or by virtue of a decision of a court on an appeal under s 31 (see PARA 688 post): s 22(7) (s 22(7), (9) amended by the National Health Service Reform and Health Care Professions Act 2002 s 34(1), (3)).

18 Chiropractors Act 1994 s 22(7)(a). Where the period for which a conditions of practice order has effect is extended or reduced under s 22(7)(a), or a test of competence is specified under s 22(7)(c) (see the text to note 20 infra), then s 22(6) (see the text to notes 14-16 supra) has effect as if the period specified in the conditions of practice order was the extended or reduced period (s 22(8)(a)) and the test of competence was specified in that order (s 22(8)(b)).

19 Ibid s 22(7)(b).

20 Ibid s 22(7)(c). See also note 18 supra.

21 Ibid s 22(7)(d).

22 Ibid s 22(7)(e).

23 It is under ibid s 22 (as amended) or by virtue of a decision of a court on an appeal under s 31 (see PARA 688 post): s 22(9) (as amended: see note 17 supra).

24 Ibid s 22(9)(a).

25 Ibid s 22(9)(b).



26     le under ibid s 22(7), (9) (as amended): see the text to notes 17-25 supra.

27     Ibid s 22(10).

28     le under ibid s 22(7), (9) (as amended): see the text to notes 17-25 supra.

29     Ibid s 22(13).

30     le its powers under ibid s 22(4) (see the text to notes 6-10 supra), s 22(7), (9) (as amended) (see the text to notes 17-25 supra).

31     Ibid s 22(11).

32     Ibid s 22(12).

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### **650. Annual report.**

The professional conduct committee<sup>1</sup> must, before the end of the period of 12 months beginning with 7 June 2000<sup>2</sup>, and at least once in every succeeding period of 12 months, publish a report setting out<sup>3</sup>: (1) the names of those chiropractors in respect of whom it has investigated allegations<sup>4</sup> and found the allegations to be well founded<sup>5</sup>; (2) the nature of those allegations<sup>6</sup>; and (3) the steps, if any, taken by the committee in respect of the chiropractors so named<sup>7</sup>. Where the committee has investigated any allegation against a chiropractor and has not been satisfied that the allegation was well founded, it must include in its report for the year in question a statement of that fact if the chiropractor so requests<sup>8</sup>.

1 As to the professional conduct committee see PARA 609 ante.

2 I.e. the date of the commencement of the Chiropractors Act 1994 s 22: see the Chiropractors Act 1994 (Commencement No 4) Order 2000, SI 2000/2388.

3 Chiropractors Act 1994 s 22(14).

4 I.e. under *ibid* s 22 (as amended): see PARA 649 ante.

5 *Ibid* s 22(14)(a).

6 *Ibid* s 22(14)(b).

7 *Ibid* s 22(14)(c).

8 *Ibid* s 22(15).

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### **651. Consideration of allegations by the health committee.**

Where an allegation has been referred to the health committee<sup>1</sup>, it is the duty of the committee to consider the allegation<sup>2</sup>. If, having considered it, the committee is satisfied that the allegation is well founded, it must: (1) make an order imposing conditions with which the chiropractor concerned must comply while practising as a chiropractor, known as a 'conditions of practice order'<sup>3</sup>; or (2) order the registrar<sup>4</sup> to suspend the chiropractor's registration for such period as may be specified in the order, known as a 'suspension order'<sup>5</sup>.

Any condition in a conditions of practice order must be imposed so as to have effect for a period specified in the order<sup>6</sup>. At any time while a conditions of practice order is in force<sup>7</sup>, the committee may, whether or not of its own motion, extend, or further extend, the period for which the order has effect<sup>8</sup>, or make a suspension order with respect to the chiropractor concerned<sup>9</sup>. At any time while a suspension order is in force with respect to a chiropractor<sup>10</sup>, the committee may, whether or not of its own motion: (a) extend, or further extend, the period of suspension<sup>11</sup>; (b) replace the order with a conditions of practice order having effect for the remainder of the period of suspension<sup>12</sup>; or (c) make a conditions of practice order with which the chiropractor must comply if he resumes the practice of chiropractic after the end of his period of suspension<sup>13</sup>. The period specified in a conditions of practice order or in a suspension order, and any extension of a specified period<sup>14</sup>, must not in each case exceed three years<sup>15</sup>.

On the application of the chiropractor with respect to whom a conditions of practice order or a suspension order is in force<sup>16</sup>, the committee may: (i) revoke the order<sup>17</sup>; (ii) vary the order by reducing the period for which it has effect<sup>18</sup>; or (iii) in the case of a conditions of practice order, vary the order by removing or altering any of the conditions<sup>19</sup>. Where a chiropractor has made such an application which has been refused ('the previous application')<sup>20</sup>, the committee must not entertain a further such application unless it is made after the end of the period of 12 months<sup>21</sup> beginning with the date on which the previous application was received by the committee<sup>22</sup>.

In exercising any of its powers described above, the committee must ensure that any conditions imposed on the chiropractor concerned are, or any period of suspension imposed on him is, the minimum which it considers necessary for the protection of members of the public<sup>23</sup>.

Before exercising its powers<sup>24</sup>, the committee must give the chiropractor concerned an opportunity to appear before it and to argue his case<sup>25</sup>. At any such hearing, the chiropractor is entitled to be legally represented<sup>26</sup>.

1     le under the Chiropractors Act 1994 s 20 (see PARAS 646-647 ante) or by virtue of any rule made under s 26(2)(a) (see PARA 654 post). As to the health committee see PARA 610 ante.

2     Ibid s 23(1). As to the use by the chairman of the health committee of his casting vote in respect of any decision of the committee under s 23 (as amended) see PARA 610 note 11 ante. As to the tendering of advice by legal assessors in proceedings under s 23 (as amended) see PARA 674 post. As to the tendering of advice by medical assessors in proceedings under s 23 (as amended) see PARA 675 post.

3     Ibid s 23(2)(a).

4     For the meaning of 'the registrar' see PARA 614 note 3 ante.

5     Chiropractors Act 1994 s 23(2)(b). As to the suspension of registration see PARA 628 ante.

6 Ibid s 23(3).

7 Ie under ibid s 23 (as amended) or under s 30 (see PARA 681 post) or by virtue of a decision of a court on an appeal under s 31 (see PARA 688 post): s 23(4) (s 23(4)-(6) amended by the National Health Service Reform and Health Care Professions Act 2002 s 34(1), (4)).

8 Chiropractors Act 1994 s 23(4)(a).

9 Ibid s 23(4)(b).

10 Ie under ibid s 23 (as amended) or under s 30 (see PARA 681 post) or by virtue of a decision of a court on an appeal under s 31 (see PARA 688 post): s 23(5) (as amended: see note 7 supra).

11 Ibid s 23(5)(a).

12 Ibid s 23(5)(b).

13 Ibid s 23(5)(c).

14 Ie under ibid s 23(4), (5) (as amended): see the text to notes 7-13 supra.

15 Ibid s 23(8).

16 Ie under ibid s 23 (as amended) or under s 30 (see PARA 681 post) or by virtue of a decision of a court on an appeal under s 31 (see PARA 688 post): s 23(6) (as amended: see note 7 supra).

17 Ibid s 23(6)(a).

18 Ibid s 23(6)(b).

19 Ibid s 23(6)(c).

20 Ibid s 23(7).

21 For the meaning of 'month' see PARA 13 note 14 ante.

22 Chiropractors Act 1994 s 23(7).

23 Ibid s 23(11).

24 Ie under ibid s 23(2) (see the text to notes 3-5 supra), s 23(4)-(6) (as amended) (see the text to notes 7-13, 16-19 supra).

25 Ibid s 23(9).

26 Ibid s 23(10).

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## **652. Interim suspension orders.**

The provisions described below apply where: (1) an allegation against a registered chiropractor<sup>1</sup> has been referred<sup>2</sup> to the professional conduct committee<sup>3</sup> or the health committee<sup>4</sup> and the committee has not reached a decision on the matter<sup>5</sup>; or (2) the professional conduct committee or the health committee reaches a relevant decision<sup>6</sup> on any such allegation<sup>7</sup>.

The committee concerned may, if it is satisfied that it is necessary to do so in order to protect members of the public, order the registrar<sup>8</sup> to suspend the registration of the chiropractor concerned<sup>9</sup> (an 'interim suspension order')<sup>10</sup>. An interim suspension order ceases to have effect: (a) in a case where the committee has not reached a decision<sup>11</sup>, when the committee reaches a decision in respect of the allegation in question<sup>12</sup>; and (b) in a case where the committee has reached a decision<sup>13</sup>, if there is no appeal against the decision, when the period for appealing expires<sup>14</sup>, or, if there is an appeal against the decision, when the appeal is withdrawn or otherwise disposed of<sup>15</sup>. Before making an interim suspension order, the committee must give the chiropractor in question an opportunity to appear before it and to argue his case against the making of the proposed order<sup>16</sup>. At any such hearing, the chiropractor is entitled to be legally represented<sup>17</sup>.

Where an interim suspension order has been made, the chiropractor concerned may appeal against it to the appropriate court<sup>18</sup>. On an appeal, the court may terminate the suspension<sup>19</sup>, and the decision of the court is final<sup>20</sup>.

1 For the meaning of 'registered chiropractor' see PARA 595 note 5 ante.

2 *le* under the Chiropractors Act 1994 s 20 (see PARAS 646-647 ante), or by virtue of any rule made under s 26(2)(a) (see PARA 654 post).

3 As to the professional conduct committee see PARA 609 ante. As to the consideration of allegations by the professional conduct committee see PARA 649 ante.

4 As to the health committee see PARA 610 ante. As to the consideration of allegations by the health committee see PARA 651 ante.

5 Chiropractors Act 1994 s 24(1)(a).

6 'Relevant decision' means an order under *ibid* s 22(4)(c), (d) (see PARA 649 ante), or an order under s 23(2)(b) (see PARA 651 ante): s 24(10).

7 *Ibid* s 24(1)(b).

8 For the meaning of 'the registrar' see PARA 614 note 3 ante.

9 Chiropractors Act 1994 s 24(2). As to the suspension of registration see PARA 628 ante.

10 *Ibid* s 24(3). As to the use by the chairman of the professional conduct committee of his casting vote in respect of any decision of the committee under s 24 see PARA 609 note 9 ante; and as to the use by the chairman of the health committee of his casting vote in respect of any decision of the committee under s 24 see PARA 610 note 11 ante. As to the tendering of advice by legal assessors in proceedings under s 24 see PARA 674 post. As to the tendering of advice by medical assessors in proceedings under s 24 see PARA 675 post.

11 *le* a case falling within *ibid* s 24(1)(a): see the text to notes 1-5 *supra*.

12 Ibid s 24(3)(a).

13 Ie a case falling within ibid s 24(1)(b): see the text to notes 6, 7 supra.

14 Ibid s 24(3)(b)(i). As to the period for appealing see note 18 infra.

15 Ibid s 24(3)(b)(ii). As to appeals see the text to notes 18-20 infra.

16 Ibid s 24(4).

17 Ibid s 24(5).

18 Ibid s 24(6). Any such appeal must be brought before the end of the period of 28 days beginning with the date on which the order appealed against is made: s 24(7). 'The appropriate court' means in the case of a chiropractor whose registered address is in Scotland, the Court of Session; in the case of a chiropractor whose registered address is in Northern Ireland, the High Court of Justice in Northern Ireland; and in any other case, the High Court of Justice in England and Wales: s 24(10)(a)-(c). As to the High Court of Justice in England and Wales see COURTS vol 10 (Reissue) PARA 602 et seq.

19 Ibid s 24(8).

20 Ibid s 24(9).

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### **653. Revocation of interim suspension orders.**

On an application made by the chiropractor concerned<sup>1</sup>, an interim suspension order<sup>2</sup> may be revoked by the committee which made it on the ground that a change in the circumstances of the case has made the order unnecessary<sup>3</sup>. No such application may be entertained by the committee concerned if it is made before the end of the period of six months beginning with the date on which the order was imposed<sup>4</sup> or, where an unsuccessful appeal against the order has been made<sup>5</sup>, the date on which the appeal was dismissed<sup>6</sup>. However, where a previous application has been made in relation to an interim suspension order, no further such application may be entertained by the committee concerned if it is made before the end of the period of six months beginning with the date on which the previous application was finally disposed of<sup>7</sup>.

Where a chiropractor has made an application for the revocation of an interim suspension order which has been refused, he may appeal to the appropriate court<sup>8</sup> against the refusal<sup>9</sup>. Any such appeal must be brought before the end of the period of 28 days beginning with the date on which notice of the refusal is sent to the chiropractor<sup>10</sup>. On an appeal, the court may terminate the suspension<sup>11</sup>, and the decision of the court is final<sup>12</sup>.

1    Ie in a case falling within the Chiropractors Act 1994 s 24(1)(a): see PARA 652 ante.

2    As to interim suspension orders see PARA 652 ante.

3    Chiropractors Act 1994 s 25(1). As to the tendering of advice by legal assessors in proceedings under s 25 see PARA 674 post. As to the tendering of advice by medical assessors in proceedings under s 25 see PARA 675 post.

4    Ibid s 25(4)(a).

5    Ie under ibid s 24(6): see PARA 652 ante.

6    Ibid s 25(4)(b).

7    Ibid s 25(5).

8    For the meaning of 'appropriate court' see PARA 652 note 18 ante; definition applied by ibid s 25(9).

9    Ibid s 25(2). Where, in relation to an interim suspension order: (1) an appeal has been made under s 24(6) (see PARA 652 ante) against the making of the order (s 25(3)(a)); or (2) a further application for the order to be revoked has been made after an unsuccessful appeal under s 25 against the refusal of an earlier application (s 25(3)(b)), then leave of the appropriate court is required for any appeal under s 25(2) in relation to that order (s 25(3)).

10   Ibid s 25(6).

11   Ibid s 25(7).

12   Ibid s 25(8).

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#### **654. Investigation of allegations: procedural rules.**

The General Council<sup>1</sup> must make rules<sup>2</sup> as to the procedure to be followed by the professional conduct committee<sup>3</sup> or the health committee<sup>4</sup> in considering any allegation<sup>5</sup>. The rules must, in particular, include provision:

- 836 (1) empowering each committee to refer to the other any allegation which it considers would be better dealt with by that other committee<sup>6</sup>;
- 837 (2) requiring the chiropractor to whom the allegation relates to be given notice of the allegation<sup>7</sup>;
- 838 (3) giving the chiropractor an opportunity to put his case at a hearing if:  
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  - 214. (a) before the end of the period of 28 days beginning with the date on which notice of the allegation is sent to him, he asks for a hearing<sup>8</sup>; or
  - 215. (b) the committee considers that a hearing is desirable<sup>9</sup>;
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  - 839 (4) entitling the chiropractor to be legally represented at any hearing in respect of the allegation<sup>10</sup>;
  - 840 (5) securing that:  
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    - 216. (a) any hearing before the professional conduct committee is held in public unless the committee decides that it is in the interests of the person making the allegation, or of any person giving evidence or of any patient, to hold the hearing or any part of it in private<sup>11</sup>; and
    - 217. (b) any hearing before the health committee is held in private unless the committee considers that it is appropriate to hold the hearing or any part of it in public<sup>12</sup>;
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  - 841 (6) requiring the chiropractor to be notified by the committee of its decision, its reasons for reaching that decision and of his right of appeal<sup>13</sup>;
  - 842 (7) requiring the person by whom the allegation was made to be notified by the committee of its decision and of its reasons for reaching that decision<sup>14</sup>;
  - 843 (8) empowering the committee to require persons to attend and give evidence or to produce documents<sup>15</sup>;
  - 844 (9) about the admissibility of evidence<sup>16</sup>;
  - 845 (10) enabling the committee to administer oaths<sup>17</sup>.

No person may be required by any such rules to give any evidence or produce any document or other material at a hearing held by either committee which he could not be compelled to give or produce in civil proceedings in any court in that part of the United Kingdom<sup>18</sup> in which the hearing takes place<sup>19</sup>.

1 For the meaning of 'the General Council' see PARA 591 note 1 ante.

2 As to the making of rules see PARA 598 ante.

3 As to the professional conduct committee see PARA 609 ante.



4 As to the health committee see PARA 610 ante.

5 In any allegation under the Chiropractors Act 1994 ss 22, 23 (both as amended) (see PARAS 649, 651 ante):  
s 26(1). As to the rules that have been made see the General Chiropractic Council (Professional Conduct  
Committee) Rules 2000, approved by the General Chiropractic Council (Professional Conduct Committee) Rules  
Order of Council 2000, SI 2000/3290 (see PARA 655 et seq post); and the General Chiropractic Council (Health  
Committee) Rules 2000, approved by the General Chiropractic Council (Health Committee) Rules Order of  
Council 2000, SI 2000/3291 (see PARA 665 et seq post).

6 Chiropractors Act 1994 s 26(2)(a).

7 Ibid s 26(2)(b).

8 Ibid s 26(2)(c)(i).

9 Ibid s 26(2)(c)(ii).

10 Ibid s 26(2)(d).

11 Ibid s 26(2)(e)(i).

12 Ibid s 26(2)(e)(ii).

13 Ibid s 26(2)(f).

14 Ibid s 26(2)(g).

15 Ibid s 26(2)(h). See also the text to notes 18, 19 infra.

16 Ibid s 26(2)(i).

17 Ibid s 26(2)(j). For the meaning of 'oath' see PARA 153 note 4 ante.

18 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

19 Chiropractors Act 1994 s 26(3). As to evidence in civil proceedings see CIVIL PROCEDURE vol 11 (2009) PARA  
758 et seq. As to the production of documents in civil proceedings see CIVIL PROCEDURE vol 11 (2009) PARAS 538-  
583.

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## ***B. PROCEDURE OF THE PROFESSIONAL CONDUCT COMMITTEE***

### **655. Notice and decision as to manner of proceeding on allegations.**

Where an allegation<sup>1</sup> has been referred to the professional conduct committee<sup>2</sup>, it must meet as soon as practicable to consider whether in its view a hearing is desirable to deal with the allegation<sup>3</sup>. For this purpose, the professional conduct committee must consider the nature of the allegation and any observations or admissions given by the respondent<sup>4</sup> to the investigating committee<sup>5</sup>, and, in the case of a reference from the health committee<sup>6</sup>, any evidence given or submissions made to that committee<sup>7</sup>. As soon as practicable after that meeting, the registrar<sup>8</sup> must give notice<sup>9</sup> to the respondent, specifying the allegation formulated by the investigating committee which has been referred to the professional conduct committee<sup>10</sup> and: (1) if the professional conduct committee has determined to hold a hearing, notifying the date, time and place of the meeting of the professional conduct committee which will consider the allegation by way of a hearing<sup>11</sup>; or (2) if the professional conduct committee has not so determined, requiring the respondent, if he wishes to have the allegation considered at a hearing, to notify the registrar in writing to that effect<sup>12</sup>. If the professional conduct committee has not determined that a hearing is desirable and the respondent has not requested a hearing<sup>13</sup>, but the professional conduct committee reaches the view during its investigations and deliberations that the allegation should nonetheless be the subject of a hearing, it may then require one, and the registrar must in that event give notice to the respondent notifying him of the date, time and place of the meeting of the professional conduct committee which will consider the allegation by way of a hearing<sup>14</sup>. When the registrar gives notice to the respondent<sup>15</sup>, he must also notify the person making the allegation concerned of the date, time and place of the meeting of the professional conduct committee which will consider the allegation by way of a hearing<sup>16</sup>.

The chairman of the professional conduct committee or, in the event of his being unavailable or there being no such chairman in office, the registrar, may, of his own motion or on the application of a party to the proceedings, postpone a hearing of which notice has been given<sup>17</sup> before the hearing begins<sup>18</sup>. If the hearing is so postponed, the registrar must, as soon as practicable, give notice to the parties<sup>19</sup> concerned of the postponement and of the further date, time and place of the meeting of the professional conduct committee at which the allegation will be considered by way of a hearing; and the registrar must also notify the person making the allegation of that date, time and place<sup>20</sup>.

1 'Allegation' means an allegation falling within the Chiropractors Act 1994 s 20(1) (see PARA 646 ante); General Chiropractic Council (Professional Conduct Committee) Rules Order of Council 2000, SI 2000/3290, r 2.

2 ie under the Chiropractors Act 1994 s 20(12)(b)(ii) (see PARA 647 ante) or by the health committee (see note 6 infra) by virtue of rules under s 26(2)(a) (see PARAS 654 ante, 666 et seq post). As to the professional conduct committee see PARA 609 ante. As to the consideration of allegations by the professional conduct committee see PARA 649 et seq ante.

3 General Chiropractic Council (Professional Conduct Committee) Rules Order of Council 2000, SI 2000/3290, r 3(1).

4 'The respondent' means the chiropractor to whom an allegation under consideration by the professional conduct committee relates: *ibid* r 2.

5 As to the investigating committee see PARA 608 ante. As to the investigation of allegations by the investigating committee see PARAS 646-648 ante.

6 As to the health committee see PARA 610 ante. As to the consideration of allegations by the health committee see PARA 651 et seq ante.

7 General Chiropractic Council (Professional Conduct Committee) Rules Order of Council 2000, SI 2000/3290, r 3(1).

8 For the meaning of 'the registrar' see PARA 614 note 3 ante.

9 Any notice, document or other matter to be given to or served on a chiropractor by the registrar under the General Chiropractic Council (Professional Conduct Committee) Rules Order of Council 2000, SI 2000/3290, may be served by sending it by a postal service in which delivery or receipt is recorded to, or by leaving it at, the address of the chiropractor as appearing in the register pursuant to the Chiropractors Act 1994 s 6(1)(b) (see PARA 619 ante); or, if his last known place of residence differs from his address in the register and it appears to the registrar that, if the notice, document or other matter is sent to or left at that place of residence, it is more likely to reach him, it may be served by sending it by such a postal service to or by leaving it at his last known place of residence: General Chiropractic Council (Professional Conduct Committee) Rules Order of Council 2000, SI 2000/3290, r 21(1). Any other notice, document or other matter to be given to or served on a person under the rules may be sent by ordinary post: r 21(2). The address for service of the registrar for the purposes of r 21(2) is the principal office of the General Council, for a chiropractor is any such address or place as is mentioned in r 21(1) (treating the second reference in that provision to the registrar as a reference to the person sending the matter in question), and for the solicitor is the address at which he ordinarily practises; or such other address as any of them may specify for the purpose: r 21(3). As to proof of the posting or leaving of a notice see PARA 659 text to notes 13-14 post. For the meaning of 'the solicitor' see PARA 657 note 9 post.

10 *Ibid* r 3(2).

11 *Ibid* r 3(2)(a). A notice given pursuant to r 3(2)(a), r 3(3) (see note 12 infra), r 3(4) (see the text to note 14 infra) must be served before the beginning of the period of 21 days ending with the date of the meeting of the professional conduct committee which will consider the allegation by way of a hearing: r 3(5).

12 *Ibid* r 3(2)(b). The notification must be given before the end of the period of 28 days beginning with the day on which that notice was sent to the chiropractor: see r 3(2)(b). Where a notice given to the respondent under r 3(2)(b) is served by being left at such an address or place as is mentioned in r 21(1) (see note 9 supra) instead of being sent there by post, the reference in r 3(2)(b) to the day on which that notice was sent to him is to be construed as a reference to the day on which it was so left: r 3(7). If the respondent notifies the registrar under r 3(2)(b) within the 28 day period of his wish to have the allegation considered at a hearing, the registrar must give a further notice to the respondent notifying him of the date, time and place of the meeting of the professional conduct committee which will consider the allegation by way of a hearing: r 3(3). See also notes 9, 11 supra.

13 As to the procedure on allegations where there is no hearing see PARA 656 post.

14 General Chiropractic Council (Professional Conduct Committee) Rules Order of Council 2000, SI 2000/3290, r 3(4). See also notes 9, 11 supra.

15 *Ie* pursuant to *ibid* r 3(2)(a), (3), (4): see the text and notes 11-14 supra.

16 *Ibid* r 3(6). Any notification of the person making the allegation under rr 3(6), 4(2) (see the text to notes 19, 20 infra) may be sent pursuant to r 21(2) (see note 9 supra) to such address of that person as the registrar considers appropriate; but any failure or delay in the delivery of a notification so posted does not invalidate, or in any way prejudice the standing of, any proceedings under rr 5-13 (see PARAS 657-660 post): r 13.

17 *Ie* pursuant to *ibid* r 3(2)(a), (3), (4): see the text and notes 11-14 supra.

18 *Ibid* r 4(1).

19 'Party' means the respondent or the solicitor; and references to 'the parties' are to be construed accordingly: *ibid* r 2.

20 *Ibid* r 4(2). See also note 16 supra.

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#### **656. Procedure on allegations where there is no hearing.**

The provisions described below apply where the respondent<sup>1</sup> to an allegation<sup>2</sup> does not require a hearing<sup>3</sup> and the professional conduct committee<sup>4</sup> does not determine<sup>5</sup> that the allegation should be the subject of a hearing<sup>6</sup>.

In considering the allegation and determining any steps to be taken in relation to it<sup>7</sup>, the committee may make such inquiry in such manner as it thinks fair and proper<sup>8</sup>. However, the committee must not, in considering the allegation and determining such steps to be taken, take into account any evidence or other matters relating to issues of fact unless the respondent and the person making the allegation have been given an opportunity to consider and comment on the evidence or other matter<sup>9</sup>.

1 For the meaning of 'respondent' see PARA 655 note 4 ante.

2 For the meaning of 'allegation' see PARA 655 note 1 ante.

3 Ie in accordance with the General Chiropractic Council (Professional Conduct Committee) Rules Order of Council 2000, SI 2000/3290, r 3(2)(b): see PARA 655 ante.

4 As to the professional conduct committee see PARA 609 ante. As to the consideration of allegations by the professional conduct committee see PARA 649 et seq ante.

5 Ie under the General Chiropractic Council (Professional Conduct Committee) Rules Order of Council 2000, SI 2000/3290, r 3(1), (4): see PARA 655 ante.

6 Ibid r 17(1).

7 Ie under the Chiropractors Act 1994 s 22(3), (4): see PARA 649 ante.

8 General Chiropractic Council (Professional Conduct Committee) Rules Order of Council 2000, SI 2000/3290, r 17(3). In respect of its exercise of its powers under the Chiropractors Act 1994 s 22(4), the committee must afford the respondent the opportunity to be heard required by s 22(11) (see PARA 649 ante): see the General Chiropractic Council (Professional Conduct Committee) Rules Order of Council 2000, SI 2000/3290, r 17(3).

9 Ibid r 17(2).

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### **657. Procedure on allegations where there is a hearing.**

Where the respondent<sup>1</sup> requires a hearing<sup>2</sup> or the professional conduct committee determines<sup>3</sup> that an allegation<sup>4</sup> should be the subject of a hearing<sup>5</sup>, before the opening of the hearing the registrar<sup>6</sup> must nominate a legal assessor<sup>7</sup> to provide advice to the committee in considering the allegation<sup>8</sup>. If the respondent does not appear, the committee must call upon the solicitor<sup>9</sup> to produce evidence<sup>10</sup> that notice has been given to the respondent<sup>11</sup>; and if the committee is satisfied that it was so given, it may determine that proceedings on the allegation be heard and determined in the absence of the respondent<sup>12</sup>.

At the opening of the hearing, the allegation is read out by the solicitor<sup>13</sup>. When the allegation has been so read out, the respondent may: (1) admit any of the facts alleged, in which case the facts admitted are taken as proved<sup>14</sup>; (2) submit an objection on grounds of law to any allegation or part of an allegation<sup>15</sup>. If it appears to the committee that the particulars of an allegation as formulated by the investigating committee should be amended, whether in consequence of an objection under head (2) above or at any other time, and that the amendment can be made without injustice, it may, after hearing the parties and consulting the legal assessor, amend the particulars to such extent as appears to the committee to be necessary or desirable<sup>16</sup>.

The order of proceedings in relation to any allegation with respect to which any of the material facts are not admitted by the respondent is, unless the committee directs otherwise, as follows<sup>17</sup>: (a) the solicitor opens the case and calls evidence in support of the allegation<sup>18</sup>; (b) the respondent presents his case, and may call evidence<sup>19</sup>; (c) the solicitor has a right of reply by way of closing submissions, and, with the leave of the committee, may before making such submissions call further evidence dealing only with the rebuttal of any matters raised by the respondent<sup>20</sup>; (d) the respondent may make closing submissions to the committee<sup>21</sup>. If, after the conclusion of such proceedings, the committee determines that the allegation is well founded, it may if it thinks fit hear further evidence or submissions from the parties for the purpose of determining the steps to be taken in relation to the allegation<sup>22</sup>. Any witness called to give oral evidence may be cross-examined and re-examined, and may be questioned by the committee and, with the leave of the committee, by the legal assessor<sup>23</sup>.

Where all of the material facts of an allegation are admitted and the committee is satisfied that the allegation is well founded, the committee must hear any explanation of the solicitor of the circumstances surrounding the allegation so far as relevant, and hear any submissions in mitigation which the respondent wishes to make; and the committee may if it thinks fit hear submissions or evidence for the purpose of determining the steps to be taken in relation to the allegation<sup>24</sup>.

The committee may consider and determine at the same hearing more than one allegation against the respondent<sup>25</sup>. Unless the committee is of the view that there is a risk of conflict of interest between respondents, the committee may consider and determine at the same hearing allegations against different respondents where the subject matter of each of the allegations is the same or substantially related one to another<sup>26</sup>.

1 For the meaning of 'respondent' see PARA 655 note 4 ante.

2 le in accordance with the General Chiropractic Council (Professional Conduct Committee) Rules Order of Council 2000, SI 2000/3290, r 3(2)(b): see PARA 655 ante. At any hearing, the respondent is entitled to be legally represented: r 11(1).

3 le under ibid r 3: see PARA 655 ante. As to the professional conduct committee see PARA 609 ante. As to the consideration of allegations by the professional conduct committee see PARA 649 et seq ante.

4 For the meaning of 'allegation' see PARA 655 note 1 ante.

5 General Chiropractic Council (Professional Conduct Committee) Rules Order of Council 2000, SI 2000/3290, r 5(1).

6 For the meaning of 'the registrar' see PARA 614 note 3 ante.

7 As to legal assessors see PARA 674 post.

8 General Chiropractic Council (Professional Conduct Committee) Rules Order of Council 2000, SI 2000/3290, r 5(2). The registrar must secure that any such assessor is provided before the hearing with a copy of the allegation as formulated by the investigating committee: r 5(2). As to the investigating committee see PARA 608 ante. As to the investigation of allegations by the investigating committee see PARAS 646-648 ante.

9 'The solicitor' means a solicitor appointed by the registrar for the purposes of presenting the case for the allegation to a hearing held by the professional conduct committee: ibid r 2.

10 As to evidence see PARA 659 post.

11 le under the General Chiropractic Council (Professional Conduct Committee) Rules Order of Council 2000, SI 2000/3290, rr 3(2)(a), (3), (4), 4(2), as the case may be: see PARA 655 ante.

12 Ibid r 6(1).

13 Ibid r 6(2). The solicitor may, with the approval of the registrar, instruct counsel to present the case for the allegation: r 11(2).

14 Ibid r 6(3)(a).

15 Ibid r 6(3)(b). If the respondent submits an objection on grounds of law under r 6(3)(b), before determining the matter the committee must give the solicitor an opportunity to address the committee and must consider the advice of the legal assessor: r 6(4). Subject to r 6(9) (see the text to note 23 infra), if the committee is satisfied after hearing the parties and consulting the legal assessor that such an objection is substantiated, the allegation or part of the allegation in relation to which it is so satisfied is not to be proceeded with further: r 6(5). 'The legal assessor' means a legal assessor appointed under the Chiropractors Act 1994 s 27 (see PARA 674 post) and nominated by the registrar under the General Chiropractic Council (Professional Conduct Committee) Rules Order of Council 2000, SI 2000/3290, r 5(2) (see the text to notes 6-8 supra): Sch 2.

16 Ibid r 6(11).

17 Ibid r 6(6).

18 Ibid r 6(6)(a). At the conclusion of the stage referred to in r 6(6)(a), the committee may determine (whether on submissions of the respondent or otherwise) that insufficient evidence has been adduced to satisfy it that the allegation was well founded and dismiss the allegation without hearing evidence for the respondent: r 6(7).

19 Ibid r 6(6)(b).

20 Ibid r 6(6)(c).

21 Ibid r 6(6)(d).

22 le the steps to be taken under the Chiropractors Act 1994 s 22(3), (4) (see PARA 649 ante): General Chiropractic Council (Professional Conduct Committee) Rules Order of Council 2000, SI 2000/3290, r 6(8). In respect of its exercise of its powers under the Chiropractors Act 1994 s 22(4), the committee must in any event afford the respondent the opportunity to be heard required by s 22(11) (see PARA 649 ante): see the General Chiropractic Council (Professional Conduct Committee) Rules Order of Council 2000, SI 2000/3290, r 6(8).

23 Ibid r 6(9).

24     le the steps to be taken under the Chiropractors Act 1994 s 22(3), (4) (see PARA 649 ante): General Chiropractic Council (Professional Conduct Committee) Rules Order of Council 2000, SI 2000/3290, r 6(10). See also the text to note 23 supra. In respect of its exercise of its powers under the Chiropractors Act 1994 s 22(4), the committee must in any event afford the respondent the opportunity to be heard required by s 22(11) (see PARA 649 ante): see the General Chiropractic Council (Professional Conduct Committee) Rules Order of Council 2000, SI 2000/3290, r 6(10).

25     Ibid r 12(1).

26     Ibid r 12(2).

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### **658. Hearing to be in public; adjournment of hearing.**

Subject as provided<sup>1</sup>, the hearing<sup>2</sup> must take place in the presence of the parties<sup>3</sup> or their representatives and in public<sup>4</sup>. However, the professional conduct committee<sup>5</sup> may, if satisfied that it would be in the interests of the person making the allegation<sup>6</sup>, or of any person giving evidence or of any patient, determine that the public should be excluded from being present in any part of the proceedings<sup>7</sup>. The committee may deliberate in the absence of the parties and their representatives and of the public at any time<sup>8</sup>.

The committee may adjourn the hearing from time to time as it thinks fit<sup>9</sup>. The committee may in particular adjourn any hearing after it has determined that an allegation is well founded for the purposes of allowing time to deliberate on the terms of any conditions of practice order<sup>10</sup> that it is minded to make<sup>11</sup>. Unless adjourned proceedings are to resume, so far as they are to be in the presence of the parties, at a time, date or place not determined at the time of adjournment, upon adjourning the committee must announce the time, date and place of the resumption of proceedings which are to be in the presence of the parties<sup>12</sup>. If, on a hearing resuming after adjournment, a party who was present in the earlier proceedings is absent, the committee may proceed in that party's absence if it is satisfied that the time, date and place of the resumption were announced at the time of the adjournment or notice of those details<sup>13</sup> was duly given to the party<sup>14</sup>.

1     le subject to the General Chiropractic Council (Professional Conduct Committee) Rules Order of Council 2000, SI 2000/290, r 6(1) (see PARA 657 ante), r 10(5) (see the text to notes 13, 14 infra).

2     le a hearing required by the respondent in accordance with *ibid* r 3(2)(b) (see PARA 655 ante) or where the professional conduct committee (see note 5 infra) determines under r 3 (see PARA 655 ante) that an allegation (see note 6 infra) should be the subject of a hearing: r 5(1). As to the procedure for the hearing see PARA 657 ante.

3     For the meaning of 'the parties' see PARA 655 note 19 ante.

4     General Chiropractic Council (Professional Conduct Committee) Rules Order of Council 2000, SI 2000/3290, r 9(1).

5     As to the professional conduct committee see PARA 609 ante. As to the consideration of allegations by the professional conduct committee see PARA 649 et seq ante.

6     For the meaning of 'allegation' see PARA 655 note 1 ante.

7     General Chiropractic Council (Professional Conduct Committee) Rules Order of Council 2000, SI 2000/3290, r 9(2).

8     *Ibid* r 9(3). This is subject to the General Chiropractic Council (Functions of Legal Assessors) Rules 2000, SI 2000/2865, r 3(2), (3) (see PARA 674 post), where the committee receives the advice of the legal assessor: General Chiropractic Council (Professional Conduct Committee) Rules Order of Council 2000, SI 2000/3290, r 9(3). For the meaning of 'the legal assessor' see PARA 657 note 15 ante.

9     *Ibid* r 10(1).

10    As to conditions of practice orders see PARA 649 ante.

11    General Chiropractic Council (Professional Conduct Committee) Rules Order of Council 2000, SI 2000/3290, r 10(2).



12 Ibid r 10(3). If an adjournment of proceedings which are to be in the presence of the parties is to a time, date or place not determined at the time of adjournment, the registrar must secure that reasonable notice is given to the parties of the time, date and place of the resumption; and must also notify the person making the allegation of that time, date and place: r 10(4). Any notification of the person making the allegation under r 10(4) may be sent pursuant to r 21(2) (see PARA 655 note 9 ante) to such address of that person as the registrar considers appropriate; but any failure or delay in the delivery of a notification so posted does not invalidate, or in any way prejudice the standing of, any proceedings under rr 5-13: r 13.

13 Ie notice under ibid r 10(4): see note 12 supra.

14 Ibid r 10(5). For the meaning of 'party' see PARA 655 note 19 ante.

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## **659. Evidence.**

In relation to a hearing<sup>1</sup>, the production of a certificate purporting to be under the hand of a competent officer of a court in the United Kingdom<sup>2</sup> that a person has been convicted of a criminal offence<sup>3</sup> is conclusive evidence of the offence committed, and the only evidence which may be called by the respondent<sup>4</sup> in connection with an allegation<sup>5</sup> of a conviction so certified or extracted is evidence for the purpose of proving that he is not the person referred to in the certificate<sup>6</sup>. The professional conduct committee<sup>7</sup> may receive oral, documentary or other evidence of any fact which appears to be relevant to the allegation before it, except that, where any matter tendered in evidence is such as would not be admissible in a court of criminal jurisdiction in the country in the United Kingdom in which the allegation is heard<sup>8</sup>, it must not be received unless the committee is satisfied, after consulting the legal assessor<sup>9</sup>, that it is desirable in the interests of making due inquiry that it should be so received, having regard to the justice of the case and the difficulty or expense of obtaining evidence which would be so admissible<sup>10</sup>. A party<sup>11</sup> may admit a fact, and a fact so admitted may be received in evidence without further proof<sup>12</sup>. The posting or leaving of a notice<sup>13</sup> may be proved by a certificate in writing purporting to be signed by the person posting or leaving it<sup>14</sup>.

The committee may of its own motion or on the application of a party require a witness to appear before it and give evidence, and may require a person to attend to produce documents<sup>15</sup>; and it must call the person making the allegation to appear before it if that person is not called as a witness by the solicitor<sup>16</sup>, unless in the view of the committee there are special reasons why that person should not, or is not able, so to appear<sup>17</sup>. Without the leave of the committee, a person who is not a party to the proceedings or the person making the allegation concerned may not give evidence on any matter unless he has been absent from the proceedings until called to give evidence<sup>18</sup>. The committee may administer oaths<sup>19</sup>.

1    In a hearing required by the respondent in accordance with the General Chiropractic Council (Professional Conduct Committee) Rules Order of Council 2000, SI 2000/3290, r 3(2)(b) (see PARA 655 ante) or where the professional conduct committee determines under r 3 (see PARA 655 ante) that an allegation should be the subject of a hearing: r 5(1).

2    For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

3    As to certificates of conviction see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1500.

4    For the meaning of 'respondent' see PARA 655 note 4 ante.

5    For the meaning of 'allegation' see PARA 655 note 1 ante.

6    General Chiropractic Council (Professional Conduct Committee) Rules Order of Council 2000, SI 2000/3290, r 7(1).

7    As to the professional conduct committee see PARA 609 ante. As to the consideration of allegations by the professional conduct committee see PARA 649 et seq ante.

8    As to the admissibility of evidence in criminal proceedings see CIVIL PROCEDURE vol 11 (2009) PARA 758 et seq; CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1359 et seq.

9    For the meaning of 'the legal assessor' see PARA 657 note 15 ante.

10 General Chiropractic Council (Professional Conduct Committee) Rules Order of Council 2000, SI 2000/3290, r 7(2). Without prejudice to the generality of r 7(2), if satisfied that the interests of justice will not be prejudiced thereby, the committee may admit in evidence, without strict proof, copies of documents and other material the originals of which would be admissible, and (without prejudice to the foregoing) maps, plans, photographs, certificates of conviction and sentence, certificates of registration of birth, marriage or death, records (including registers) of the General Council, notes of proceedings before the professional conduct committee, the health committee or the investigating committee and any other tribunals and the records of such tribunals; and the committee may take note, without strict proof, of the professional qualifications, registration, address and identity of the respondent and of any other person: r 7(3). For the meaning of 'the General Council' see PARA 591 note 1 ante. As to the register and registration see PARA 615 ante. As to the health committee see PARA 610 ante. As to the consideration of allegations by the health committee see PARA 651 et seq ante. As to proceedings before the health committee see PARA 665 et seq post. As to the investigating committee see PARA 608 ante. As to the investigation of allegations by the investigating committee see PARAS 646-648 ante.

11 For the meaning of 'party' see PARA 655 note 19 ante.

12 General Chiropractic Council (Professional Conduct Committee) Rules Order of Council 2000, SI 2000/3290, r 7(4).

13 Ie under ibid r 21(1) (see PARA 655 note 9 ante) for the purposes of rr 3(2), (3), (4), 4 (see PARA 655 ante) or r 10(4) (see PARA 658 note 12 ante).

14 Ibid r 7(8). There must be annexed to such certificate in the case of posting any confirmation of the posting issued by or on behalf of the Post Office or other postal operator: r 7(8).

15 As to the exchange of lists of witnesses and documents between the parties see PARA 660 post.

16 For the meaning of 'the solicitor' see PARA 657 note 9 ante.

17 General Chiropractic Council (Professional Conduct Committee) Rules Order of Council 2000, SI 2000/3290, r 7(5).

18 Ibid r 7(6). This provision does not apply to evidence as to the giving, service or receipt of notice or other documents, evidence to comprise only the production or verification of documents or evidence in rebuttal of evidence given by another person: see r 7(6).

19 Ibid r 7(7). For the meaning of 'oath' see PARA 153 note 4 ante. As to oaths, affirmations and declarations see CIVIL PROCEDURE vol 11 (2009) PARA 1021 et seq.

## UPDATE

### 659 Evidence

TEXT AND NOTES 1-6--Where it is alleged that the respondent has been included in a barred list (within the meaning of Safeguarding Vulnerable Groups Act 2006) by the Independent Barring Board (1) information provided by the Secretary of State under the 2006 Act that attests to the inclusion is conclusive evidence of it, unless the respondent can prove that he is not the person referred to in the information; and (2) a document from the Board, authenticated in whatever way the General Council may approve, that provides a statement of the findings of fact made by the Board that led to the inclusion is conclusive evidence of the facts found proved by the Board: SI 2000/3290 r 7(1A) (added by SI 2009/1182) (in force on the coming into force of the Safeguarding Vulnerable Groups Act 2006 s 44(1) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 704)). As to the system under the 2006 Act see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 675 et seq.

NOTE 10--SI 2000/3290 r 7(3) amended: SI 2005/2114.

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#### **660. Lists of witnesses; production of documents.**

The solicitor<sup>1</sup> must at a reasonable time before the hearing<sup>2</sup> send the respondent<sup>3</sup> a list of the names of the persons he proposes to call to give evidence and of any documents he proposes to adduce in evidence<sup>4</sup>; and he must on the request of the respondent send him a copy of any statement of evidence made by such a person and of any such document, and of any other statutory declaration<sup>5</sup>, affidavit<sup>6</sup>, explanation or other statement sent to the General Council<sup>7</sup> by the person making the allegation<sup>8</sup> or made by any person to be called by the solicitor to give evidence, and of any communication between the solicitor and the person making the allegation or such a witness<sup>9</sup>. The respondent must at a reasonable time before the hearing send the solicitor a list of the names of the persons he proposes to call to give evidence and of any documents he proposes to adduce in evidence; and he must on the request of the solicitor send him a copy of any statement of evidence made by such a person and of any such document<sup>10</sup>. The solicitor and the respondent must, as soon as practicable after supplying the other with such a list, send to the registrar<sup>11</sup> three copies of the list and of any statement of evidence made by any person listed in it and of any other documents referred to in it; and the registrar must secure that the legal assessor<sup>12</sup> and members of the professional conduct committee<sup>13</sup> are provided with a copy of the same<sup>14</sup>. The respondent and the solicitor may at any time give the other notice to produce any document relevant to the allegation in question which is alleged to be in the possession of that other; and, on receipt of such a notice, the respondent or solicitor must use reasonable endeavours to produce the document<sup>15</sup>.

1 For the meaning of 'the solicitor' see PARA 657 note 9 ante.

2 I.e. a hearing required by the respondent in accordance with the General Chiropractic Council (Professional Conduct Committee) Rules Order of Council 2000, SI 2000/3290, r 3(2)(b) (see PARA 655 ante) or where the professional conduct committee (see note 13 infra) determines under r 3 (see PARA 655 ante) that an allegation (see note 8 infra) should be the subject of a hearing: r 5(1).

3 For the meaning of 'respondent' see PARA 655 note 4 ante.

4 As to evidence see PARA 659 ante.

5 As to statutory declarations see the Statutory Declarations Act 1835 (as amended); and CIVIL PROCEDURE vol 11 (2009) PARA 1024.

6 As to affidavits see CIVIL PROCEDURE vol 11 (2009) PARA 989 et seq.

7 For the meaning of 'the General Council' see PARA 591 note 1 ante.

8 For the meaning of 'allegation' see PARA 655 note 1 ante.

9 General Chiropractic Council (Professional Conduct Committee) Rules Order of Council 2000, SI 2000/3290, r 8(1). Nothing in r 8(1), (3) (see the text to note 15 infra) requires the solicitor to release a document or other material in the nature of advice between him and the General Council, and no party is required to give any evidence or produce any document or other material under these rules which he could not be compelled to give or produce in civil proceedings in any court in that part of the United Kingdom in which the hearing takes place: r 8(6). For the meaning of 'United Kingdom' see PARA 1 note 3 ante. As to evidence in civil proceedings see CIVIL PROCEDURE vol 11 (2009) PARA 749 et seq. As to the production of documents in civil proceedings see CIVIL PROCEDURE vol 11 (2009) PARAS 538-583.

10 Ibid r 8(2).

11 For the meaning of 'the registrar' see PARA 614 note 3 ante.

12 For the meaning of 'the legal assessor' see PARA 657 note 15 ante.

13 As to the professional conduct committee see PARA 609 ante. As to the consideration of allegations by the professional conduct committee see PARA 649 et seq ante.

14 General Chiropractic Council (Professional Conduct Committee) Rules Order of Council 2000, SI 2000/3290, r 8(5).

15 Ibid r 8(3). See also note 9 supra. If a party fails to produce any document in accordance with r 8(3), the professional conduct committee may (notwithstanding that the hearing has not begun) require it to be produced to the registrar so that it may be made available to the party giving such notice: r 8(4).

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### **661. Review of conditions of practice and suspension orders.**

Where the professional conduct committee<sup>1</sup> proposes to exercise its powers to review a conditions of practice order or a suspension order<sup>2</sup>, for the purpose of determining whether to exercise those powers and, if so, the steps to be taken under those powers, the committee may make such inquiry, receive such statements and evidence, and procure the production of such expert or other reports, as it thinks desirable<sup>3</sup>. Before determining the steps to be taken under those powers in consequence of such inquiry, the committee must by notice<sup>4</sup> given by the registrar<sup>5</sup> to the relevant chiropractor<sup>6</sup>: (1) indicate under which powers<sup>7</sup> it is proposing to act<sup>8</sup>; (2) request the chiropractor to notify the registrar in writing<sup>9</sup> before the end of the period of 28 days beginning with the day on which that notice was served on him, whether he wishes to appear before the committee<sup>10</sup>; and (3) request the relevant chiropractor, if he does not wish so to appear, to make within that period any representations in writing to the committee concerning the matter<sup>11</sup>. The registrar must send with such notice, copies of any reports, statements or other documents which the committee has considered and which in the view of the committee are material to the issue<sup>12</sup>. The committee may by notice given by the registrar request the relevant chiropractor to attend before the committee even if that chiropractor has not requested so to appear<sup>13</sup>.

1 As to the professional conduct committee see PARA 609 ante. As to the consideration of allegations by the professional conduct committee see PARA 649 et seq ante.

2 Ie under the Chiropractors Act 1994 s 22(7), (9) (see PARA 649 ante): General Chiropractic Council (Professional Conduct Committee) Rules Order of Council 2000, SI 2000/3290, r 14(1).

3 Ibid r 15(1).

4 As to the service of notices see PARA 655 note 9 ante.

5 For the meaning of 'the registrar' see PARA 614 note 3 ante.

6 'The relevant chiropractor' means the chiropractor in respect of whom the committee is proposing to exercise the powers under the Chiropractors Act 1994 s 22(7), (9) (see PARA 649 ante): General Chiropractic Council (Professional Conduct Committee) Rules Order of Council 2000, SI 2000/3290, r 14(2).

7 Ie which of the powers in the Chiropractors Act 1994 s 22(7)(a)-(e) (see PARA 649 ante) or, as the case may be, s 22(9)(a), (b) (see PARA 649 ante).

8 General Chiropractic Council (Professional Conduct Committee) Rules Order of Council 2000, SI 2000/3290, r 15(2)(a).

9 For the meaning of 'writing' see PARA 20 note 22 ante.

10 Ie to appear pursuant to the Chiropractors Act 1994 s 22(11) (see PARA 649 ante): General Chiropractic Council (Professional Conduct Committee) Rules Order of Council 2000, SI 2000/3290, r 15(2)(b). If the relevant chiropractor indicates within the period mentioned in r 15(2)(b) that he wishes so to appear, the registrar must give notice to him specifying the date, time and place of the meeting of the committee at which he is to appear: r 15(3). The chairman of the committee or, in the event of his being unavailable or there being no such chairman in office, the registrar may, whether of his own motion or on the application of the relevant chiropractor, postpone any meeting of which notice has been given under r 15(3), in which event the registrar must give a further notice specifying the date and time to which the meeting has been postponed, and the

place of the meeting: r 15(5). As to the right of the chiropractor to be legally represented, to see documents and to question witnesses see PARA 662 post.

11 Ibid r 15(2)(c).

12 Ibid r 15(4). This does not include reports, statements or other documents of which the relevant chiropractor has already received copies in connection with proceedings under rr 5-13 (see PARA 660 ante) or under r 17 (see PARA 656 ante) or which were procured or provided by or on behalf of the relevant chiropractor: see r 15(4).

13 Ibid r 16(1).

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## **662. Proceedings on review.**

At any appearance before the professional conduct committee<sup>1</sup> on the review of a conditions of practice order or a suspension order<sup>2</sup>, the relevant chiropractor<sup>3</sup> may be legally represented<sup>4</sup>. At any such appearance, the relevant chiropractor may give evidence and call witnesses, and he and such witnesses may be questioned by the committee<sup>5</sup>. The committee may take the advice of a legal assessor<sup>6</sup> and it must secure, unless otherwise agreed by the relevant chiropractor or his representative, that such an assessor is present at any appearance of the relevant chiropractor before the committee; and any legal assessor may with the leave of the committee question any witness attending before it<sup>7</sup>.

In determining the steps to be taken<sup>8</sup> on a review of a conditions of practice order or a suspension order, the committee must not take into account any evidence or other matters relating to issues of fact unless the relevant chiropractor has been given an opportunity to consider and comment on the evidence or other matter, by the registrar<sup>9</sup> providing him with the specified documents<sup>10</sup> and with any other material documents which have subsequently been procured by the committee for the purposes of such a review<sup>11</sup>. If the relevant chiropractor has not indicated within the specified period<sup>12</sup> that he wishes to appear before the committee and he does not appear at the request of the committee<sup>13</sup>, the committee must give him an opportunity to make representations to it in writing<sup>14</sup>. Where the relevant chiropractor is to appear before the committee, he may<sup>15</sup> request the committee in writing that the author of any report or statement of which he has been sent a copy<sup>16</sup> should appear before the committee to adduce the report or statement by way of oral evidence and to be questioned by the relevant chiropractor; and, if he makes such a request, the report or statement must not be taken into account by the committee without such appearance by the author unless the committee is satisfied that it is desirable in the interests of making due inquiry that it should be taken into account, having regard to the justice of the case and the difficulty or expense of obtaining such appearance<sup>17</sup>. Even if no such request is made by the relevant chiropractor, the committee may arrange for the attendance of the author of any such report or statement in order that the author may be questioned by the committee<sup>18</sup>. The committee may from time to time adjourn any proceedings before it at which the relevant chiropractor is to be present, whether to enable attendance of the author of a report or statement<sup>19</sup> or for any other reason<sup>20</sup>.

If the relevant chiropractor has indicated that he wishes to appear, the proceedings connected with his appearance must be in public unless the committee is satisfied that it is in the interests of the person making the allegation which gave rise to the conditions of practice order or suspension order concerned, or of any person giving evidence or of any patient, that the public should be excluded from being present in any part of those proceedings<sup>21</sup>.

If the relevant chiropractor does not appear and the committee is satisfied that notice has been given to him to appear<sup>22</sup>, or of any adjournment<sup>23</sup>, it may proceed in his absence<sup>24</sup>.

1 As to the professional conduct committee see PARA 609 ante. As to the consideration of allegations by the professional conduct committee see PARA 649 et seq ante.

2 Ie under the General Chiropractic Council (Professional Conduct Committee) Rules Order of Council 2000, SI 2000/3290, Pt IV (rr 14-16).

3 For the meaning of 'the relevant chiropractor' see PARA 661 note 6 ante.



- 4 General Chiropractic Council (Professional Conduct Committee) Rules Order of Council 2000, SI 2000/3290, r 16(3).
- 5 Ibid r 16(4).
- 6 Ie a legal assessor appointed under the Chiropractors Act 1994 s 27: see PARA 674 post.
- 7 General Chiropractic Council (Professional Conduct Committee) Rules Order of Council 2000, SI 2000/3290, r 16(8).
- 8 Ie the steps under the Chiropractors Act 1994 s 22(7), (9) (see PARA 649 ante).
- 9 For the meaning of 'the registrar' see PARA 614 note 3 ante.
- 10 Ie the documents specified in the General Chiropractic Council (Professional Conduct Committee) Rules Order of Council 2000, SI 2000/3290, r 15(4): see PARA 661 text to note 12 ante.
- 11 Ibid r 16(2). As to the powers of the committee to obtain information see PARA 661 ante.
- 12 Ie within the period mentioned in ibid r 15(2)(b): see PARA 661 ante.
- 13 Ie under ibid r 16(1): see PARA 661 ante.
- 14 See ibid r 16(2). Such representations must be made before the expiry of the period mentioned in r 15(2)(b) or (if later) before the expiry of the period of 14 days beginning with the day on which such documents were served on him: see r 16(2). For the meaning of 'writing' see PARA 20 note 22 ante.
- 15 Ie at the time that he notifies the registrar under ibid r 15 that he wishes to appear or (if later) before the expiry of the period of 14 days beginning with the day on which a copy of any report or statement was served on him: r 16(5).
- 16 Ie under ibid r 15(4) (see PARA 661 ante), r 16(2) (see the text to notes 8-14 supra).
- 17 Ibid r 16(5).
- 18 See ibid r 16(6). If the committee so arranges for the attendance of the author, and the relevant chiropractor has elected to appear before it pursuant to the Chiropractors Act 1994 s 22(11) (see PARA 649 ante), the author may also be questioned by him: see the General Chiropractic Council (Professional Conduct Committee) Rules Order of Council 2000, SI 2000/3290, r 16(6).
- 19 Ie under ibid r 16(5), (6): see the text to notes 15-18 supra.
- 20 Ibid r 16(7). The relevant chiropractor must be given reasonable notice by the registrar of the date, time and place of the resumption of such adjourned proceedings at which he is to be present unless they were announced at the time of adjournment and the relevant chiropractor or his legal representative were then present: r 16(7).
- 21 Ibid r 16(9)(a). Nothing in rr 14-16 precludes the committee deliberating in the absence of the relevant chiropractor (and any representative) and of the public at any time: r 16(9)(b).
- 22 Ie under ibid r 15(3): see PARA 661 note 10 ante.
- 23 Ie by way of the notice or the announcement referred to in ibid r 16(7): see note 20 supra.
- 24 Ibid r 16(9)(c).

## UPDATE

### 662 Proceedings on review

TEXT AND NOTES 8-11--See now SI 2000/3290 r 16(2), (2A), (2B) (substituted by SI 2006/1630).

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### **663. Decisions.**

The professional conduct committee<sup>1</sup> must vote on any matter to be determined by it in considering an allegation<sup>2</sup>, or in deciding<sup>3</sup> the steps to be taken in relation to the review of a conditions of practice order or a suspension order<sup>4</sup>, by the chairman of the committee calling upon members present to signify their votes by raising their hands, and by the chairman then announcing his own vote, followed by any casting vote<sup>5</sup>, and declaring to the committee how the matter has been decided<sup>6</sup>. Any member may challenge any decision so declared, in which event the chairman must again announce the motion, and call each member's name in turn, each member on being so called announcing his own vote being either 'yes' or 'no' to the motion put, and the chairman must vote last making first his ordinary vote and then, so far as relevant, any casting vote, and then declare the result<sup>7</sup>. No member present may abstain<sup>8</sup>.

As soon as practicable after the committee has made its decision on whether an allegation is well founded and as to any steps to be taken in respect of it<sup>9</sup>, whether or not that decision was announced at the conclusion of a hearing<sup>10</sup>, the committee must, by notice given by the registrar<sup>11</sup>, notify<sup>12</sup>: (1) the respondent<sup>13</sup> of its decision and its reasons for reaching it, and, if the allegation is found to be well founded, of the respondent's right of appeal<sup>14</sup>; and (2) the person making the allegation of its decision and its reasons for reaching it<sup>15</sup>. As soon as practicable after the committee has determined the steps that it is to take in relation to the review of a conditions of practice order or a suspension order, the committee must, by notice given by the registrar, notify the chiropractor to whom the decision relates of its decision and its reasons for reaching it, and, so far as relevant, of his right of appeal<sup>16</sup>.

1 As to the professional conduct committee see PARA 609 ante. As to the consideration of allegations by the professional conduct committee see PARA 649 et seq ante.

2 For the meaning of 'allegation' see PARA 655 note 1 ante.

3 Ie under the General Chiropractic Council (Professional Conduct Committee) Rules Order of Council 2000, SI 2000/3290, Pt IV (rr 14-16): see PARAS 661-662 ante.

4 Ie under the Chiropractors Act 1994 s 22(7)-(9): see PARA 649 ante.

5 Ie as provided for in ibid s 1(9), Sch 1 para 36(3), (4): see PARA 609 ante.

6 General Chiropractic Council (Professional Conduct Committee) Rules Order of Council 2000, SI 2000/3290, r 19(1).

7 Ibid r 19(2).

8 Ibid r 19(3).

9 Ie under the Chiropractors Act 1994 s 22(3), (4): see PARA 649 ante.

10 Ie a hearing under the General Chiropractic Council (Professional Conduct Committee) Rules Order of Council 2000, SI 2000/3290, Pt III (rr 5-13): see PARAS 657-660 ante.

11 For the meaning of 'the registrar' see PARA 614 note 3 ante.

12 As to the service of notices see PARA 655 note 9 ante.

13 For the meaning of 'respondent' see PARA 655 note 4 ante.

14     le the right of appeal under the Chiropractors Act 1994 s 31 (see PARA 688 post): General Chiropractic Council (Professional Conduct Committee) Rules Order of Council 2000, SI 2000/3290, r 18(1)(a).

15     Ibid r 18(1)(b).

16     le the right of appeal under the Chiropractors Act 1994 s 31 (see PARA 688 post): General Chiropractic Council (Professional Conduct Committee) Rules Order of Council 2000, SI 2000/3290, r 18(2).

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#### **664. Referral to the health committee.**

If in the course of the investigation of, and its deliberations on, an allegation<sup>1</sup>, the professional conduct committee<sup>2</sup> is of the view that a substantial issue arises whether the ability of the respondent<sup>3</sup> to practise as a chiropractor is seriously impaired because of his physical or mental condition, it may refer the matter to the health committee<sup>4</sup>; and the health committee must deal with the matter as if the allegation were to that effect<sup>5</sup>. The power to refer the matter to the health committee may be exercised notwithstanding that a hearing<sup>6</sup> has begun, provided that the professional conduct committee has not voted on its decision whether the allegation is well founded<sup>7</sup>.

The professional conduct committee must take no further action on the allegation if, following a reference under these provisions, the health committee finds that the ability of the respondent to practise as a chiropractor is seriously impaired because of his physical or mental condition<sup>8</sup>. In such an event, the matter is to be finally disposed of by the health committee<sup>9</sup>. The professional conduct committee must continue<sup>10</sup> with its consideration of the allegation and dispose of it accordingly if, following such a reference, the health committee certifies its opinion to the professional conduct committee that the ability of the respondent to practise as a chiropractor is not seriously impaired because of his physical or mental condition<sup>11</sup>.

1 For the meaning of 'allegation' see PARA 655 note 1 ante.

2 As to the professional conduct committee see PARA 609 ante. As to the consideration of allegations by the professional conduct committee see PARA 649 et seq ante. As to the procedure of the professional conduct committee in relation to allegations see PARA 655 et seq ante.

3 For the meaning of 'respondent' see PARA 655 note 4 ante.

4 As to the health committee see PARA 610 ante. As to the consideration of allegations by the health committee see PARA 651 et seq ante. As to the procedure of the health committee in relation to allegations see PARA 665 et seq post.

5 General Chiropractic Council (Professional Conduct Committee) Rules Order of Council 2000, SI 2000/3290, r 20(1).

6 I.e a hearing under *ibid* under Pt III (rr 5-13): see PARAS 657-660 ante.

7 *Ibid* r 20(2). As to voting on decisions see PARA 663 ante.

8 *Ibid* r 20(3).

9 *Ibid* r 20(3).

10 I.e under *ibid* Pt III (rr 5-13) (see PARAS 657-660 ante) or r 17 (see PARA 656 ante), as the case may be.

11 *Ibid* r 20(4).

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### ***C. PROCEDURE OF THE HEALTH COMMITTEE***

#### **665. Notice of allegation and hearing.**

The health committee<sup>1</sup> must meet as soon as practicable after an allegation<sup>2</sup> has been referred to it<sup>3</sup>, to consider whether in its view a hearing is desirable to deal with the allegation, for which purpose it must consider the nature of the allegation and any observations or admissions given by the respondent<sup>4</sup> to the investigating committee<sup>5</sup> and, in the case of a reference from the professional conduct committee, any evidence given or submissions made to that committee<sup>6</sup>. As soon as practicable after that meeting, the registrar<sup>7</sup> must give notice<sup>8</sup> to the respondent, specifying the allegation formulated by the investigating committee which has been referred to the health committee<sup>9</sup> and: (1) if the health committee has determined to hold a hearing, notifying the date, time and place of the meeting of the committee which will consider the allegation by way of a hearing<sup>10</sup>; or (2) if the committee has not so determined, requiring the respondent, if he wishes to have the allegation considered at a hearing, to notify the registrar in writing to that effect before the end of the period of 28 days beginning with the day on which that notice was sent to him<sup>11</sup>. If the health committee has not so determined that a hearing is desirable and the respondent has not so requested a hearing, but the committee reaches the view during its investigations and deliberations that the matter should nonetheless be the subject of a hearing, it may then require one<sup>12</sup>. When the registrar gives notice to the respondent<sup>13</sup>, he must also notify the person making the allegation concerned of the date, time and place of the meeting of the health committee which will consider the allegation by way of a hearing<sup>14</sup>.

The chairman of the health committee or, in the event of his being unavailable or there being no such chairman in office, the registrar may, of his own motion or on the application of a party<sup>15</sup> to the proceedings, postpone a hearing of which notice has been given<sup>16</sup> before the hearing begins<sup>17</sup>. If the hearing is so postponed the registrar must, as soon as practicable, give notice to the parties concerned of the postponement and of the further date, time and place of the meeting of the committee at which the allegation will be considered by way of a hearing; and the registrar must also notify the person making the allegation of that date, time and place<sup>18</sup>.

1 As to the health committee see PARA 610 ante. As to the consideration of allegations by the health committee see PARA 651 et seq ante.

2 'Allegation' means an allegation falling within the Chiropractors Act 1994 s 20(1) (see PARA 646 ante): General Chiropractic Council (Health Committee) Rules Order of Council 2000, SI 2000/3291, r 2.

3 ie under the Chiropractors Act 1994 s 20 (see PARA 646 ante) or by the professional conduct committee by virtue of rules under s 26(2)(a) (see PARA 654 ante). As to the referral of matters to the health committee by the professional conduct committee see PARA 664 ante. As to the professional conduct committee see PARA 609 ante.

4 'The respondent' means the chiropractor to whom an allegation under consideration by the health committee relates: General Chiropractic Council (Health Committee) Rules Order of Council 2000, SI 2000/3291, r 2.

5 As to the investigating committee see PARA 608 ante. As to the investigation of allegations by the investigating committee see PARAS 646-648 ante.

6 General Chiropractic Council (Health Committee) Rules Order of Council 2000, SI 2000/3291, r 3(1).

7 For the meaning of 'the registrar' see PARA 614 note 3 ante.

8 Any notice, document or other matter to be given to or served on a chiropractor by the registrar under the General Chiropractic Council (Health Committee) Rules Order of Council 2000, SI 2000/3291, may be served by sending it by a postal service in which delivery or receipt is recorded to, or by leaving it at, the address of the chiropractor as appearing in the register pursuant to the Chiropractors Act 1994 s 6(1)(b) (see PARA 619 ante), or, if his last known place of residence differs from his address in the register and it appears to the registrar that, if the notice, document or other matter is sent to or left at that place of residence, it is more likely to reach him, it may be served by sending it by such a postal service to or by leaving it at his last known place of residence: General Chiropractic Council (Health Committee) Rules Order of Council 2000, SI 2000/3291, r 21(1). Any other notice, document or other matter to be given to or served on a person may be sent by ordinary post: r 21(2). The address for service of the registrar for the purposes of r 21(2) is the principal office of the General Council, for a chiropractor is any such address or place as is mentioned in r 21(1) (treating the second reference in that provision to the registrar as a reference to the person sending the matter in question), and for the solicitor is the address at which he ordinarily practises; or such other address as any of them may specify for the purpose: r 21(3). For the meaning of 'the register' see PARA 614 note 4 ante. For the meaning of 'the General Council' see PARA 591 note 1 ante. For the meaning of 'the solicitor' see PARA 666 note 7 post.

9 Ibid r 3(2).

10 Ibid r 3(2)(a). A notice given pursuant to r 3(2)(a), (3), (4) (see notes 11, 12 infra) must be served before the beginning of the period of 42 days ending with the date of the meeting of the committee which will consider the allegation by way of a hearing, and must specify the requirement of r 8(3) (see PARA 668 post) for the respondent to provide the list, statement and notice there mentioned: r 3(5).

11 Ibid r 3(2)(b). Where a notice given to the respondent under r 3(2)(b) is served by being left at such an address or place as is mentioned in r 21(1) (see note 8 supra) instead of being sent there by post, the reference in r 3(2)(b) to the day on which that notice was sent to him is to be construed as a reference to the day on which it was so left: r 3(7). If the respondent notifies the registrar under r 3(2)(b) within the period there mentioned of his wish to have the allegation considered at a hearing, the registrar must give a further notice to the respondent notifying him of the date, time and place of the meeting of the committee which will consider the allegation by way of a hearing: r 3(3). See also notes 8, 10 supra.

12 Ibid r 3(4). The registrar must, in that event, give notice to the respondent notifying him of the date, time and place of the meeting of the committee which will consider the allegation by way of a hearing: r 3(4). See also notes 8, 10 supra.

13 Ie pursuant to ibid r 3(2)(a), (3), (4): see the text and notes 10-12 supra.

14 Ibid r 3(6). Any notification of the person making the allegation under rr 3(6), 4(2) (see the text to note 18 infra) may be sent pursuant to r 21(2) (see note 8 supra) to such address of that person as the registrar considers appropriate; but any failure or delay in the delivery of a notification so posted does not invalidate, or in any way prejudice the standing of, any proceedings under Pt III (rr 5-13): r 13.

15 'Party' means the respondent or the solicitor; and references to 'the parties' are to be construed accordingly: ibid r 2.

16 Ie notice pursuant to ibid r 3(2)(a), (3), (4): see the text and notes 10-12 supra.

17 Ibid r 4(1).

18 Ibid r 4(2). See also note 14 supra.

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#### **666. Preliminary matters prior to hearing an allegation.**

Where the respondent<sup>1</sup> requires a hearing<sup>2</sup> or the health committee<sup>3</sup> determines<sup>4</sup> that an allegation<sup>5</sup> should be the subject of a hearing<sup>6</sup>, the solicitor<sup>7</sup> must so far as practicable cause to be prepared such further reports<sup>8</sup>, if any, from appropriately qualified medical practitioners, as in his opinion are necessary for the purpose of presenting proper and sufficient evidence as to the physical or mental condition of the respondent to enable determination by the committee of the allegation<sup>9</sup>. For the purpose of so doing, the solicitor may request the respondent to attend for examination by any such practitioner, and may if he thinks it appropriate request the respondent to agree to a report being prepared for the solicitor by the respondent's own medical practitioner<sup>10</sup>. As soon as practicable after receiving any report prepared under these provisions, the solicitor must provide the respondent with a copy<sup>11</sup>.

Before the opening of the hearing, the registrar<sup>12</sup> must nominate one or more medical assessors<sup>13</sup> and a legal assessor<sup>14</sup> to provide advice to the committee in considering the allegation, and the registrar must secure that any such assessors are provided before the hearing with a copy of the allegation as formulated by the investigating committee<sup>15</sup>.

1 For the meaning of 'respondent' see PARA 665 note 4 ante.

2 Ie in accordance with the General Chiropractic Council (Health Committee) Rules Order of Council 2000, SI 2000/3291, r 3(2)(b): see PARA 665 ante.

3 As to the health committee see PARA 610 ante. As to the consideration of allegations by the health committee see PARA 651 et seq ante.

4 Ie under the General Chiropractic Council (Health Committee) Rules Order of Council 2000, SI 2000/3291, r 3: see PARA 665 ante.

5 For the meaning of 'allegation' see PARA 665 note 1 ante.

6 General Chiropractic Council (Health Committee) Rules Order of Council 2000, SI 2000/3291, r 5.

7 'The solicitor' means a solicitor appointed by the registrar for the purposes of presenting the case for the allegation to a hearing held by the health committee: *ibid* r 2.

8 Ie in addition to any report which may have been prepared under the General Chiropractic Council (Investigating Committee) Rules 2000, SI 2000/2916, r 4(3): see PARA 647 ante.

9 General Chiropractic Council (Health Committee) Rules Order of Council 2000, SI 2000/3291, r 6(1).

10 *Ibid* r 6(2).

11 *Ibid* r 6(3). As to the service of documents see PARA 665 note 8 ante.

12 For the meaning of 'the registrar' see PARA 614 note 3 ante.

13 'The medical assessors' means any medical assessors appointed under the Chiropractors Act 1994 s 28 (see PARA 675 post) and nominated by the registrar under the General Chiropractic Council (Health Committee) Rules Order of Council 2000, SI 2000/3291, r 6(4): r 2.

14 'The legal assessor' means a legal assessor appointed under the Chiropractors Act 1994 s 27 (see PARA 674 post) and nominated by the registrar under the General Chiropractic Council (Health Committee) Rules Order of Council 2000, SI 2000/3291, r 6(4): r 2.

15 Ibid r 6(4). As to the investigating committee see PARA 608 ante. As to the investigation of allegations by the investigating committee see PARAS 646-648 ante.



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### **667. Procedure at hearing.**

At the opening of the hearing<sup>1</sup>, the allegation<sup>2</sup> must be read out by the solicitor<sup>3</sup>. The order of proceedings is as follows: (1) the solicitor opens the case for the allegation, and calls or produces evidence<sup>4</sup> in support of the allegation<sup>5</sup>; (2) the respondent<sup>6</sup> presents his case and may call or produce evidence<sup>7</sup>; and (3) the health committee<sup>8</sup> hears such further submissions from the parties<sup>9</sup> and receives such further evidence as it considers relevant, having regard to the justice of the case and the public interest<sup>10</sup>. Any witness called to give oral evidence may be cross-examined and re-examined, and may be questioned by the committee and, with the leave of the committee, by the legal assessor<sup>11</sup> and the medical assessors<sup>12</sup>. If it appears to the committee that the particulars of an allegation as formulated by the investigating committee<sup>13</sup> should be amended and that the amendment can be made without injustice, it may, after hearing the parties and consulting the legal assessor, amend the particulars to such extent as appears to the health committee to be necessary or desirable<sup>14</sup>.

The hearing takes place in private save for the parties or their representatives, the legal assessor, the medical assessors, the person making the allegation, any witnesses, any staff of the General Council<sup>15</sup> and any note-taker; but the health committee may if it thinks fit at any time exclude the person making the allegation if it considers that the evidence in question relates to matters properly to be treated as confidential between the respondent and a medical practitioner<sup>16</sup>. However, the committee may, if satisfied that it would be appropriate that the hearing or any part of it should be held in public, hold the hearing or that part of it in public<sup>17</sup>.

The committee may adjourn the hearing from time to time as it thinks fit<sup>18</sup>. The committee may in particular adjourn any hearing after it has determined that an allegation is well founded for the purposes of allowing time to deliberate on the terms of any conditions of practice order that it is minded to make<sup>19</sup>. Unless adjourned proceedings are to resume, so far as they are to be in the presence of the parties, at a time, date or place not determined at the time of adjournment, upon adjourning the committee must announce the time, date and place of the resumption of proceedings which are to be in the presence of the parties<sup>20</sup>. If, on a hearing resuming after adjournment, a party who was present in the earlier proceedings is absent, the committee may proceed in that party's absence if it is satisfied that the time, date and place of the resumption were so announced or notice was duly given to the party<sup>21</sup>.

At any hearing, the respondent is entitled to be legally represented<sup>22</sup>.

The committee may consider and determine at the same hearing more than one allegation against the respondent<sup>23</sup>.

1     In a hearing in a case where the respondent (see note 6 *infra*) requires a hearing in accordance with the General Chiropractic Council (Health Committee) Rules Order of Council 2000, SI 2000/3291, r 3(2)(b) (see PARA 665 *ante*) or the health committee (see note 8 *infra*) determines under r 3 (see PARA 665 *ante*) that an allegation (see note 2 *infra*) should be the subject of a hearing: r 5.

2     For the meaning of 'allegation' see PARA 665 note 1 *ante*.

3     General Chiropractic Council (Health Committee) Rules Order of Council 2000, SI 2000/3291, r 7(2). If the respondent does not appear, the health committee must call upon the solicitor to produce evidence that notice has been given to the respondent in accordance with rr 3(2)(a), (3), (4), 4(2) (see PARA 665 *ante*), as the case may be; and if the committee is satisfied that notice was so given, it may determine that proceedings on the

allegation be heard and determined in the absence of the respondent: r 7(1). For the meaning of 'the solicitor' see PARA 666 note 7 ante.

4 As to evidence see PARA 668 post.

5 General Chiropractic Council (Health Committee) Rules Order of Council 2000, SI 2000/3291, r 7(3)(a). The solicitor may, with the approval of the registrar, instruct counsel to present the case for the allegation: r 11(2). For the meaning of 'the registrar' see PARA 614 note 3 ante.

6 For the meaning of 'respondent' see PARA 665 note 4 ante.

7 General Chiropractic Council (Health Committee) Rules Order of Council 2000, SI 2000/3291, r 7(3)(b).

8 As to the health committee see PARA 610 ante. As to the consideration of allegations by the health committee see PARA 651 et seq ante.

9 For the meaning of 'the parties' see PARA 665 note 15 ante.

10 General Chiropractic Council (Health Committee) Rules Order of Council 2000, SI 2000/3291, r 7(3)(c). The committee must also have regard to the requirements of the Chiropractors Act 1994 s 23(9) in respect of its exercise of its powers under s 23(2) (see PARA 651 ante): General Chiropractic Council (Health Committee) Rules Order of Council 2000, SI 2000/3291, r 7(3)(c).

11 For the meaning of 'the legal assessor' see PARA 666 note 14 ante.

12 General Chiropractic Council (Health Committee) Rules Order of Council 2000, SI 2000/3291, r 7(4). For the meaning of 'the medical assessors' see PARA 666 note 13 ante.

13 As to the investigating committee see PARA 608 ante. As to the investigation of allegations by the investigating committee see PARAS 646-648 ante.

14 General Chiropractic Council (Health Committee) Rules Order of Council 2000, SI 2000/3291, r 7(5).

15 For the meaning of 'the General Council' see PARA 591 note 1 ante. As to the power of the General Council to appoint staff see PARA 597 ante.

16 General Chiropractic Council (Health Committee) Rules Order of Council 2000, SI 2000/3291, r 9(1). The committee may deliberate in the absence of any of the persons mentioned in r 9(1) (including the parties and their representatives) and of the public at any time: r 9(3). Schedule r 9(3) is without prejudice to the General Chiropractic Council (Functions of Medical Assessors) Rules 2000, SI 2000/2866, r 3(2) (see PARA 675 post) in relation to the receiving of advice from the medical assessors, but has effect subject to the General Chiropractic Council (Functions of Legal Assessors) Rules 2000, SI 2000/2865, r 3(2), (3) (see PARA 674 post) where the committee receives the advice of the legal assessor: General Chiropractic Council (Health Committee) Rules Order of Council 2000, SI 2000/3291, r 9(4).

17 Ibid r 9(2).

18 Ibid r 10(1).

19 Ibid r 10(2). As to conditions of practice orders see PARA 651 ante.

20 Ibid r 10(3). If an adjournment of proceedings which are to be in the presence of the parties is to a time, date or place not determined at the time of adjournment, the registrar must secure that reasonable notice is given to the parties of the time, date or place of the resumption; and the registrar must also notify the person making the allegation of that time, date and place: r 10(4). Any notification of the person making the allegation under r 10(4) may be sent pursuant to r 21(2) (see PARA 665 note 8 ante) to such address of that person as the registrar considers appropriate; but any failure or delay in the delivery of a notification so posted does not invalidate, or in any way prejudice the standing of, any proceedings under Pt III (rr 5-13): r 13.

21 Ie notice under ibid r 10(4) (see note 20 supra): r 10(5).

22 Ibid r 11(1).

23 Ibid r 12.

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#### **668. Documents and evidence.**

The health committee<sup>1</sup> may<sup>2</sup> at a hearing<sup>3</sup> consider the allegation<sup>4</sup> on the basis of any of the following reports, written<sup>5</sup> statements and documents submitted in evidence to it without the authors being called to give oral evidence, that is to say<sup>6</sup>: (1) reports, written statements and other documents prepared or procured for the purposes of obtaining information about the case and the health of the respondent<sup>7</sup>; (2) reports, written statements and other documents prepared on behalf of the respondent<sup>8</sup>; (3) such other reports, written statements and documents as the committee determines, after hearing the views of the parties<sup>9</sup>, and having regard to all the circumstances and the justice of the case, can properly be admitted without such oral evidence<sup>10</sup>.

The solicitor<sup>11</sup> must secure that, not less than 28 days before the opening of any hearing, the respondent is provided with a list of every report, written statement or other document under head (1) above which is to be produced in evidence; a statement as to which, if any, of those he intends to have adduced by way of oral evidence by its author; and a notice requiring the respondent to notify him before the end of the period of 14 days beginning with the day on which that notice was sent to the respondent whether the respondent requires any other author of a report, statement or other document so listed to attend the hearing to give oral evidence as to the matters with which it deals<sup>12</sup>. The respondent must secure that, not less than 28 days before the opening of any hearing, the solicitor is provided with a list of every report, written statement or other document under head (2) above which is to be produced in evidence; a statement as to which, if any, of those he intends to have adduced by way of oral evidence by its author; and a notice requiring the solicitor to notify him before the end of the period of 14 days beginning with the day on which that notice was sent to the solicitor whether the solicitor requires any other author of a report, statement or other document so listed to attend the hearing to give oral evidence as to the matters with which it deals<sup>13</sup>. Any such list provided by a party must be accompanied by a copy of any report, statement or document listed of which the other party has not previously been sent a copy<sup>14</sup>. The solicitor and the respondent must, as soon as practicable after supplying the other with such a list, send to the registrar<sup>15</sup> three copies of the list and of the reports, statements and documents referred to in it<sup>16</sup>. Where notification is given by the respondent or by the solicitor requiring the author of a report, statement or other document to attend to give oral evidence, the report, statement or other document must not be taken into account by the committee in reaching its decision on the allegation without such oral evidence unless the committee is of the view that, having regard to all the circumstances, including the difficulty or expense of obtaining such attendance, and the justice of the case, it is proper so to do<sup>17</sup>.

The committee may require a witness to appear before it and give evidence:

- 846 (a) on the application of the respondent<sup>18</sup>;
- 847 (b) on the application of the solicitor<sup>19</sup>; or
- 848 (c) of its own motion<sup>20</sup>,

and the committee may require a person to attend before it to produce documents<sup>21</sup>. The committee may administer oaths<sup>22</sup>. No person may be required to give any evidence or produce any document or other material under these provisions which he could not be compelled to

give or produce in civil proceedings in any court in that part of the United Kingdom<sup>23</sup> in which the hearing takes place<sup>24</sup>. A party may admit a fact, and a fact so admitted may be received in evidence without further proof<sup>25</sup>. The posting or leaving of a notice<sup>26</sup> may be proved by a certificate in writing purporting to be signed by the person posting or leaving it<sup>27</sup>.

1 As to the health committee see PARA 610 ante. As to the consideration of allegations by the health committee see PARA 651 et seq ante.

2 Ie subject to the provisions of the General Chiropractic Council (Health Committee) Rules Order of Council 2000, SI 2000/3291, r 8.

3 Ie a hearing in a case where the respondent requires a hearing in accordance with ibid r 3(2)(b) (see PARA 665 ante) or the health committee determines under r 3 (see PARA 665 ante) that an allegation should be the subject of a hearing: r 5.

4 For the meaning of 'allegation' see PARA 665 note 1 ante.

5 For the meanings of 'written' and 'writing' see PARA 20 note 22 ante.

6 General Chiropractic Council (Health Committee) Rules Order of Council 2000, SI 2000/3291, r 8(1).

7 Ie reports, written statements and other documents prepared or procured for the purposes of the Chiropractors Act 1994 s 20(9)(b) (see PARA 647 ante) or the General Chiropractic Council (Health Committee) Rules Order of Council 2000, SI 2000/3291, r 6(1), (2) (see PARA 666 ante), including any report prepared under the General Chiropractic Council (Investigating Committee) Rules 2000, SI 2000/2916, r 4(3) (see PARA 647 ante): General Chiropractic Council (Health Committee) Rules Order of Council 2000, SI 2000/3291, r 8(1)(a). For the meaning of 'respondent' see PARA 665 note 4 ante.

8 Ibid r 8(1)(b).

9 For the meanings of 'party' and 'the parties' see PARA 665 note 15 ante.

10 General Chiropractic Council (Health Committee) Rules Order of Council 2000, SI 2000/3291, r 8(1)(c).

11 For the meaning of 'the solicitor' see PARA 666 note 7 ante.

12 General Chiropractic Council (Health Committee) Rules Order of Council 2000, SI 2000/3291, r 8(2). As to the service of notices and other documents see PARA 665 note 8 ante.

13 Ibid r 8(3). See also note 12 supra.

14 Ibid r 8(4).

15 For the meaning of 'the registrar' see PARA 614 note 3 ante.

16 Ie other than any report prepared under the General Chiropractic Council (Investigating Committee) Rules 2000, SI 2000/2916, r 4(3) (see PARA 647 ante): General Chiropractic Council (Health Committee) Rules Order of Council 2000, SI 2000/3291, r 8(5). See also note 12 supra. The registrar must secure that the legal assessor, the medical assessors and members of the committee are provided with a copy of the lists and any accompanying reports, statements and documents, together with a copy of any report prepared under the General Chiropractic Council (Investigating Committee) Rules 2000, SI 2000/2916, r 4(3): General Chiropractic Council (Health Committee) Rules Order of Council 2000, SI 2000/3291, r 8(5). For the meaning of 'the legal assessor' see PARA 666 note 14 ante. For the meaning of 'the medical assessors' see PARA 666 note 13 ante.

17 Ibid r 8(6).

18 Ie notwithstanding the absence of any notification by the respondent under ibid r 8(2) (see the text to note 12 supra): r 8(7)(a).

19 Ie notwithstanding the absence of any notification by the solicitor under ibid r 8(3) (see the text to note 13 supra): r 8(7)(b).

20 Ibid r 8(7)(c).

21 Ibid r 8(7).

22 Ibid r 8(8). For the meaning of 'oath' see PARA 153 note 4 ante. As to oaths, affirmations and declarations see CIVIL PROCEDURE vol 11 (2009) PARA 1021 et seq.

23 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

24 General Chiropractic Council (Health Committee) Rules Order of Council 2000, SI 2000/3291, r 8(10). As to evidence in civil proceedings see CIVIL PROCEDURE vol 11 (2009) PARA 749. As to the production of documents in civil proceedings see CIVIL PROCEDURE vol 11 (2009) PARAS 538-583.

25 Ibid r 8(9).

26 See under ibid r 21(1) (see PARA 665 note 8 ante) for the purposes of rr 3(2), (3), (4), 4, 10(4) (see PARAS 665, 667 ante).

27 Ibid r 8(11). In the case of posting, there must be annexed to the certificate any confirmation of the posting issued by or on behalf of the Post Office or other postal operator: r 8(11).

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#### **669. Review of conditions of practice and suspension orders; preliminary matters.**

For the purpose of determining whether to exercise its powers to review conditions of practice orders and suspension orders<sup>1</sup> and the steps to be taken in respect of them<sup>2</sup>, the health committee<sup>3</sup> may make such inquiry, receive such statements and evidence, and procure the production of such expert or other reports, as it thinks desirable, and in particular may request the relevant chiropractor<sup>4</sup> to attend an examination by an appropriately qualified medical practitioner<sup>5</sup>. Before determining any steps to be taken<sup>6</sup> in consequence of such inquiry, the committee must by notice<sup>7</sup> given by the registrar<sup>8</sup> to the relevant chiropractor: (1) indicate under which powers<sup>9</sup> it is proposing to act<sup>10</sup>; (2) request the chiropractor to notify the registrar in writing<sup>11</sup>, before the end of the period of 28 days beginning with the day on which that notice was served on him, whether he wishes to appear before the committee<sup>12</sup>; and (3) request the relevant chiropractor, if he does not wish so to appear, to make within that period any representations in writing to the committee concerning the matter<sup>13</sup>. Before determining the steps to be taken<sup>14</sup> in consequence of an application by the relevant chiropractor, the committee must by notice given by the registrar to the relevant chiropractor: (a) request the chiropractor to notify the registrar in writing, before the end of the period of 28 days beginning with the day on which that notice was served on him, whether he wishes to appear before the committee<sup>15</sup>; and (b) request the relevant chiropractor to make within that period a statement in writing in support of the application, and to provide with the statement any reports or other documents which he wishes the committee to take into account<sup>16</sup>.

If the relevant chiropractor indicates within the period mentioned in head (2) or head (a) above that he wishes so to appear, the registrar must give notice to him specifying the date, time and place of the meeting of the committee at which he is to appear<sup>17</sup>. The chairman of the committee or, in the event of his being unavailable or there being no such chairman in office, the registrar may, whether of his own motion or on the application of the relevant chiropractor, postpone any meeting of which such notice has been given, in which event the registrar must give a further notice specifying the date and time to which the meeting has been postponed, and the place of the meeting<sup>18</sup>.

1    le the powers under the Chiropractors Act 1994 s 23(4), (5) (as amended) (see PARA 651 ante) or where an application is made under s 23(6) (as amended) (see PARA 651 ante): General Chiropractic Council (Health Committee) Rules Order of Council 2000, SI 2000/3291, r 14(1).

2    le under the Chiropractors Act 1994 s 23(4)-(6) (as amended) (see PARA 651 ante).

3    As to the health committee see PARA 610 ante. As to the consideration of allegations by the health committee see PARA 651 et seq ante.

4    'The relevant chiropractor' means the chiropractor in respect of whom the committee is proposing to exercise its powers under the Chiropractors Act 1994 s 23(4), (5) (as amended) (see PARA 651 ante) or (as the case may be) the chiropractor making the application under s 23(6) (as amended) (see PARA 651 ante): General Chiropractic Council (Health Committee) Rules Order of Council 2000, SI 2000/3291, r 14(2).

5    Ibid r 15(1).

6    le under the Chiropractors Act 1994 s 23(4), (5) (as amended): see PARA 651 ante.

7    As to the service of notices see PARA 665 note 8 ante.

8 Subject to the General Chiropractic Council (Health Committee) Rules Order of Council 2000, SI 2000/3291, r 16(9) (see PARA 670 post), the registrar must send with a notice given under r 15(2) copies of any reports, statements or other documents which the committee has considered and which in the view of the committee are material to the issue: r 15(5). For the meaning of 'the registrar' see PARA 614 note 3 ante.

9 Ie which of the powers under the Chiropractors Act 1994 s 23(4)(a), (b) (see PARA 651 ante) or, as the case may be, s 23(5)(a)-(c) (see PARA 651 ante).

10 General Chiropractic Council (Health Committee) Rules Order of Council 2000, SI 2000/3291, r 15(2)(a).

11 For the meaning of 'writing' see PARA 20 note 22 ante.

12 Ie pursuant to the Chiropractors Act 1994 s 23(9) (see PARA 651 ante): General Chiropractic Council (Health Committee) Rules Order of Council 2000, SI 2000/3291, r 15(2)(b).

13 Ibid r 15(2)(c).

14 Ie under the Chiropractors Act 1994 s 23(6) (as amended): see PARA 651 ante.

15 Ie pursuant to ibid s 23(9) (see PARA 651 ante): General Chiropractic Council (Health Committee) Rules Order of Council 2000, SI 2000/3291, r 15(3)(a).

16 Ibid r 15(3)(b).

17 Ibid r 15(4).

18 Ibid r 15(6).

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#### **670. Review of conditions of practice and suspension orders; manner of proceeding.**

Where the health committee<sup>1</sup> proposes to exercise its powers to review conditions of practice orders and suspension orders<sup>2</sup>, the committee may by notice<sup>3</sup> given by the registrar<sup>4</sup> request the relevant chiropractor<sup>5</sup> to attend before it even if that chiropractor has not requested so to appear<sup>6</sup>. In determining the steps to be taken in respect of such a review, the committee must not take into account any evidence or other matters relating to issues of fact unless the relevant chiropractor has been given an opportunity to consider and comment on the evidence or other matter, by the registrar providing him with the specified documents<sup>7</sup> and with any other material documents which have been procured by the committee for the purposes of the review; and if the relevant chiropractor has not indicated within the specified period<sup>8</sup> that he wishes to appear before the committee and he does not appear at the request of the committee<sup>9</sup>, by the committee giving him an opportunity to make representations in writing to it before the expiry of that period or, if later, before the expiry of the period of 14 days beginning with the day on which such documents were served on him<sup>10</sup>. Where the relevant chiropractor is to appear before the committee, he may, at the time that he notifies the registrar<sup>11</sup> that he wishes to appear or, if later, before the expiry of the period of 14 days beginning with the day on which a copy of any report or statement was served on him, request the committee in writing that the author of any report or statement of which he has been sent a copy<sup>12</sup> should appear before the committee to adduce the report or statement by way of oral evidence and to be questioned by the relevant chiropractor; and, if he makes such a request, the report or statement must not be taken into account by the committee without such appearance by the author unless the committee is of the view that, having regard to all the circumstances, including the difficulty or expense of obtaining such attendance, and the justice of the case, it is proper so to do<sup>13</sup>.

If the relevant chiropractor has indicated that he wishes to appear, the proceedings connected with his appearance must be in private<sup>14</sup>, unless the committee is satisfied that it would be appropriate that the proceedings or any part of them be held in public<sup>15</sup>.

If the relevant chiropractor does not appear and the committee is satisfied that notice has been given to him of the meeting or of any adjournment<sup>16</sup>, it may proceed in his absence<sup>17</sup>.

The committee may from time to time adjourn any proceedings before it at which the relevant chiropractor is to be present, whether to enable attendance of the author of a report or statement<sup>18</sup> or for any other reason<sup>19</sup>.

The committee must take the advice of a medical assessor<sup>20</sup> to such extent as the committee thinks is necessary or desirable in discharging its functions in relation to reviews, and it may take the advice of a legal assessor<sup>21</sup>. The committee must secure, unless otherwise agreed by the relevant chiropractor or his representative, that such a medical assessor and legal assessor are present at any appearance of the relevant chiropractor before the committee, and any medical or legal assessor may, with the leave of the committee, question any witness attending before it<sup>22</sup>. At any appearance before the committee in respect of a review, the relevant chiropractor may be legally represented<sup>23</sup>. At any such appearance, the relevant chiropractor may give evidence and call witnesses, and he and such witnesses may be questioned by the committee<sup>24</sup>.



1 As to the health committee see PARA 610 ante. As to the consideration of allegations by the health committee see PARA 651 et seq ante.

2 Ie its powers under the Chiropractors Act 1994 s 23(4), (5) (as amended) (see PARA 651 ante) or where an application is made under s 23(6) (as amended) (see PARA 651 ante): see the General Chiropractic Council (Health Committee) Rules Order of Council 2000, SI 2000/3291, r 14(1).

3 As to the service of notices see PARA 665 note 8 ante.

4 For the meaning of 'the registrar' see PARA 614 note 3 ante.

5 For the meaning of 'the relevant chiropractor' see PARA 669 note 4 ante.

6 Ie under the General Chiropractic Council (Health Committee) Rules Order of Council 2000, SI 2000/3291, r 15 (see PARA 669 ante): r 16(1).

7 Ie the documents referred to in ibid r 15(5): see PARA 669 note 8 ante.

8 Ie within the period mentioned in ibid r 15(2)(b) or r 15(3)(a) (see PARA 669 ante).

9 Ie under ibid r 16(1): see the text to notes 1-6 supra.

10 Ibid r 16(2).

11 Ie under ibid r 15: see PARA 669 ante.

12 Ie under ibid r 15(5) (see PARA 669 note 8 ante) or r 16(2) (see the text to notes 7-10 supra).

13 Ibid r 16(5). The committee may arrange for the attendance of the author of any report or statement of which the relevant chiropractor has been sent a copy under rr 15(5), 16(2), even if no request is made by the relevant chiropractor under r 16(5), in order that the author may be questioned by the committee; and if it does so and the relevant chiropractor has elected to appear before the committee pursuant to the Chiropractors Act 1994 s 23(9) (see PARA 651 ante), the author may also be questioned by him: General Chiropractic Council (Health Committee) Rules Order of Council 2000, SI 2000/3291, r 16(6). The reports, statements and other documents of which copies must be provided under rr 15(5), 16(2) do not include reports, statements and documents of which the relevant chiropractor has already received copies in connection with proceedings under Pt III (rr 5-13) (see PARAS 666-668 ante) or under r 17 (see PARA 671 post) or which were procured or provided by or on behalf of the relevant chiropractor: r 16(8).

14 Ie save for the relevant chiropractor and his representative, the registrar, any legal assessor or medical assessor, the person making the allegation to which the conditions of practice order or suspension order in question relates, any witnesses, any staff of the General Council and any note-taker: ibid r 16(10)(a). However, nothing in r 15 (see PARA 669 ante) or r 16 precludes the committee deliberating in the absence of any of the persons mentioned in r 16(10)(a) (including the relevant chiropractor and any representative) and of the public at any time: r 16(10)(b). For the meaning of 'the General Council' see PARA 591 note 1 ante. As to the power of the General Council to appoint staff see PARA 597 ante.

15 Ibid r 16(10)(a).

16 Ie under ibid r 15(4) (see PARA 669 ante) or, in the case of an adjournment, under r 16(7), or the announcement referred to in r 16(7) was made (see the text to note 19 infra).

17 Ibid r 16(10)(c).

18 Ie under ibid r 16(5), (6): see the text to notes 11-13 supra.

19 Ibid r 16(7). The relevant chiropractor must be given reasonable notice by the registrar of the date, time and place of the resumption of such adjourned proceedings at which he is to be present unless they were announced at the time of adjournment and the relevant chiropractor or his legal representative were then present: r 16(7).

20 Ie a medical assessor appointed under the Chiropractors Act 1994 s 28: see PARA 675 post.

21 Ie a legal assessor appointed under ibid s 27 (see PARA 674 post): General Chiropractic Council (Health Committee) Rules Order of Council 2000, SI 2000/3291, r 16(9).

22 Ibid r 16(9).

23 Ibid r 16(3).

24 Ibid r 16(4).

### **UPDATE**

### **670 Review of conditions of practice and suspension orders; manner of proceeding**

TEXT AND NOTES 7-10--See now SI 2000/3291 r 16(2), (2A), (2B) (substituted by SI 2006/1630).

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### **671. Procedure on allegations where there is no hearing.**

Where the respondent<sup>1</sup> to an allegation<sup>2</sup> does not require a hearing<sup>3</sup> and the health committee<sup>4</sup> does not determine that the allegation should be the subject of a hearing<sup>5</sup>, the committee must not, in considering the allegation and determining the steps to be taken in respect of it<sup>6</sup>, take into account any evidence or other matters relating to issues of fact unless the respondent and the person making the allegation have been given an opportunity to consider and comment on the evidence or other matter<sup>7</sup>. Otherwise, in considering the allegation and determining any step to be taken, the committee may make such inquiry in such manner as it thinks fair and proper<sup>8</sup>.

1 For the meaning of 'respondent' see PARA 665 note 4 ante.

2 For the meaning of 'allegation' see PARA 665 note 1 ante.

3 Ie in accordance with the General Chiropractic Council (Health Committee) Rules Order of Council 2000, SI 2000/3291, r 3(2)(b): see PARA 665 ante.

4 As to the health committee see PARA 610 ante. As to the consideration of allegations by the health committee see PARA 651 et seq ante.

5 Ie under the General Chiropractic Council (Health Committee) Rules Order of Council 2000, SI 2000/3291, r 3 (see PARA 665 ante): r 17(1).

6 Ie under the Chiropractors Act 1994 s 23(2): see PARA 651 ante.

7 General Chiropractic Council (Health Committee) Rules Order of Council 2000, SI 2000/3291, r 17(2).

8 Ibid r 17(3). The committee must afford the respondent the opportunity to appear and argue his case (ie the opportunity required by the Chiropractors Act 1994 s 23(9) in respect of the exercise of its powers under s 23(2) (see PARA 651 ante)): General Chiropractic Council (Health Committee) Rules Order of Council 2000, SI 2000/3291, r 17(3).

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## **672. Referral to professional conduct committee.**

If in the course of the investigation of, and its deliberations on, an allegation<sup>1</sup>, the health committee<sup>2</sup> is of the view that the allegation would be better dealt with by the professional conduct committee<sup>3</sup> because a substantial issue arises whether the respondent<sup>4</sup> has been guilty of unacceptable professional conduct<sup>5</sup> or of professional incompetence<sup>6</sup>, it may refer the matter to that committee, and the professional conduct committee must deal with the matter as if the allegation were to that effect<sup>7</sup>. The power of referral may be exercised notwithstanding that a hearing<sup>8</sup> has begun, provided that the health committee has not voted on its decision whether the allegation is well founded<sup>9</sup>.

1 For the meaning of 'allegation' see PARA 665 note 1 ante.

2 As to the health committee see PARA 610 ante. As to the consideration of allegations by the health committee see PARA 651 et seq ante.

3 As to the professional conduct committee see PARA 609 ante. As to the consideration of allegations by the professional conduct committee see PARA 649 et seq ante.

4 For the meaning of 'respondent' see PARA 665 note 4 ante.

5 For the meaning of 'unacceptable professional conduct' see PARA 646 note 2 ante.

6 As to the standard required for the safe and competent practice of chiropractic see PARA 635 ante.

7 General Chiropractic Council (Health Committee) Rules Order of Council 2000, SI 2000/3291, r 20(1). As to the procedure of the professional conduct committee see PARA 655 et seq ante.

8 I.e a hearing under *ibid* Pt III (rr 5-13): see PARAS 666-668 ante.

9 *Ibid* r 20(2). As to voting see PARA 673 post.

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### **673. Decisions.**

As soon as practicable after the health committee<sup>1</sup> has made its decision on whether an allegation<sup>2</sup> is well founded and as to any steps to be taken in respect of it<sup>3</sup>, whether or not that decision was announced at the conclusion of a hearing<sup>4</sup>, the committee must, by notice<sup>5</sup> given by the registrar<sup>6</sup>, notify<sup>7</sup>: (1) the respondent<sup>8</sup> of its decision and its reasons for reaching it, and, if the allegation is found to be well founded, of the respondent's right of appeal<sup>9</sup>; and (2) the person making the allegation of its decision and its reasons for reaching it<sup>10</sup>. As soon as practicable after the committee has determined<sup>11</sup> the steps that it is to take in respect of the review of a conditions of practice order or a suspension order<sup>12</sup>, the committee must, by notice given by the registrar, notify the chiropractor to whom the decision relates of its decision and its reasons for reaching it, and, so far as relevant, of his right of appeal<sup>13</sup>.

The committee must vote on any matter to be determined by it in considering an allegation, or in deciding the steps to be taken in respect of the review of a conditions of practice order or a suspension order, by the chairman of the committee calling upon members present to signify their votes by raising their hands, and by the chairman then announcing his own vote, followed by any casting vote<sup>14</sup>, and declaring to the committee how the matter has been decided<sup>15</sup>. Any member may challenge any decision so declared, in which event the chairman must again announce the motion, and call each member's name in turn, each member on being so called announcing his own vote being either 'yes' or 'no' to the motion put, and the chairman votes last, making first his ordinary vote and then, so far as relevant, any casting vote, and then declares the result<sup>16</sup>. No member present may abstain<sup>17</sup>.

1 As to the health committee see PARA 610 ante. As to the consideration of allegations by the health committee see PARA 651 et seq ante. As to the procedure of the health committee see PARA 665 et seq ante.

2 For the meaning of 'allegation' see PARA 665 note 1 ante.

3 Ie under the Chiropractors Act 1994 s 23(2): see PARA 651 ante.

4 Ie a hearing under the General Chiropractic Council (Health Committee) Rules Order of Council 2000, SI 2000/3291, Pt III (rr 5-13): see PARAS 666-668 ante.

5 As to the service of notices see PARA 665 note 8 ante.

6 For the meaning of 'the registrar' see PARA 614 note 3 ante.

7 General Chiropractic Council (Health Committee) Rules Order of Council 2000, SI 2000/3291, r 18(1).

8 For the meaning of 'respondent' see PARA 665 note 4 ante.

9 Ie his right of appeal under the Chiropractors Act 1994 s 30 (see PARA 681 post): General Chiropractic Council (Health Committee) Rules Order of Council 2000, SI 2000/3291, r 18(1)(a).

10 Ibid r 18(1)(b).

11 Ie under ibid Pt IV (rr 14-16): see PARAS 669-670 ante.

12 Ie the steps under the Chiropractors Act 1994 s 23(4)-(6) (as amended), including any decision not to take a step after application under s 23(6) (as amended): see PARA 651 ante.

13     le his right of appeal under the Chiropractors Act 1994 s 30 (see PARA 681 post): General Chiropractic Council (Health Committee) Rules Order of Council 2000, SI 2000/3291, r 18(2).

14     le as provided for in the Chiropractors Act 1994 s 1(9), Sch 1 para 40(3), (4): see PARA 610 ante.

15     General Chiropractic Council (Health Committee) Rules Order of Council 2000, SI 2000/3291, r 19(1).

16     Ibid r 19(2).

17     Ibid r 19(3).

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 CHIROPRACTORS/(4) PROFESSIONAL CONDUCT AND FITNESS TO PRACTISE/(iv) Assessors/674.  
 Legal assessors.

## **(iv) Assessors**

### **674. Legal assessors.**

The General Council<sup>1</sup> must appoint persons to be legal assessors<sup>2</sup>. Legal assessors have the general function of giving advice to:

- 849 (1) any person appointed to give preliminary consideration to allegations made or referred to the investigating committee<sup>3</sup>;
- 850 (2) the investigating committee<sup>4</sup>;
- 851 (3) the professional conduct committee<sup>5</sup>;
- 852 (4) the health committee<sup>6</sup>; or
- 853 (5) the registrar<sup>7</sup>,

on questions of law arising in connection with any matter which he or, as the case may be, the committee is considering<sup>8</sup>. Legal assessors also have such other functions as may be conferred on them by rules<sup>9</sup> made by the General Council<sup>10</sup>.

Legal assessors have the additional functions: (a) of informing the investigating committee, the professional conduct committee and the health committee of the assessors' own motion if it appears to them from information which has come to their knowledge, whether by their presence at a meeting of the committee concerned or otherwise, that there has been an irregularity in the conduct of any proceedings before the committee<sup>11</sup>, and of advising the committee concerned about the steps which may be taken, if any, to remedy the irregularity<sup>12</sup>; (b) of giving advice to the General Council<sup>13</sup> on questions of law arising in connection with any proceedings before it<sup>14</sup>; and (c) of informing the General Council of the assessors' own motion if it appears to them from information which has come to their knowledge, whether by their presence at a meeting of the General Council or otherwise, that there has been an irregularity in the conduct of any such proceedings before the General Council, and of advising the General Council about the steps which may be taken, if any, to remedy the irregularity<sup>15</sup>.

In connection with certain proceedings<sup>16</sup>, any advice tendered by a legal assessor to the committee concerned or the General Council must be given in the presence of every party attending the proceeding or, if his representative is attending, his representative<sup>17</sup>. If the committee or the General Council has heard the evidence or submissions on the matter in question and refers an issue to a legal assessor for advice after it has begun deliberating on its decision, and the committee or the General Council considers that it would be prejudicial to the discharge of its functions for the advice to be tendered to it in the presence of the parties, it may be given in the absence of the parties or their representatives; but, in such an event, the legal assessor must as soon as practicable after completion of those deliberations inform each of the parties or their representatives who are in attendance of the question put to him and the advice he gave, and must subsequently record those matters in writing and give a copy to the parties or their representatives<sup>18</sup>.

The General Council may pay such fees, allowances and expenses to persons appointed as legal assessors as it may determine<sup>19</sup>. In the case of a legal assessor who is also a member of the General Council or of any of its committees, any such payment made to him in his capacity as a legal assessor is in addition to any to which he is entitled as such a member<sup>20</sup>.

- 1 For the meaning of 'the General Council' see PARA 591 note 1 ante.
- 2 Chiropractors Act 1994 s 27(1). To be qualified for appointment as a legal assessor, a person must: (1) have a ten year general qualification within the meaning of the Courts and Legal Services Act 1990 s 71 (see LEGAL PROFESSIONS vol 65 (2008) PARA 742) (Chiropractors Act 1994 s 27(4)(a)); (2) be an advocate or solicitor in Scotland of at least ten years' standing (s 27(4)(b)); or (3) be a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least ten years' standing (s 27(4)(c)).
- 3 le in accordance with rules made under ibid s 20(4) (see PARA 646 ante): s 27(2)(a).
- 4 Ibid s 27(2)(b). As to the investigating committee see PARA 608 ante. As to the investigation of allegations by the investigating committee see PARAS 646-648 ante.
- 5 Ibid s 27(2)(c). As to the professional conduct committee see PARA 609 ante. As to the consideration of allegations by the professional conduct committee see PARA 649 et seq ante.
- 6 Ibid s 27(2)(d). As to the health committee see PARA 610 ante. As to the consideration of allegations by the health committee see PARA 651 et seq ante.
- 7 Ibid s 27(2)(e). For the meaning of 'the registrar' see PARA 614 note 3 ante.
- 8 Ibid s 27(2).
- 9 As to the making of rules see PARA 598 ante.
- 10 Chiropractors Act 1994 s 27(3). As to the rules that have been made see the General Chiropractic Council (Functions of Legal Assessors) Rules 2000, approved by the General Chiropractic Council (Functions of Legal Assessors) Rules Order 2000, SI 2000/2865; and the text to notes 11-18 infra.
- 11 le proceedings under the Chiropractors Act 1994 s 8 (see PARA 629 ante), s 10 (see PARA 632 ante), ss 20-25 (see PARAS 646-653 ante).
- 12 General Chiropractic Council (Functions of Legal Assessors) Rules Order 2000, SI 2000/2865, r 2(a).
- 13 In the General Chiropractic Council (Functions of Legal Assessors) Rules Order 2000, SI 2000/2865, references to the General Council include any committee of the General Council to which functions have been delegated under the Chiropractors Act 1994 Sch 1 para 15(2)(j) (see PARA 597 ante): see the General Chiropractic Council (Functions of Legal Assessors) Rules Order 2000, SI 2000/2865, r 1(2).
- 14 le proceedings under the Chiropractors Act 1994 s 10(5) (see PARA 632 ante), s 29 (see PARA 676 post): General Chiropractic Council (Functions of Legal Assessors) Rules Order 2000, SI 2000/2865, r 2(b).
- 15 Ibid r 2(c). See also note 13 supra.
- 16 The proceedings in question are: (1) any proceedings before the professional conduct committee or the health committee under the Chiropractors Act 1994 ss 22-25 (see PARAS 649-653 ante); (2) any proceedings before the investigating committee under rules made under s 10(4)(a) (see PARA 631 ante); and (3) any proceedings before the General Council on an appeal under s 29 (see PARA 676 post): General Chiropractic Council (Functions of Legal Assessors) Rules Order 2000, SI 2000/2865, r 3(1)(a)-(c). See also note 13 supra.
- 17 Ibid r 3(2). See also note 13 supra.
- 18 Ibid r 3(3). See also note 13 supra.
- 19 Chiropractors Act 1994 s 27(5).
- 20 Ibid s 27(6). As to membership of the General Council see PARA 592 ante. As to the committees of the General Council see PARAS 591, 602 et seq ante. As to the powers of the General Council to make payments to its members and members of its committees see PARA 597 ante.

## UPDATE

### 674 Legal assessors



NOTE 2--Chiropractors Act 1994 s 27(4)(c) amended: Constitutional Reform Act 2005  
Sch 11 para 5 (in force 1 October 2009: SI 2009/1604).

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 CHIROPRACTORS/(4) PROFESSIONAL CONDUCT AND FITNESS TO PRACTISE/(iv) Assessors/675.  
 Medical assessors.

### **675. Medical assessors.**

The General Council<sup>1</sup> may appoint registered medical practitioners<sup>2</sup> to be medical assessors<sup>3</sup>. Medical assessors have the general function of giving advice to:

- 854 (1) any person appointed to give preliminary consideration to allegations made or referred to the investigating committee<sup>4</sup>;
- 855 (2) the investigating committee<sup>5</sup>;
- 856 (3) the professional conduct committee<sup>6</sup>;
- 857 (4) the health committee<sup>7</sup>; or
- 858 (5) the registrar<sup>8</sup>,

on matters within their professional competence arising in connection with any matter which he or, as the case may be, the committee is considering<sup>9</sup>. Medical assessors also have such other functions as may be conferred on them by rules<sup>10</sup> made by the General Council<sup>11</sup>.

Medical assessors have the additional functions of: (a) informing the investigating committee and the health committee of the assessors' own motion if it appears to them that, without their advice, a mistake may be made in judging the medical significance of information, or the absence of information, in proceedings before the committee<sup>12</sup>; (b) giving advice to the General Council<sup>13</sup> on matters within their professional competence arising in connection with any appeal proceedings before the General Council<sup>14</sup>; (c) informing the General Council of the assessors' own motion if it appears to them that, without their advice, a mistake may be made in judging the medical significance of information, or the absence of information, in any such proceedings before the General Council<sup>15</sup>; and (d) at the request of the investigating committee, examining a registered chiropractor and reporting on his physical or mental condition for the purposes of any investigation of an allegation by the committee<sup>16</sup>.

In connection with certain proceedings<sup>17</sup>, any advice may be tendered by a medical assessor to the committee concerned or the General Council either in the presence of the parties to the proceedings or their representatives, so far as they are in attendance, or in their absence when the committee or General Council is deliberating in private, as the committee or General Council requests and determines<sup>18</sup>.

The General Council may pay such fees, allowances and expenses to persons appointed as medical assessors as it may determine<sup>19</sup>. In the case of a medical assessor who is also a member of the General Council or of any of its committees, any such payment made to him in his capacity as a medical assessor is in addition to any to which he is entitled as such a member<sup>20</sup>.

1 For the meaning of 'the General Council' see PARA 591 note 1 ante.

2 For the meaning of 'registered medical practitioner' see PARA 4 ante.

3 Chiropractors Act 1994 s 28(1).

4 ie persons appointed in accordance with rules made under *ibid* s 20(4) (see PARA 646 ante): s 28(2)(a).

5 *Ibid* s 28(2)(b). As to the investigating committee see PARA 608 ante. As to the investigation of allegations by the investigating committee see PARAS 646-648 ante.

6 Ibid s 28(2)(c). As to the professional conduct committee see PARA 609 ante. As to the consideration of allegations by the professional conduct committee see PARA 649 et seq ante.

7 Ibid s 28(2)(d). As to the health committee see PARA 610 ante. As to the consideration of allegations by the health committee see PARA 651 et seq ante.

8 Ibid s 28(2)(e). For the meaning of 'the registrar' see PARA 614 note 3 ante.

9 Ibid s 28(2).

10 As to the making of rules see PARA 598 ante.

11 Chiropractors Act 1994 s 28(3). As to the rules that have been made see the General Chiropractic Council (Functions of Medical Assessors) Rules 2000, approved by the General Chiropractic Council (Functions of Medical Assessors) Rules Order 2000, SI 2000/2866; and the text to notes 12-18 infra.

12 Ie proceedings under the Chiropractors Act 1994 ss 20, 21, 23-25 (see PARAS 646-648, 651-653 ante): General Chiropractic Council (Functions of Medical Assessors) Rules Order 2000, SI 2000/2866, r 2(a).

13 In the General Chiropractic Council (Functions of Medical Assessors) Rules Order 2000, SI 2000/2866, references to the General Council include any committee of the General Council to which functions have been delegated under the Chiropractors Act 1994 Sch 1 para 15(2)(j) (see PARA 597 ante): General Chiropractic Council (Functions of Medical Assessors) Rules Order 2000, SI 2000/2866, r 1(2).

14 Ie proceedings under the Chiropractors Act 1994 s 29 (see PARA 676 post): General Chiropractic Council (Functions of Medical Assessors) Rules Order 2000, SI 2000/2866, r 2(b).

15 Ibid r 2(c). See also note 13 supra.

16 Ie any investigation under the Chiropractors Act 1994 s 20 (see PARAS 646-647 ante): General Chiropractic Council (Functions of Medical Assessors) Rules Order 2000, SI 2000/2866, r 2(d).

17 The proceedings concerned are: (1) any proceedings of the health committee under the Chiropractors Act 1994 ss 23-25 (as amended) (see PARAS 651-653 ante); and (2) any proceedings before the General Council on an appeal under s 29 (see PARA 676 post): General Chiropractic Council (Functions of Medical Assessors) Rules Order 2000, SI 2000/2866, r 3(1)(a), (b). See also note 13 supra.

18 Ibid r 3(2). See also note 13 supra.

19 Chiropractors Act 1994 s 28(4).

20 Ibid s 28(5). As to membership of the General Council see PARA 592 ante. As to the committees of the General Council see PARAS 591, 602 et seq ante. As to the powers of the General Council to make payments to its members and members of its committees see PARA 597 ante.

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## **(v) Appeals**

### **A. APPEALS AGAINST DECISIONS OF THE REGISTRAR**

#### **676. Appeals against decisions of the registrar.**

Where the registrar<sup>1</sup>: (1) refuses to register an applicant for registration under the Chiropractors Act 1994<sup>2</sup>; (2) registers such an applicant with provisional or conditional registration<sup>3</sup>; (3) refuses to renew any registration<sup>4</sup>; (4) removes the name of a registered chiropractor<sup>5</sup> from the register<sup>6</sup> on the ground that he has breached one or more of the conditions subject to which his registration had effect, otherwise than under an order of the professional conduct committee<sup>7</sup>; or (5) refuses to grant an application for the conversion of a conditional or provisional registration into full registration<sup>8</sup>, then the person aggrieved may appeal to the General Council<sup>9</sup>. An appeal to the General Council must be made before the end of the period of 28 days beginning with the date on which notice of the registrar's decision is sent to the person concerned<sup>10</sup>. Any such appeal is subject to such rules<sup>11</sup> as the General Council may make for the purpose of regulating those appeals<sup>12</sup>.

A person aggrieved by the decision of the General Council on such an appeal may appeal to a county court<sup>13</sup>. On an appeal to the county court, the court may:

- 859 (a) dismiss the appeal<sup>14</sup>;
- 860 (b) allow the appeal and quash the decision appealed against<sup>15</sup>;
- 861 (c) substitute for the decision appealed against any other decision which could have been made by the registrar<sup>16</sup>; or
- 862 (d) remit the case to the General Council to dispose of the case in accordance with the directions of the court<sup>17</sup>,

and may make such order as to costs as it thinks fit<sup>18</sup>.

1 For the meaning of 'the registrar' see PARA 614 note 3 ante.

2 Chiropractors Act 1994 s 29(1)(a). As to applications for registration see PARA 621 ante. As to registration generally see PARA 615 et seq ante.

3 Ibid s 29(1)(b). As to provisional registration see PARA 618 ante. As to conditional registration see PARA 616 ante.

4 Ibid s 29(1)(c). As to the renewal of registration see PARA 623 ante.

5 For the meaning of 'registered chiropractor' see PARA 595 note 5 ante.

6 For the meaning of 'the register' see PARA 614 note 4 ante.

7 Chiropractors Act 1994 s 29(1)(d). As to orders of the professional conduct committee see PARA 649 ante. As to the professional conduct committee see PARA 609 ante.

8 Ibid s 29(1)(e). As to the conversion of conditional or provisional registration into full registration see PARAS 617-618 ante.

9 Ibid s 29(1). As to the giving of advice by a legal assessor on such an appeal see PARA 674 ante. As to the giving of advice by a medical assessor on such an appeal see PARA 675 ante. For the meaning of 'the General Council' see PARA 591 note 1 ante.

10 Ibid s 29(3).

11 As to the making of rules see PARA 598 ante.

12 Chiropractors Act 1994 s 29(2). As to the rules that have been made see the General Chiropractic Council (Appeals Against Decisions of the Registrar) Rules 2000, approved by the General Chiropractic Council (Appeals Against Decisions of the Registrar) Rules Order 2000, SI 2000/2265; and PARAS 677-680 post.

13 Chiropractors Act 1994 s 29(4) (s 29(4) substituted, and s 29(4A) added, by the National Health Service Reform and Health Care Professions Act 2002 s 34(1), (5)). As to county courts see COURTS.

14 Chiropractors Act 1994 s 29(4A)(a) (as added: see note 13 supra).

15 Ibid s 29(4A)(b) (as added: see note 13 supra).

16 Ibid s 29(4A)(c) (as added: see note 13 supra).

17 Ibid s 29(4A)(d) (as added: see note 13 supra).

18 Ibid s 29(4A) (as added: see note 13 supra). As to costs generally see CIVIL PROCEDURE vol 12 (2009) PARA 1729 et seq.

## **UPDATE**

### **676 Appeals against decisions of the registrar**

TEXT AND NOTES--As to appeals against the General Chiropractic Council, see the Chiropractors Act 1994 s 29A (added by SI 2007/3101).

NOTE 8--Add head (6) refuses to register a person with temporary registration: Chiropractors Act 1994 s 29(1)(ba) (added by SI 2007/3101).

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### **677. Notice of appeal; preliminary matters.**

An appeal<sup>1</sup> must be made by giving notice<sup>2</sup> in writing<sup>3</sup> to the registrar<sup>4</sup>, specifying the decision of the registrar in relation to which the appeal is brought<sup>5</sup>. Upon receipt of such notice, the registrar must prepare a paginated and indexed bundle of papers for consideration at the meeting of the Council<sup>6</sup> held for the purpose of hearing the appeal, comprising: (1) the registrar's reasons for reaching the decision<sup>7</sup>; (2) the documentary evidence taken into account by him in reaching the decision, including any statements, references, reports and other particulars supplied by the appellant<sup>8</sup> to the registrar or obtained by the registrar in connection with his determination of the matter<sup>9</sup>; (3) by way of a supplementary report, such other matters, if any, as in his view are relevant to the determination of the appeal and which he wishes to bring to the attention of the Council<sup>10</sup>. Before the beginning of the period of 28 days ending with the day appointed for the meeting to be held for the purposes of hearing the appeal, the registrar must serve on the appellant<sup>11</sup>: (a) the reasons referred to in head (1) above, any report prepared under head (3) above, a list of the documents referred to in head (2) above, and a copy of any of the documents so listed of which the appellant has not previously been sent a copy by the registrar and which are not documents supplied by the appellant to the registrar<sup>12</sup>; and (b) a notice informing the appellant of the date, time and place of the meeting, and requiring the appellant to submit to the registrar, within the period of 14 days beginning with the day on which the notice is served on the appellant, the appellant's grounds of appeal, any additional evidence the appellant wishes the Council to take into account in determining the appeal in question, and an indication of whether the appellant intends to be legally represented<sup>13</sup>. Before the beginning of the period of seven days ending with the day of the meeting to be held for the purposes of hearing the appeal, the registrar must send to each of the members of the Council a copy of the bundle prepared for consideration at the meeting, and of any grounds and additional documentary evidence supplied by the appellant pursuant to such notice<sup>14</sup>.

An appeal must be heard at a meeting of the Council, being either an ordinary meeting of the Council to consider other business, or a special meeting held to determine the appeal, whether or not also held to determine other appeals<sup>15</sup>.

1 'Appeal' means an appeal under the Chiropractors Act 1994 s 29(1) (see PARA 676 ante): General Chiropractic Council (Appeals Against Decisions of the Registrar) Rules Order 2000, SI 2000/2265, r 2(1).

2 Any notice or other matter or document to be served on the registrar (see note 4 infra) for the purposes of the General Chiropractic Council (Appeals Against Decisions of the Registrar) Rules Order 2000, SI 2000/2265, may be served by sending it by post to, or leaving it at, the principal office of the Council (see note 6 infra): r 8(2).

3 For the meaning of 'writing' see PARA 20 note 22 ante.

4 For the meaning of 'the registrar' see PARA 614 note 3 ante.

5 General Chiropractic Council (Appeals Against Decisions of the Registrar) Rules Order 2000, SI 2000/2265, r 3(1).

6 'The Council' means, subject to *ibid* r 6, the General Chiropractic Council: r 2(1). If the Council in exercise of its powers under the Chiropractors Act 1994 s 1(4), Sch 1 para 15(2)(j) (see PARA 597 ante) delegates its function of determining any appeal to a committee of the Council, references to the Council are to be construed (except in the references to the chairman of the Council and staff of the Council) as references to that committee: General Chiropractic Council (Appeals Against Decisions of the Registrar) Rules Order 2000, SI

2000/2265, r 6(1). The Council may not delegate its function of determining an appeal to any of the statutory committees.: r 6(2). As to the General Chiropractic Council and its committees see PARA 591 et seq ante. For the meaning of 'statutory committee' see PARA 591 note 5 ante.

7 Ibid r 4(1)(a). 'The decision', except in r 5 (see PARA 680 post), means the decision of the registrar specified in the notice given under r 3(1) (see the text to notes 1-5 supra): r 2(1).

8 'The appellant' means the chiropractor who has made the appeal in question: ibid r 2(1).

9 Ibid r 4(1)(b).

10 Ibid r 4(1)(c).

11 Any notice or other matter or document to be served on the appellant for the purposes of the General Chiropractic Council (Appeals Against Decisions of the Registrar) Rules Order 2000, SI 2000/2265, may be served by sending it by post to, or leaving it at, the address of the appellant as appearing in the register pursuant to the Chiropractors Act 1994 s 6(1)(b) (see PARA 619 ante), or if he is not registered or if his last known place of residence differs from his address in the register and it appears to the registrar that a notice sent to that place of residence is more likely to reach him, or if he has given some other address for service, it may be served by sending it by post to or by leaving it at his last known place of residence or (as the case may be) the address given for service: General Chiropractic Council (Appeals Against Decisions of the Registrar) Rules Order 2000, SI 2000/2265, r 8(1). For the meaning of 'the register' see PARA 614 note 4 ante. For the meaning of 'registered' see PARA 615 note 1 ante.

12 Ibid r 4(2)(a).

13 Ibid r 4(2)(b).

14 Ibid r 4(3). The bundle and other matters to be sent to the members of the Council under r 4(3) must be sent in accordance with the ordinary arrangements of the Council for the receiving by the members of papers relating to its meetings; and is treated as sent, if sent by post, when posted: r 8(3).

15 Ie other appeals under the Chiropractors Act 1994 s 29(1) (see PARA 676 ante): General Chiropractic Council (Appeals Against Decisions of the Registrar) Rules Order 2000, SI 2000/2265, r 3(2).

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 APPEALS AGAINST DECISIONS OF THE REGISTRAR/678. Witnesses.

## **678. Witnesses.**

The Council<sup>1</sup> may, in considering an appeal<sup>2</sup>, hear witnesses on the application of the appellant<sup>3</sup>, on the application of the registrar<sup>4</sup>, or of its own motion<sup>5</sup>. Any witness may be cross-examined and re-examined, and may be questioned by the Council and, with the leave of the Council, by any legal assessor or medical assessor<sup>6</sup>. No person may be required under these provisions to give evidence or produce any document or other material at any appeal which he could not be compelled to give or produce in civil proceedings in any court in that part of the United Kingdom<sup>7</sup> in which the appeal takes place<sup>8</sup>.

1 For the meaning of 'the Council' see PARA 677 note 6 ante.

2 For the meaning of 'appeal' see PARA 677 note 1 ante.

3 General Chiropractic Council (Appeals Against Decisions of the Registrar) Rules Order 2000, SI 2000/2265, r 7(1)(a). For the meaning of 'the appellant' see PARA 677 note 8 ante.

4 Ibid r 7(1)(b). For the meaning of 'the registrar' see PARA 614 note 3 ante.

5 Ibid r 7(1)(c).

6 I.e. a legal assessor or medical assessor appointed under the Chiropractors Act 1994 ss 27, 28 (see PARAS 674-675 ante); General Chiropractic Council (Appeals Against Decisions of the Registrar) Rules Order 2000, SI 2000/2265, r 7(2).

7 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

8 General Chiropractic Council (Appeals Against Decisions of the Registrar) Rules Order 2000, SI 2000/2265, r 7(3). As to evidence in civil proceedings see CIVIL PROCEDURE vol 11 (2009) PARA 749. As to the production of documents in civil proceedings see CIVIL PROCEDURE vol 11 (2009) PARAS 538-583.



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### **679. Extension of time; postponement and adjournment.**

The chairman of the Council<sup>1</sup> may extend the time for the doing of any thing under these provisions<sup>2</sup> and may postpone a meeting to be held for the purposes of hearing an appeal<sup>3</sup> of which notice has been given to the appellant<sup>4</sup>; and the registrar<sup>5</sup> may, in order to give effect to any such extension or postponement after having given such notice to the appellant, serve on the appellant a further notice<sup>6</sup>. Without prejudice to the Council's general powers of adjournment, the Council may from time to time adjourn any proceedings before it on an appeal at which the appellant may be present; and if it does so the registrar must give notice to the appellant of the date, time and place of the resumption of proceedings at which he may be present unless that date, time and place were announced at the time of adjournment in the presence of the appellant or his representative<sup>7</sup>.

1 References to the chairman of the Council include reference to an acting chairman exercising the functions of chairman of the Council under the General Chiropractic Council (Constitution and Procedure) Rules 1999, SI 1999/1537, r 7 (see PARA 596 ante); General Chiropractic Council (Appeals Against Decisions of the Registrar) Rules Order 2000, SI 2000/2265, r 2(2). The chairman of the Council may delegate any of his functions under the General Chiropractic Council (Constitution and Procedure) Rules 1999, SI 1999/1537, to another member of the Council: r 6(3). As to the chairman of the Council see PARA 596 ante. For the meaning of 'the Council' see PARA 677 note 6 ante.

2 Ie under the General Chiropractic Council (Appeals Against Decisions of the Registrar) Rules Order 2000, SI 2000/2265: see PARAS 677-678 ante, 680 post.

3 Ie a meeting held under *ibid* r 3(2): see PARA 677 ante. For the meaning of 'appeal' see PARA 677 note 1 ante.

4 Ie notice under *ibid* r 4(2)(b): see PARA 677 ante. For the meaning of 'the appellant' see PARA 677 note 8 ante.

5 For the meaning of 'the registrar' see PARA 614 note 3 ante.

6 General Chiropractic Council (Appeals Against Decisions of the Registrar) Rules Order 2000, SI 2000/2265, r 9(1). Such notice must specify any later date for the meeting to be held for the purposes of r 3(2) (see PARA 677 ante), stating also the time and place of the meeting, or specify any later date for the appellant to submit the grounds and evidence referred to in r 4(2)(b) (see PARA 677 ante), or specify both of those things, as the case may be: r 9(1).

7 *Ibid* r 9(2).

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 APPEALS AGAINST DECISIONS OF THE REGISTRAR/680. Decision by the General Council.

## **680. Decision by the General Council.**

The appellant<sup>1</sup> may attend the meeting held for the purposes of hearing an appeal<sup>2</sup>, and he and the registrar<sup>3</sup>, or their legal representatives<sup>4</sup>, may address the Council<sup>5</sup> concerning the appeal<sup>6</sup>. The decision of the Council on the appeal must be by resolution of the Council passed by a majority of the members of the Council<sup>7</sup> present and voting; and, in the event of an equality of votes, the person chairing the meeting has an additional casting vote which he must exercise in favour of the appellant<sup>8</sup>. Upon the Council reaching its decision, the person chairing the meeting considering the appeal in question must announce that decision; and the chairman of the Council<sup>9</sup> must as soon as practicable after the meeting give notice in writing<sup>10</sup> to the appellant notifying him of the decision of the Council and its reasons for reaching the decision and, if the appeal is dismissed, of the appellant's right to appeal against it on a point of law<sup>11</sup>.

The meeting considering an appeal must be open to the public<sup>12</sup>. However, the appellant may elect that the meeting considering his appeal should be held in private; and, if he does so elect, the meeting must be held in the absence of anyone except members of the Council, the registrar and his legal representative (if any), staff of the Council<sup>13</sup>, the appellant and his legal representative (if any), any witnesses, and any legal assessor or medical assessor<sup>14</sup>.

1 For the meaning of 'the appellant' see PARA 677 note 8 ante.

2 I.e. the meeting held under *ibid* r 3(2); see PARA 677 ante. For the meaning of 'appeal' see PARA 677 note 1 ante.

3 For the meaning of 'the registrar' see PARA 614 note 3 ante.

4 'Legal representative' means a solicitor or a barrister: see the General Chiropractic Council (Appeals Against Decisions of the Registrar) Rules Order 2000, SI 2000/2265, r 2(1).

5 For the meaning of 'the Council' see PARA 677 note 6 ante.

6 General Chiropractic Council (Appeals Against Decisions of the Registrar) Rules Order 2000, SI 2000/2265, r 5(1).

7 As to the membership of the Council see PARA 592 ante.

8 General Chiropractic Council (Appeals Against Decisions of the Registrar) Rules Order 2000, SI 2000/2265, r 5(2).

9 As to references to the chairman of the Council see PARA 679 note 1 ante.

10 For the meaning of 'writing' see PARA 20 note 22 ante.

11 I.e. his right of appeal under the Chiropractors Act 1994 s 29 (see PARA 676 ante): General Chiropractic Council (Appeals Against Decisions of the Registrar) Rules Order 2000, SI 2000/2265, r 5(3).

12 *Ibid* r 5(4). Nothing in r 5(4), (5) (see the text to notes 13, 14 *infra*) precludes the Council deliberating in private, including deliberating in the absence of the registrar and the appellant and their legal representatives, after having heard the appellant and the registrar or such representatives: r 5(6).

13 As to the power of the General Council to appoint staff see PARA 597 ante.

14 I.e. any legal assessor or medical assessor appointed under the Chiropractors Act 1994 s 27 or s 28 (see PARAS 674-675 ante): General Chiropractic Council (Appeals Against Decisions of the Registrar) Rules Order 2000, SI 2000/2265, r 5(5). See also note 12 *supra*.



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## ***B. APPEALS AGAINST DECISIONS OF THE HEALTH COMMITTEE***

### **681. Appeals against decisions of the Health Committee.**

Any person with respect to whom a decision of the health committee<sup>1</sup> is made<sup>2</sup> may, before the end of the period of 28 days beginning with the date on which notification of the decision is sent to him, appeal against it<sup>3</sup>. No decision against which such an appeal may be made has effect before the expiry of the period within which the appeal may be made<sup>4</sup>, or the appeal is withdrawn or otherwise disposed of<sup>5</sup>.

An appeal lies to an appeal tribunal, consisting of a chairman and two other members, established for the purposes of the appeal in accordance with rules<sup>6</sup> made by the General Council<sup>7</sup>. The chairman of an appeal tribunal is to be selected in accordance with such rules<sup>8</sup>, and must be appropriately qualified<sup>9</sup>. Each of the other two members of an appeal tribunal are to be selected in accordance with the rules, one of them being a fully registered chiropractor<sup>10</sup> and the other being a registered medical practitioner<sup>11</sup>. The rules may not provide for the selection of any member of an appeal tribunal to be by the General Council<sup>12</sup>.

The General Council must make rules as to the procedure to be followed by an appeal tribunal hearing an appeal<sup>13</sup>. On any appeal, the appeal is by way of a re-hearing of the case<sup>14</sup>; the General Council is the respondent<sup>15</sup>; and the tribunal hearing the appeal has power to make any decision which the health committee had power to make<sup>16</sup>. Subject to any provision made by the rules<sup>17</sup>, an appeal tribunal sits in public<sup>18</sup>. No person may be required by any rules made under these provisions to give any evidence or produce any document or other material at a hearing held by an appeal tribunal which he could not be compelled to give or produce in civil proceedings in any court in that part of the United Kingdom<sup>19</sup> in which the hearing takes place<sup>20</sup>. An appeal tribunal has power to award costs<sup>21</sup>.

The chairman of an appeal tribunal must appoint a person approved by the members of the tribunal to act as clerk of the tribunal<sup>22</sup>.

Any expenses reasonably incurred by a tribunal, including any incurred in connection with the appointment of a clerk, are to be met by the General Council<sup>23</sup>.

1 As to the health committee see PARA 610 ante.

2 Ie under the Chiropractors Act 1994 s 23 (as amended): see PARA 651 ante.

3 Ibid s 30(1).

4 Ibid s 30(5)(a).

5 Ibid s 30(5)(b).

6 As to the making of rules see PARA 598 ante.

7 Chiropractors Act 1994 s 30(2). The rules may, in particular, make similar provision to that made by virtue of s 26(2)(d), (f)-(j) (see PARA 654 ante): s 30(4). As to the rules that have been made see the General Chiropractic Council (Health Appeal Tribunal) Rules 2000, approved by the General Chiropractic Council (Health Appeal Tribunal) Rules Order 2000, SI 2000/3214. For the meaning of 'the General Council' see PARA 591 note 1 ante.

- 8 Chiropractors Act 1994 s 30(6)(a). As to the selection of the chairman of an appeal tribunal see PARA 682 post.
- 9 le as mentioned in ibid s 27(4) (see PARA 674 note 2 ante): s 30(6)(b).
- 10 Ibid s 30(7)(a). For the meaning of 'fully registered chiropractor' see PARA 615 note 2 ante.
- 11 Ibid s 30(7)(b). As to the selection of the members of an appeal tribunal see PARA 682 post. For the meaning of 'registered medical practitioner' see PARA 4 ante.
- 12 Ibid s 30(8).
- 13 Ibid s 30(3). As to the procedure to be followed by an appeal tribunal see PARA 684 et seq post.
- 14 Ibid s 30(11)(a).
- 15 Ibid s 30(11)(b).
- 16 le under ibid s 23 (as amended): s 30(11)(c). An appeal tribunal has the same powers of interim suspension as the health committee has by virtue of s 24(1)(b) (see PARA 652 ante); and s 24 has effect in relation to suspension orders made by appeal tribunals with the necessary modifications: s 30(12).
- 17 As to such provision see PARA 684 post.
- 18 Chiropractors Act 1994 s 30(10). An appeal tribunal sits: (1) in Northern Ireland, in the case of a chiropractor whose registered address is in Northern Ireland (s 30(10)(a)); (2) in Scotland, in the case of a chiropractor whose registered address is in Scotland (s 30(10)(b)); and (3) in England and Wales, in any other case (s 30(10)(c)). For the meaning of 'registered address' see PARA 619 note 5 ante.
- 19 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.
- 20 Chiropractors Act 1994 s 30(13). As to evidence in civil proceedings see CIVIL PROCEDURE vol 11 (2009) PARA 749. As to the production of documents in civil proceedings see CIVIL PROCEDURE vol 11 (2009) PARAS 538-583.
- 21 Ibid s 30(14). As to costs generally see CIVIL PROCEDURE vol 12 (2009) PARA 1729 et seq.
- 22 Ibid s 30(9).
- 23 Ibid s 30(15). As to financial provisions relating to the General Council see PARA 599 ante.

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## **682. Notice of appeal and the establishment of the appeal tribunal.**

An appeal<sup>1</sup> must be made by giving notice<sup>2</sup> in writing<sup>3</sup> to the registrar<sup>4</sup>, specifying the decision of the health committee<sup>5</sup> in relation to which the appeal is brought<sup>6</sup>.

As soon as practicable after the registrar receives an appeal, the chairman of the General Council<sup>7</sup> must request either the chairman of the General Council of the Bar or the president of the Law Society<sup>8</sup>, or a person authorised by either of them, to select a person to act as the chairman of the appeal tribunal to hear the appeal<sup>9</sup>. The member of the tribunal selected as a fully registered chiropractor<sup>10</sup> must be willing and able to act in the appeal and is selected by the chairman of the tribunal so appointed from a list kept by the registrar of fully registered chiropractors who have agreed to sit on appeal tribunals<sup>11</sup>. The member of the tribunal selected as a registered medical practitioner<sup>12</sup> must be willing and able to act in the appeal and is selected at the request of the chairman of the tribunal by the president of the General Medical Council, or a person authorised by him<sup>13</sup>. A member of the General Council or of a committee or sub-committee of the General Council may not be appointed a member of the tribunal<sup>14</sup>. A member of the tribunal is entitled to the payment by the General Council of his reasonable fees relating to his functions in connection with the tribunal<sup>15</sup>.

1 'Appeal' means an appeal under the Chiropractors Act 1994 s 30(1) (see PARA 681 ante): General Chiropractic Council (Health Appeal Tribunal) Rules Order 2000, SI 2000/3214, r 2(1).

2 Any notice, document or other matter to be given to or served on the appellant by the clerk under the General Chiropractic Council (Health Appeal Tribunal) Rules Order 2000, SI 2000/3214, may be served by sending it by a postal service in which delivery or receipt is recorded to, or by leaving it at, the address of the appellant as appearing in the register pursuant to the Chiropractors Act 1994 s 6(1)(b) (see PARA 619 ante); or, if his last known place of residence differs from his address in the register and it appears to the clerk that, if the notice, document or other matter is sent to or left at that place of residence, it is more likely to reach him, it may be served by sending it by such a postal service to or by leaving it at his last known place of residence: General Chiropractic Council (Health Appeal Tribunal) Rules Order 2000, SI 2000/3214, r 13(1). Any other notice, document or other matter to be given to or served on a person may be sent by ordinary post: r 13(2). The address for service of the appellant for the purposes of r 13(2) is any such address or place as is mentioned in r 13(1) (treating the second reference in that provision to the clerk as a reference to the person sending the matter in question), and for the solicitor is the address at which he ordinarily practises; or such other address as any of them may specify for the purpose: r 13(3). 'The clerk' means the clerk appointed under the Chiropractors Act 1994 s 30(9) (see PARA 681 ante) in relation to the appeal in question; and 'the appellant' means the chiropractor who has made the appeal in question which is to be determined by the tribunal: General Chiropractic Council (Health Appeal Tribunal) Rules Order 2000, SI 2000/3214, r 2(1). For the meaning of 'the solicitor' see PARA 684 note 8 post.

3 For the meaning of 'writing' see PARA 20 note 22 ante.

4 For the meaning of 'the registrar' see PARA 614 note 3 ante.

5 As to the health committee see PARA 610 ante. As to the consideration of allegations by the health committee see PARA 651 et seq ante.

6 General Chiropractic Council (Health Appeal Tribunal) Rules Order 2000, SI 2000/3214, r 3.

7 References in the General Chiropractic Council (Health Appeal Tribunal) Rules Order 2000, SI 2000/3214, to the chairman of the General Council include a reference to an acting chairman exercising the functions of chairman of the General Council under the General Chiropractic Council (Constitution and Procedure) Rules Order 1999, SI 1999/1537, r 7 (see PARA 596 ante): General Chiropractic Council (Health Appeal Tribunal) Rules Order 2000, SI 2000/3214, r 2(2). For the meaning of 'the General Council' see PARA 591 note 1 ante.

8 As to the chairman of the General Council of the Bar see LEGAL PROFESSIONS vol 66 (2009) PARA 1043. As to the president of the Law Society see LEGAL PROFESSIONS vol 65 (2008) PARA 612.

9 General Chiropractic Council (Health Appeal Tribunal) Rules Order 2000, SI 2000/3214, r 4(1). The appeal tribunal established pursuant to r 4 to hear the appeal in question is referred to as 'the tribunal': see rr 2(1), 4(1). The chairman of the tribunal selected under r 4(1) must be a person who is qualified as mentioned in the Chiropractors Act 1994 s 27(4) (see PARA 674 note 2 ante) and who is willing and able to act as chairman in the appeal: General Chiropractic Council (Health Appeal Tribunal) Rules Order 2000, SI 2000/3214, r 4(2).

10 Ie the member referred to in the Chiropractors Act 1994 s 30(7)(a): see PARA 681 ante. For the meaning of 'fully registered chiropractor' see PARA 615 note 2 ante.

11 Ie appeal tribunals established under ibid s 30 (see PARA 681 ante): see the General Chiropractic Council (Health Appeal Tribunal) Rules Order 2000, SI 2000/3214, r 4(3).

12 Ie the member referred to in the Chiropractors Act 1994 s 30(7)(b): see PARA 681 ante. For the meaning of 'registered medical practitioner' see PARA 4 ante.

13 See the General Chiropractic Council (Health Appeal Tribunal) Rules Order 2000, SI 2000/3214, r 4(4). As to the president of the General Medical Council see PARA 22 ante. As to the General Medical Council see PARA 13 ante.

14 Ibid r 4(5). As to the membership of the General Council see PARA 592 ante. As to the committees of the General Council see PARAS 591, 602 et seq ante. As to the power of the General Council to appoint sub-committees see PARA 597 ante.

15 Ibid r 4(6). In the event of a disagreement as to what those fees should be, the fees are to be determined by a person appointed for the purpose:

158 (1) in the case of the chairman of the tribunal, by the chairman of the Bar Council or, as the case may be, the president of the Law Society, according to the person making the selection under r 4(1) (see the text to notes 7-9 supra), or a person authorised by the said chairman or president (r 4(6)(a));

159 (2) in the case of the member appointed under r 4(3) (see the text to notes 10-11 supra), by the president of the Law Society or a person authorised by him (r 4(6)(b));

160 (3) in the case of the member appointed under r 4(4) (see the text to notes 12-13 supra), by the president of the General Medical Council or a person authorised by him (r 4(6)(c)),

and the reasonable costs of any such determination are payable by the parties to the disagreement in such proportions as the person determining the issue directs: see r 4(6).

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 APPEALS AGAINST DECISIONS OF THE HEALTH COMMITTEE/683. Notice of hearing.

### **683. Notice of hearing.**

As soon as practicable after the tribunal has been established<sup>1</sup> and a clerk appointed<sup>2</sup>, the clerk must give notice<sup>3</sup> to the appellant<sup>4</sup> of the date, time and place of the hearing of the tribunal which will consider the appeal<sup>5</sup>. Such a notice must be given not later than the beginning of the period of 42 days ending with the date fixed for the opening of the hearing<sup>6</sup>. The chairman of the tribunal<sup>7</sup> may, of his own motion or on the application of a party to the proceedings, postpone a hearing of which notice has been given before the hearing begins; and, if he does so, the clerk must as soon as practicable inform the parties concerned of the postponement and give notice of the further date, time and place fixed for the opening of the hearing<sup>8</sup>.

1    Ie in accordance with the General Chiropractic Council (Health Appeal Tribunal) Rules Order 2000, SI 2000/3214, r 4: see PARA 682 ante.

2    Ie under the Chiropractors Act 1994 s 30(9): see PARA 681 ante.

3    As to the service of notices see PARA 682 note 2 ante.

4    For the meaning of 'the appellant' see PARA 682 note 2 ante.

5    General Chiropractic Council (Health Appeal Tribunal) Rules Order 2000, SI 2000/3214, r 5(1). For the meaning of 'appeal' see PARA 682 note 1 ante.

6    Ibid r 5(2). The notice must specify the requirement in r 8(3) (see PARA 686 post) that the appellant provide the list, statement and notice there mentioned: r 5(2).

7    As to the appointment of the chairman of the tribunal see PARA 682 ante.

8    General Chiropractic Council (Health Appeal Tribunal) Rules Order 2000, SI 2000/3214, r 6.



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#### **684. Procedure at the hearing.**

At the opening of the hearing: (1) in the case of an allegation appeal<sup>1</sup>, the clerk<sup>2</sup> reads out the allegation<sup>3</sup> and briefly states the nature of the order made by the health committee, and indicates whether the appeal<sup>4</sup> relates only to the order made or is against the finding that the allegation is well founded<sup>5</sup>; and (2) in the case of a review appeal<sup>6</sup>, the clerk briefly states the nature of the decision appealed against<sup>7</sup>. The order of proceedings on a hearing of the appeal is as follows<sup>8</sup>: (a) the solicitor opens the case for the General Council<sup>9</sup>, and calls or produces evidence<sup>10</sup> in support of the case of the General Council as respondent to the appeal<sup>11</sup>; (b) the appellant<sup>12</sup> presents his case and may call or produce evidence<sup>13</sup>; and (c) the tribunal<sup>14</sup> hears such further submissions from the parties<sup>15</sup> and receives such further evidence as it considers relevant, having regard to the justice of the case and the public interest<sup>16</sup>. Any witness called to give oral evidence may be cross-examined and re-examined, and may be questioned by the tribunal<sup>17</sup>. At any hearing, the appellant is entitled to be legally represented<sup>18</sup>.

The hearing is to take place<sup>19</sup> in the presence of the parties or their representatives and in public<sup>20</sup>. However, the tribunal may, if it is satisfied that it would be in the interests of the person making the allegation, or of any person giving evidence or of any patient, or if it is of the view that the evidence in question relates to matters properly to be treated as confidential between the appellant and a medical practitioner, determine that the public should be excluded from being present in any part of the proceedings<sup>21</sup>.

If the appellant does not appear and the tribunal is satisfied that a notice has been given to him<sup>22</sup>, it may dismiss the appeal, or adjourn to give a further opportunity to the appellant to appear, or determine that proceedings on the appeal be heard and determined in the absence of the appellant<sup>23</sup>.

1 'Allegation appeal' means an appeal with respect to a decision of the health committee under the Chiropractors Act 1994 s 23(2) (see PARA 651 ante): General Chiropractic Council (Health Appeal Tribunal) Rules Order 2000, SI 2000/3214, r 2(1). As to the health committee see PARA 610 ante.

2 For the meaning of 'the clerk' see PARA 682 note 2 ante.

3 'The allegation' means the allegation falling within the Chiropractors Act 1994 s 20(1) (see PARA 646 ante) to which an allegation appeal relates: General Chiropractic Council (Health Appeal Tribunal) Rules Order 2000, SI 2000/3214, r 2(1).

4 For the meaning of 'appeal' see PARA 682 note 1 ante.

5 General Chiropractic Council (Health Appeal Tribunal) Rules Order 2000, SI 2000/3214, r 7(2)(a).

6 'Review appeal' means an appeal with respect to a decision of the health committee under the Chiropractors Act 1994 s 23(4)-(6) (as amended) (see PARA 651 ante): General Chiropractic Council (Health Appeal Tribunal) Rules Order 2000, SI 2000/3214, r 2(1).

7 Ibid r 7(2)(b).

8 See ibid r 7(3).

9 'The solicitor' means a solicitor appointed by the registrar for the purposes of presenting the General Council's case to a hearing held by the tribunal: ibid r 2(1). For the meaning of 'the registrar' see PARA 614 note 3 ante. For the meaning of 'the General Council' see PARA 591 note 1 ante.

10 As to evidence see PARA 686 post.

11 General Chiropractic Council (Health Appeal Tribunal) Rules Order 2000, SI 2000/3214, r 7(3)(a). The solicitor may, with the approval of the chairman of the General Council, instruct counsel to present the case for the Council: r 11(2). As to references to the chairman of the General Council see PARA 682 note 7 ante.

12 For the meaning of 'the appellant' see PARA 682 note 2 ante.

13 General Chiropractic Council (Health Appeal Tribunal) Rules Order 2000, SI 2000/3214, r 7(3)(b).

14 For the meaning of 'the tribunal' see PARA 682 note 9 ante.

15 'Party' means the appellant or the solicitor; and references to 'the parties' are to be construed accordingly: General Chiropractic Council (Health Appeal Tribunal) Rules Order 2000, SI 2000/3214, r 2(1).

16 Ibid r 7(3)(c).

17 Ibid r 7(4).

18 Ibid r 11(1).

19 Ie subject to ibid r 7(1) (see the text to notes 22, 23 infra), r 10(5), (6) (see PARA 685 post) and r 9(2), (3) (see the text and note 21 infra).

20 Ibid r 9(1).

21 Ibid r 9(2). The tribunal may also deliberate in the absence of the parties and their representatives and of the public at any time: see r 9(3).

22 Ie under ibid r 5(1) or r 6, as the case may be: see PARA 683 ante.

23 Ibid r 7(1).

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### **685. Adjournment of hearing.**

The tribunal<sup>1</sup> may adjourn the hearing<sup>2</sup> from time to time as it thinks fit<sup>3</sup>. In the case of an allegation appeal<sup>4</sup>, the tribunal may in particular adjourn any hearing after it has determined that an allegation<sup>5</sup> is well founded for the purposes of allowing time to deliberate on the terms of any conditions of practice order<sup>6</sup> that it is minded to make<sup>7</sup>. Unless adjourned proceedings are to resume at a time, date or place not determined at the time of adjournment, upon adjourning the tribunal must announce the time, date and place to which the proceeding is adjourned<sup>8</sup>.

If, on a hearing resuming after an adjournment to give a further opportunity to the appellant to appear<sup>9</sup>, the appellant does not appear, the tribunal may, if satisfied that notice<sup>10</sup> was duly given to him, act in any manner provided for<sup>11</sup>. If, on a hearing resuming after adjournment in any other case, a party<sup>12</sup> who was present in the earlier proceedings is absent, the tribunal may proceed in that party's absence if it is satisfied that the time, date and place of the resumption were announced<sup>13</sup> or notice<sup>14</sup> was duly given to the party<sup>15</sup>.

1 For the meaning of 'the tribunal' see PARA 682 note 9 ante.

2 As to the procedure at the hearing see PARA 684 ante.

3 General Chiropractic Council (Health Appeal Tribunal) Rules Order 2000, SI 2000/3214, r 10(1).

4 For the meaning of 'allegation appeal' see PARA 684 note 1 ante.

5 For the meaning of 'the allegation' see PARA 684 note 3 ante.

6 As to conditions of practice orders see PARA 651 ante. As to the decision making powers of the tribunal see PARA 681 ante.

7 General Chiropractic Council (Health Appeal Tribunal) Rules Order 2000, SI 2000/3214, r 10(2).

8 Ibid r 10(3). If an adjournment of proceedings is to a time, date or place not determined at the time of adjournment or is an adjournment under r 7(1) to give a further opportunity to the appellant to appear (see PARA 684 ante), the clerk must secure that reasonable notice is given to the parties of the time, date or place of the resumption: r 10(4). For the meaning of 'the parties' see PARA 684 note 15 ante.

9 Ie an adjournment under ibid r 7(1): see PARA 684 ante.

10 Ie under ibid r 10(4): see note 8 supra.

11 Ie provided for in r 7(1): r 10(5).

12 For the meaning of 'party' see PARA 684 note 15 ante.

13 Ie under the General Chiropractic Council (Health Appeal Tribunal) Rules Order 2000, SI 2000/3214, r 10(3): see the text to note 8 supra.

14 Ie under ibid r 10(4): see note 8 supra.

15 Ibid r 10(6).

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## **686. Documents and evidence.**

Subject to the provisions described below, the tribunal<sup>1</sup> may consider the appeal<sup>2</sup> on the basis of certain reports, written statements and documents submitted in evidence to it without the authors being called to give oral evidence<sup>3</sup>. The solicitor<sup>4</sup> must secure that, not less than 28 days before the opening of any hearing, the appellant<sup>5</sup> is provided with a list of every report, written statement or other document<sup>6</sup> which is to be produced in evidence, a statement as to which, if any, of those he intends to have adduced by way of oral evidence by its author, and a notice requiring the appellant to notify him before the end of the period of 14 days beginning with the day on which that notice was sent to the appellant whether the appellant requires any other author of a report, statement or other document so listed to attend the hearing to give oral evidence as to the matters with which it deals<sup>7</sup>. The appellant must secure that, not less than 28 days before the opening of any hearing, the solicitor is provided with a list of every report, written statement or other document<sup>8</sup> which is to be produced in evidence, a statement as to which, if any, of those he intends to have adduced by way of oral evidence by its author, and a notice requiring the solicitor to notify him before the end of the period of 14 days beginning with the day on which that notice was sent to the solicitor whether the solicitor requires any other author of a report, statement or other document so listed to attend the hearing to give oral evidence as to the matters with which it deals<sup>9</sup>. Where notification is given by the appellant or by the solicitor requiring the author of a report, statement or other document to attend to give oral evidence, the report, statement or other document must not be taken into account by the tribunal in reaching its decision on the appeal without such oral evidence unless the tribunal is of the view that, having regard to all the circumstances, including the difficulty or expense of obtaining such attendance, and the justice of the case, it is proper so to do<sup>10</sup>.

A party may admit a fact, and a fact so admitted may be received in evidence without further proof<sup>11</sup>.

The tribunal may require a witness to appear before it and give evidence:

- 863 (1) on the application of the appellant, notwithstanding the absence of any notification by the appellant<sup>12</sup>;
- 864 (2) on the application of the solicitor, notwithstanding the absence of any notification by the solicitor<sup>13</sup>; or
- 865 (3) of its own motion<sup>14</sup>,

and the tribunal may require a person to attend before it to produce documents<sup>15</sup>. The tribunal may administer oaths<sup>16</sup>.

No person may be required under these provisions to give evidence or produce any document or other material at any hearing held by the tribunal which he could not be compelled to give or produce in civil proceedings in any court in that part of the United Kingdom<sup>17</sup> in which the hearing takes place<sup>18</sup>.

1 For the meaning of 'the tribunal' see PARA 682 note 9 ante.

2 For the meaning of 'appeal' see PARA 682 note 1 ante.

3 General Chiropractic Council (Health Appeal Tribunal) Rules Order 2000, SI 2000/3214, r 8(1). The reports concerned are:

- 161 (1) reports, written statements and other documents prepared or procured for the purposes of the Chiropractors Act 1994 s 20(9)(b) (see PARA 647 ante) or the General Chiropractic Council (Health Committee) Rules 2000, SI 2000/3291, r 6(1), (2) (see PARA 666 ante) or r 15(1) (see PARA 669 ante) or procured by the solicitor for the purposes of the appeal, including any report prepared under the General Chiropractic Council (Investigating Committee) Rules 2000, SI 2000/2916, r 4(3) (see PARA 647 ante) (General Chiropractic Council (Health Appeal Tribunal) Rules Order 2000, SI 2000/3214, r 8(1)(a));
- 162 (2) reports, written statements and other documents prepared on behalf of the appellant (r 8(1)(b));
- 163 (3) such other reports, written statements and documents as the tribunal determines, after hearing the views of the parties, and having regard to all the circumstances and the justice of the case, can properly be admitted without such oral evidence (r 8(1)(c)).

4 For the meaning of 'the solicitor' see PARA 684 note 8 ante.

5 For the meaning of 'the appellant' see PARA 682 note 2 ante.

6 *Ie* under the General Chiropractic Council (Health Appeal Tribunal) Rules Order 2000, SI 2000/3214, r 8(1)(a): see note 3 supra.

7 *Ibid* r 8(2). Any list provided by a party under r 8(2), (3) (see the text to note 9 *infra*) must be accompanied by a copy of any report, statement or document listed of which the other party has not previously been sent a copy: r 8(4). The solicitor and the appellant must, as soon as practicable after supplying the other with the list referred to in r 8(2), (3), send to the clerk three copies of the list and of the reports, statements and documents referred to in it; and the clerk must secure that the members of the tribunal are provided with a copy of the same: r 8(5). For the meaning of 'the clerk' see PARA 682 note 2 ante.

8 *Ie* under *ibid* r 8(1)(b): see note 3 supra.

9 *Ibid* r 8(3). See also note 7 supra.

10 *Ibid* r 8(6).

11 *Ibid* r 8(9). The posting or leaving of a notice under *ibid* r 13(1) (see PARA 682 note 2 ante) for the purposes of r 5(1), r 6 (see PARA 683 ante), or r 10(4) (see PARA 685 note 8 ante) may be proved by a certificate in writing purporting to be signed by the person posting or leaving it, to which there must be annexed (in the case of posting) any confirmation of the posting issued by or on behalf of the Post Office or other postal operator: r 8(11). For the meaning of 'writing' see PARA 20 note 22 ante.

12 *Ie* notification under *ibid* r 8(2) (see the text to note 7 supra): r 8(7)(a).

13 *Ie* notification under *ibid* r 8(3) (see the text to note 9 supra): r 8(7)(b).

14 *Ibid* r 8(7)(c).

15 *Ibid* r 8(7).

16 *Ibid* r 8(8). For the meaning of 'oath' see PARA 153 note 4 ante. As to oaths, affirmations and declarations see CIVIL PROCEDURE vol 11 (2009) PARA 1021 et seq.

17 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

18 General Chiropractic Council (Health Appeal Tribunal) Rules Order 2000, SI 2000/3214, r 8(10). As to evidence in civil proceedings see CIVIL PROCEDURE vol 11 (2009) PARA 749 et seq. As to the production of documents in civil proceedings see CIVIL PROCEDURE vol 11 (2009) PARAS 538-583.

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### **687. Notification of decision.**

After the tribunal<sup>1</sup> has made its decision on the appeal<sup>2</sup>, it must announce that decision and thereupon close the hearing<sup>3</sup>. As soon as practicable after that announcement, the clerk<sup>4</sup> must notify in writing: (1) the appellant<sup>5</sup> of the tribunal's decision and its reasons for reaching it, and of the appellant's right of appeal on a point of law<sup>6</sup>; and (2) the General Council<sup>7</sup> and, in the case of an allegation appeal<sup>8</sup>, the person making the allegation<sup>9</sup> of the tribunal's decision and its reasons for reaching it<sup>10</sup>. If the tribunal dismisses an appeal because the appellant has not appeared<sup>11</sup>, the clerk must as soon as practicable notify in writing the appellant, the General Council, and, in the case of an allegation appeal, the person making the allegation, of that fact<sup>12</sup>.

1 For the meaning of 'the tribunal' see PARA 682 note 9 ante.

2 Ie including, so far as relevant, its decision on any steps to be taken under the Chiropractors Act 1994 s 23(2) (see PARA 651 ante) as applied by s 30(11)(c) (see PARA 681 ante): General Chiropractic Council (Health Appeal Tribunal) Rules Order 2000, SI 2000/3214, r 12(1). For the meaning of 'appeal' see PARA 682 note 1 ante.

3 Ibid r 12(1).

4 For the meaning of 'the clerk' see PARA 682 note 2 ante.

5 For the meaning of 'the appellant' see PARA 682 note 2 ante.

6 Ie the right of appeal under the Chiropractors Act 1994 s 31 (see PARA 688 post): General Chiropractic Council (Health Appeal Tribunal) Rules Order 2000, SI 2000/3214, r 12(1)(a).

7 For the meaning of 'the General Council' see PARA 591 note 1 ante.

8 For the meaning of 'allegation appeal' see PARA 684 note 1 ante.

9 For the meaning of 'the allegation' see PARA 684 note 3 ante.

10 General Chiropractic Council (Health Appeal Tribunal) Rules Order 2000, SI 2000/3214, r 12(1)(b).

11 Ie under ibid r 7(1) (see PARA 684 ante) or r 10(5) (see PARA 685 ante).

12 Ibid r 12(2).

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### **C. APPEALS AGAINST DECISIONS OF THE PROFESSIONAL CONDUCT COMMITTEE AND APPEAL TRIBUNALS**

#### **688. Appeals.**

Any person with respect to whom a decision of the professional conduct committee is made<sup>1</sup>, or a decision is made by an appeal tribunal hearing an appeal<sup>2</sup>, may, before the end of the period of 28 days beginning with the date on which notification of the decision is served on him, appeal against it to the relevant court<sup>3</sup>. No such decision has effect before the expiry of the period within which an appeal against the decision may be made<sup>4</sup> or, where an appeal against the decision has been duly made, before the appeal is withdrawn or otherwise disposed of<sup>5</sup>. On an appeal, the General Council<sup>6</sup> is the respondent<sup>7</sup>.

The court may, on an appeal: (1) dismiss the appeal<sup>8</sup>; (2) allow the appeal and quash the decision appealed against<sup>9</sup>; (3) substitute for the decision appealed against any other decision which could have been made by the professional conduct committee or, as the case may be, by the health committee<sup>10</sup>; or (4) remit the case to the committee or appeal tribunal concerned to dispose of the case in accordance with the directions of the court<sup>11</sup>. The court may make such order as to costs as it thinks fit<sup>12</sup>.

1     Ie under the Chiropractors Act 1994 s 8 (see PARA 629 ante) or s 22 (see PARA 649 ante): s 31(1)(a). As to the professional conduct committee see PARA 609 ante.

2     Ie under *ibid* s 30 (see PARA 681 ante): s 31(1)(b). As to the procedure before an appeal tribunal see PARA 682 et seq ante.

3     Ibid s 31(1) (amended by the National Health Service Reform and Health Care Professions Act 2002 s 34(1), (6)(a)). 'The relevant court' in the case of a person whose address in the register is (or if he were registered would be) in Scotland, means the Court of Session; in the case of a person whose address in the register is (or if he were registered would be) in Northern Ireland, means the High Court of Justice in Northern Ireland; and in the case of any other person, means the High Court of Justice in England and Wales: Chiropractors Act 1994 s 31(1A) (added by the National Health Service Reform and Health Care Professions Act 2002 s 34(1), (6)(b)). For the meaning of 'the register' see PARA 614 note 4 ante. For the meaning of 'registered' see PARA 615 note 1 ante. As to the High Court of Justice in England and Wales see COURTS vol 10 (Reissue) PARA 602 et seq. As to appeals generally see CPR Pt 52. An appeal is by way of re-hearing: Practice Direction-- Appeals PD52 para 22.3(1)(h), (2).

The court must give proper weight to the views of the committee, including those on the appropriate sentence; on questions of professional competence the committee's views are to be accorded the very greatest of weight, whereas on questions which do not so much depend upon professional expertise, the court may be in a better position to be able to form a judgment for itself; however, the court must never act unless it is plain that in the circumstances the decision of the committee was one which was clearly wrong: *Gage v General Chiropractic Council* [2004] EWHC 2762 (Admin), [2004] All ER (D) 14 (Nov), following *Moody v General Osteopathic Council* [2004] EWHC 967 (Admin), [2004] All ER (D) 82 (Apr). See also the cases cited in PARAS 188 note 14, 478 notes 5, 6 ante.

4     Chiropractors Act 1994 s 31(2)(a).

5     Ibid s 31(2)(b). See *Gage v General Chiropractic Council* [2004] EWHC 2762 (Admin), [2004] All ER (D) 14 (Nov), where the court was unable to extend suspension for a period ending on a specified date and the practitioner therefore served no period of suspension at all.

6     For the meaning of 'the General Council' see PARA 591 note 1 ante.

7 Chiropractors Act 1994 s 31(6).

8 Ibid s 31(8)(a) (s 31(8) substituted by the National Health Service Reform and Health Care Professions Act 2002 s 34(1), (6)(d)).

9 Chiropractors Act 1994 s 31(8)(b) (as substituted: see note 8 supra).

10 Ibid s 31(8)(c) (as substituted: see note 8 supra). As to the decisions which can be made by the professional conduct committee see PARAS 649, 652 ante. As to the decisions which can be made by the health committee see PARAS 651-652 ante. As to the health committee generally see PARA 610 ante.

11 Ibid s 31(8)(d) (as substituted: see note 8 supra).

12 Ibid s 31(8) (as substituted: see note 8 supra). See *Gage v General Chiropractic Council* [2004] EWHC 2762 (Admin), [2004] All ER (D) 14 (Nov). As to costs generally see CIVIL PROCEDURE vol 12 (2009) PARA 1729 et seq.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/5. CHIROPRACTORS/(5) LIABILITY AND OFFENCES/689. Negligence.

## **(5) LIABILITY AND OFFENCES**

### **689. Negligence.**

The principles governing the liability of chiropractors towards their patients are precisely the same as those which govern the liability of medical practitioners towards their patients<sup>1</sup>. Whether there is any negligence by a chiropractor is to be tested against the standard of the ordinary skilled chiropractor exercising and professing to have the special skill of that discipline<sup>2</sup>.

<sup>1</sup> For the principles governing the liability of medical practitioners see PARA 196 et seq ante. As to negligence generally see NEGLIGENCE.

<sup>2</sup> See *O'Loughlin v Greig* (5 November 1999, unreported), QBD.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/5. CHIROPRACTORS/(5) LIABILITY AND OFFENCES/690. Offences.

### **690. Offences.**

A person who, whether expressly or by implication, describes himself as a chiropractor, chiropractic practitioner, chiropractitioner, chiropractic physician, or any other kind of chiropractor, is guilty of an offence unless he is a registered chiropractor<sup>1</sup>. A person who, without reasonable excuse, fails to comply with any requirement imposed by the professional conduct committee<sup>2</sup>, the health committee<sup>3</sup>, or an appeal tribunal hearing an appeal<sup>4</sup> under rules made by virtue of the Chiropractors Act 1994<sup>5</sup> is guilty of an offence<sup>6</sup>.

A person guilty of an offence under these provisions is liable on summary conviction to a fine<sup>7</sup>.

1 Chiropractors Act 1994 s 32(1). For the meaning of 'registered chiropractor' see PARA 595 note 5 ante.

2 Ibid s 32(2)(a). As to the professional conduct committee see PARA 609 ante.

3 Ibid s 32(2)(b). As to the health committee see PARA 610 ante.

4 Ie under ibid s 30 (see PARA 681 ante): s 32(2)(c).

5 Ie by virtue of ibid s 26(2)(h) (see PARA 654 ante) or under any corresponding rules made by virtue of s 30(4) (see PARA 681 note 7 ante).

6 Ibid s 32(2).

7 Ibid s 32(3). The penalty is a fine not exceeding level 5 on the standard scale: see s 32(3). As to the standard scale see PARA 185 note 11 ante. As to the application of the Rehabilitation of Offenders Act 1974 to chiropractors see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 687.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/(1) THE NURSING AND MIDWIFERY COUNCIL/691. The Nursing and Midwifery Council and its committees.

## **6. NURSES, MIDWIVES AND NURSES AGENCIES**

### **(1) THE NURSING AND MIDWIFERY COUNCIL**

#### **691. The Nursing and Midwifery Council and its committees.**

Provision is made for the constitution of the Nursing and Midwifery Council, which is a body corporate<sup>1</sup>.

There are four statutory committees of the Council<sup>2</sup>, known as the investigating committee<sup>3</sup>, the conduct and competence committee<sup>4</sup>, the health committee<sup>5</sup>, and the midwifery committee<sup>6</sup>. Each of these statutory committees has the functions conferred on it by the Nursing and Midwifery Order 2001<sup>7</sup>. If it appears to the Council that any statutory committee is failing to perform its functions adequately, the Council may give a direction as to the proper performance of those functions<sup>8</sup>. Where the Council, having given such a direction, is satisfied that the committee has failed to comply with the direction, it may exercise any power of that committee or do any act or other thing authorised to be done by that committee<sup>9</sup>.

The Council may establish such other committees as it considers appropriate in connection with the discharge of its functions and delegate any of its functions to them, other than any power to make rules<sup>10</sup>.

1 Nursing and Midwifery Order 2001, SI 2002/253, art 3(1). As to the constitution of the Council see PARAS 694-695 post. As to the functions and powers of the Council see PARAS 692-693 post. As to bodies corporate generally see COMPANIES; CORPORATIONS.

2 The four committees are referred to as 'the statutory committees': see *ibid* arts 2, 3(10), Sch 4. As to the constitution and membership of the statutory committees see PARAS 699-700, 708 post.

3 *Ibid* art 3(9)(a). As to the functions of the investigating committee see PARA 757 post.

4 *Ibid* art 3(9)(b). As to the functions of the conduct and competence committee see PARA 761 post.

5 *Ibid* art 3(9)(c). As to the functions of the health committee see PARA 762 post.

6 *Ibid* art 3(9)(d). As to the midwifery committee see PARA 708 post.

7 *ie* by the Nursing and Midwifery Order 2001, SI 2002/253 (as amended): art 3(11).

8 *Ibid* art 3, Sch 1 para 15(4).

9 *Ibid* Sch 1 para 15(5).

10 *Ibid* art 3(12). In appointing non-Council members to any committee set up under art 3(12), the Council must have regard, where appropriate and subject to the other provisions of the Nursing and Midwifery Order 2001, SI 2002/253 (as amended), to the guidance issued by the Commissioner for Public Appointments: Sch 1 para 13(1). The Council must ensure that such members of the committee who are not Council members have such qualifications, interests or experience as, in the opinion of the Council, are relevant to the field with which the committee is mainly concerned: Sch 1 para 13(2). As to the Commissioner for Public Appointments see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 953.

#### **UPDATE**

**691-697 The Nursing and Midwifery Council and its committees ... The president**

The Nursing and Midwifery Order 2001, SI 2002/253, Sch 1 paras 1, 2, 8 are amended by SI 2008/1485 so as to make temporary measures pending the reconstitution of the Nursing and Midwifery Council by order of the Privy Council (see SI 2002/253 art 3(7A), Sch 1 paras 1A, 1B (art 3(7A) added, Sch 1 paras 1A, 1B substituted for Sch 1 Pt 1 (paras 1-11) by SI 2008/1485; Sch 1 para 1B amended by SI 2009/1182). For further transitional provision relating to the cancellation of elections that would otherwise have been held in 2008 and 2009, see the Nursing and Midwifery (Amendment) Order 2008, SI 2008/1485, art 3. See now the Nursing and Midwifery Council (Constitution) Order 2008, SI 2008/2553.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/(1) THE NURSING AND MIDWIFERY COUNCIL/692. Functions of the Council.

## **692. Functions of the Council.**

The principal functions of the Nursing and Midwifery Council<sup>1</sup> are to establish from time to time standards of education, training, conduct and performance for nurses and midwives and to ensure the maintenance of those standards<sup>2</sup>. The main objective of the Council in exercising its functions is to safeguard the health and well-being of persons using or needing the services of registrants<sup>3</sup>. In exercising its functions, the Council must: (1) have proper regard to the interests of those persons and of all registrants and prospective registrants in each of the countries of the United Kingdom<sup>4</sup> and to any differing considerations applying to the professions of nursing and midwifery and to groups within them<sup>5</sup>; and (2) co-operate wherever reasonably practicable with: (a) employers and prospective employers of registrants<sup>6</sup>; (b) persons who provide, assess or fund education or training for registrants or prospective registrants, or who propose to do so<sup>7</sup>; (c) persons who are responsible for regulating or co-ordinating the regulation of other health or social care professions, or of those who carry out activities in connection with the services provided by those professions or the professions of nursing and midwifery<sup>8</sup>; and (d) persons responsible for regulating services in the provision of which registrants are engaged<sup>9</sup>. The Council must consult the Privy Council, or such person as the Privy Council may designate, at least once in each calendar year on the way in which it proposes to exercise its functions in respect of such period as the Privy Council or the designated person, as the case may be, may specify<sup>10</sup>.

The Council must inform and educate registrants, and must inform the public, about its work<sup>11</sup>. Before establishing any standards or giving any guidance<sup>12</sup>, the Council must consult representatives of any group of persons it considers appropriate, including, as it sees fit, representatives of registrants or classes of registrant<sup>13</sup>, employers of registrants<sup>14</sup>, users of the services of registrants<sup>15</sup>, and persons providing, assessing or funding education or training for registrants or prospective registrants<sup>16</sup>. The Council must publish any standards it establishes and any guidance it gives<sup>17</sup>.

The Council is appointed as competent authority for the purposes of certain European Union legislation relating to the professions of nursing and midwifery<sup>18</sup>.

1 As to the creation of the Nursing and Midwifery Council see PARA 691 ante.

2 Nursing and Midwifery Order 2001, SI 2002/253, art 3(2). As to education and training see PARA 741 et seq post. As to conduct and performance see PARA 747 post. As to regulation of the practice of midwifery see PARA 708 post.

The Council has such other functions as are conferred on it by the Nursing and Midwifery Order 2001, SI 2002/253, or as may be provided by the Privy Council by order: art 3(3). Before making any such order, the Privy Council must consult the Nursing and Midwifery Council: art 3(6). At the date at which this volume states the law no such order had been made. As to the exercise by the Privy Council of its powers under the Nursing and Midwifery Order 2001, SI 2002/253, see PARA 706 post. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

3 Ibid art 3(4). For the meaning of 'registrant' see PARA 717 note 11 post.

4 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

5 Nursing and Midwifery Order 2001, SI 2002/253, art 3(5)(a).

6 Ibid art 3(5)(b)(i).

7 Ibid art 3(5)(b)(ii).

8 Ibid art 3(5)(b)(iii).

9 Ibid art 3(5)(b)(iv).

10 Ibid art 3(7).

11 Ibid art 3(13).

12 The provisions of ibid art 3(14), (15) (see the text and notes 13-17 infra) do not apply to guidance given to an individual which is particular to him: art 3(16).

13 Ibid art 3(14)(a).

14 Ibid art 3(14)(b).

15 Ibid art 3(14)(c).

16 Ibid art 3(14)(d).

17 Ibid art 3(15).

18 Ibid art 40, Sch 3 para 1(1). As to the specific obligations of the Council in this respect see Sch 3 paras 1(2)-(4). The Secretary of State may give directions to the Council in connection with its functions as competent authority, and any other of its functions which arise from Community obligations and which relate to United Kingdom or other European qualifications, or to registration by virtue of any qualifications; and it is the duty of the Council to comply with any such directions: Sch 3 para 1(5). Such directions may be as to matters of administration only: Sch 3 para 1(6). As to the Secretary of State see PARA 5 ante. For the meaning of 'Community obligation' see the European Communities Act 1972 s 1, Sch 1 Pt II; and the Interpretation Act 1978 s 5, Sch 1. As to registration see PARA 721 et seq post.

## UPDATE

### **691-697 The Nursing and Midwifery Council and its committees ... The president**

The Nursing and Midwifery Order 2001, SI 2002/253, Sch 1 paras 1, 2, 8 are amended by SI 2008/1485 so as to make temporary measures pending the reconstitution of the Nursing and Midwifery Council by order of the Privy Council (see SI 2002/253 art 3(7A), Sch 1 paras 1A, 1B (art 3(7A) added, Sch 1 paras 1A, 1B substituted for Sch 1 Pt 1 (paras 1-11) by SI 2008/1485; Sch 1 para 1B amended by SI 2009/1182). For further transitional provision relating to the cancellation of elections that would otherwise have been held in 2008 and 2009, see the Nursing and Midwifery (Amendment) Order 2008, SI 2008/1485, art 3. See now the Nursing and Midwifery Council (Constitution) Order 2008, SI 2008/2553.

### **692 Functions of the Council**

TEXT AND NOTES 4-9--SI 2002/253 art 3(5) now art 3(5), (5A), (5B) (substituted by SI 2008/1485).

TEXT AND NOTE 10--SI 2002/253 art 3(7) revoked: SI 2008/1485.

NOTE 18--See SI 2002/253 arts 39, 39A, 40, Schs 2A, 3 (arts 39, 40, Sch 3 substituted, art 39A, Sch 2A added by SI 2007/3101).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/(1) THE NURSING AND MIDWIFERY COUNCIL/693. Powers of the Council.

### **693. Powers of the Council.**

The Nursing and Midwifery Council<sup>1</sup> may do anything<sup>2</sup> which appears to it to be necessary or expedient for the purpose of, or in connection with, the performance of its functions<sup>3</sup>. In particular, the Council has power: (1) to borrow<sup>4</sup>; (2) to appoint such staff as it may determine<sup>5</sup>; (3) to pay its staff such salaries, allowances and expenses as it may determine<sup>6</sup>; (4) to make such provision for the payment of such pensions, allowances or gratuities, or such contributions or payments towards provision for such pensions, allowances or gratuities, to or in respect of its staff as it may determine<sup>7</sup>; (5) to make such provision in respect of its members and members of its committees and sub-committees<sup>8</sup> as it may determine for the payment of fees and allowances, including the payment of allowances to employers of such members for the purposes of enabling the members to perform their functions as members<sup>9</sup>, and for the reimbursement of such expenses as the members may reasonably have incurred in the course of carrying out those functions<sup>10</sup>; (6) to establish such sub-committees of any of its committees as it may determine<sup>11</sup>; (7) to regulate the procedure of any of its committees or their sub-committees<sup>12</sup>; (8) to abolish any of its committees, other than a statutory committee<sup>13</sup>, or any sub-committee of any of its committees<sup>14</sup>.

The powers of the Council may be exercised even though there is a vacancy among its members<sup>15</sup>.

1 As to the creation of the Nursing and Midwifery Council see PARA 691 ante.

2 Ie subject to any provision made by or under the Nursing and Midwifery Order 2001, SI 2002/253 (as amended).

3 Ibid art 3, Sch 1 para 15(1).

4 Ibid Sch 1 para 15(2)(a). As to the finances and accounts of the Council see PARA 703 post.

5 Ibid Sch 1 para 15(2)(b). The Council may not employ any member of the Council or its committees or sub-committees (see note 8 infra): Sch 1 para 15(3).

6 Ibid Sch 1 para 15(2)(c).

7 Ibid Sch 1 para 15(2)(d).

8 As to the membership of the Council see PARAS 694-695 post; and as to its committees see PARA 691 ante.

9 Nursing and Midwifery Order 2001, SI 2002/253, Sch 1 para 15(2)(e)(i).

10 Ibid Sch 1 para 15(2)(e)(ii).

11 Ibid Sch 1 para 15(2)(f).

12 Ibid Sch 1 para 15(2)(g). As to the procedure of committees and sub-committees see PARA 698 post. As to the power to direct a statutory committee (see note 13 infra) to carry out its functions see PARA 691 ante.

13 For the meaning of 'the statutory committees' see PARA 691 note 2 ante.

14 Nursing and Midwifery Order 2001, SI 2002/253, Sch 1 para 15(2)(h).

15 Ibid Sch 1 para 15(6). As to the appointment of members see PARAS 694-695 post.

**UPDATE****691-697 The Nursing and Midwifery Council and its committees ... The president**

The Nursing and Midwifery Order 2001, SI 2002/253, Sch 1 paras 1, 2, 8 are amended by SI 2008/1485 so as to make temporary measures pending the reconstitution of the Nursing and Midwifery Council by order of the Privy Council (see SI 2002/253 art 3(7A), Sch 1 paras 1A, 1B (art 3(7A) added, Sch 1 paras 1A, 1B substituted for Sch 1 Pt 1 (paras 1-11) by SI 2008/1485; Sch 1 para 1B amended by SI 2009/1182). For further transitional provision relating to the cancellation of elections that would otherwise have been held in 2008 and 2009, see the Nursing and Midwifery (Amendment) Order 2008, SI 2008/1485, art 3. See now the Nursing and Midwifery Council (Constitution) Order 2008, SI 2008/2553.

**693 Powers of the Council**

TEXT AND NOTE 12--SI 2002/253 Sch 1 para 15(2)(g) revoked: SI 2008/1485.

TEXT AND NOTE 15--SI 2002/253 Sch 1 para 15(6) revoked: SI 2008/1485.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/(1) THE NURSING AND MIDWIFERY COUNCIL/694. Constitution of the Council during the transitional periods.

#### **694. Constitution of the Council during the transitional periods.**

When first constituted, and during the transitional periods<sup>1</sup>, the Nursing and Midwifery Council<sup>2</sup> consists<sup>3</sup> of 12 members known as 'practitioner members'<sup>4</sup>, 11 members known as 'lay members'<sup>5</sup> and 12 members known as 'alternate members'<sup>6</sup>. All such members are appointed by the Privy Council<sup>7</sup>, which must appoint an alternate member for each practitioner member<sup>8</sup>. The members must live or work wholly or mainly in the United Kingdom<sup>9</sup>; and the members who are not registered professionals must include at least one member from each of the countries of the United Kingdom and that member must live or work wholly or mainly in the country concerned<sup>10</sup>.

Unless he resigns or is removed<sup>11</sup>, each member holds office until the end of the second transitional period<sup>12</sup>. Where a member ceases to be a member, the Privy Council may replace him and the successor's term of office begins with the day after that on which the member ceases to be a member and ends at the end of the second transitional period<sup>13</sup>. No later than six months before the end of the second transitional period, the Nursing and Midwifery Council must provide in rules for an election scheme<sup>14</sup> to elect members to take office after the transitional periods<sup>15</sup>.

The first president of the Council is appointed by the Privy Council from among the members of the Council<sup>16</sup>.

1 The transitional periods are: (1) 'the first transitional period', beginning with the coming into force of the Nursing and Midwifery Order 2001, SI 2002/253, art 3 (see PARA 691 et seq ante) and ending on the date of the coming into force of the first order made by the Privy Council under art 6(1) (see PARA 717 post); and (2) 'the second transitional period', being the period beginning with the day after the coming into force of the first order made by the Privy Council under art 6(1) and ending on the second anniversary of that date, unless ended earlier by the Privy Council on a proposal received by it from the Nursing and Midwifery Council: art 54, Sch 2 para 2. Article 3 was brought into force on 1 April 2002: see art 1(2), (3); and the London Gazette (25 March 2002). The first order made under the Nursing and Midwifery Order 2001, SI 2002/253, art 6(1) was the Nurses and Midwives (Parts of and Entries in the Register) Order of Council 2004, SI 2004/1765, which came into force on 1 August 2004: see art 1(1). As to the exercise by the Privy Council of its powers under the Nursing and Midwifery Order 2001, SI 2002/253, see PARA 706 post. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

2 As to the creation of the Nursing and Midwifery Council see PARA 691 ante.

3 Nursing and Midwifery Order 2001, SI 2002/253, Sch 2 para 1. As to the constitution of the Council after the transitional periods see PARA 695 post.

4 Ibid Sch 2 para 3(1)(a). Following consultation with persons who appear to it to be representative of the professions of nursing and midwifery, the Privy Council must appoint practitioner and alternate members (see the text and notes 6-8 infra) from among persons who were registered under the Nurses, Midwives and Health Visitors Act 1997 (repealed) immediately before 1 April 2002: see the Nursing and Midwifery Order 2001, SI 2002/253, Sch 2 para 3(4). It must select four practitioner members from each of the following categories: (1) persons registered in Part 10 of the register maintained under the Nurses, Midwives and Health Visitors Act 1997 s 7 (repealed); (2) persons registered in Part 11 of that register; and (3) persons registered in any other part of that register of whom the members may all be selected from the same part or from different parts: Nursing and Midwifery Order 2001, SI 2002/253, Sch 2 para 3(5)(a)-(c). No person may be appointed as a practitioner member while he is the subject of fitness to practise investigations or proceedings whether under the Nurses, Midwives and Health Visitors Act 1997 or the Nursing and Midwifery Order 2001, SI 2002/253 (as amended) (see PARA 747 et seq post): Sch 2 para 3(6).

5 Ibid Sch 2 para 3(1)(b). 'Lay member' means, in relation to the Council or a statutory committee, any member who is not and never has been a registered nurse or a registered midwife: art 2, Sch 4. For the

meaning of 'the statutory committees' see PARA 691 note 2 ante. As to registration see PARA 721 et seq post. Having consulted such persons as it considers appropriate, the Privy Council must appoint lay members from among persons who are not and never have been on the register or on the register kept under the Nurses, Midwives and Health Visitors Act 1997 (repealed) and who have such qualifications, interests and experience as, in the opinion of the Privy Council, will be of value to the Nursing and Midwifery Council in the performance of its functions: Nursing and Midwifery Order 2001, SI 2002/253, Sch 2 para 3(7). For the meaning of 'register' see PARA 717 note 2 post.

6 Ibid Sch 2 para 3(1)(c). See also Sch 2 para 3(4); and note 4 supra. See further the text and note 8 infra. 'Alternate member' is a member of the Council appointed under Sch 1 para 1 (see PARA 695 post) or Sch 2 para 3: Sch 4.

7 Ibid Sch 2 para 3(1)(a)-(c).

8 Ibid Sch 2 para 3(2). An alternate member has the same functions as a practitioner member but he may attend a Council meeting in his capacity as an alternate member and vote only if his corresponding practitioner member is unable to do so: Sch 2 para 3(3). 'Corresponding practitioner member' means the practitioner member appointed under Sch 2 from the same part of the register and from the same country of the United Kingdom as the alternate member concerned: Sch 4. There must be at least one practitioner member and one alternate member from each part of the register, and the number of practitioner and alternate members from each part must be equal: Sch 2 para 3(9). The practitioner and alternate members appointed in respect of each part of the register must include at least one member from each of the countries of the United Kingdom and that member must live or work wholly or mainly in the country concerned: Sch 2 para 3(10). 'United Kingdom country' means England, Scotland, Wales or Northern Ireland: Sch 4. For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

9 Ibid Sch 2 para 3(8).

10 Ibid Sch 2 para 3(11).

11 Ie in such circumstances as are set out in ibid Sch 1 para 8(2): see PARA 696 post.

12 Ibid Sch 2 para 4.

13 Ibid Sch 2 para 5.

14 Ie in accordance with the provisions of ibid Sch 1 para 2: see PARA 695 post.

15 Ibid Sch 2 para 7. At the date at which this volume states the law no such rules had been made. As to the making of rules by the Council see PARA 701 post.

16 Ibid Sch 2 para 8.

## UPDATE

### **691-697 The Nursing and Midwifery Council and its committees ... The president**

The Nursing and Midwifery Order 2001, SI 2002/253, Sch 1 paras 1, 2, 8 are amended by SI 2008/1485 so as to make temporary measures pending the reconstitution of the Nursing and Midwifery Council by order of the Privy Council (see SI 2002/253 art 3(7A), Sch 1 paras 1A, 1B (art 3(7A) added, Sch 1 paras 1A, 1B substituted for Sch 1 Pt 1 (paras 1-11) by SI 2008/1485; Sch 1 para 1B amended by SI 2009/1182). For further transitional provision relating to the cancellation of elections that would otherwise have been held in 2008 and 2009, see the Nursing and Midwifery (Amendment) Order 2008, SI 2008/1485, art 3. See now the Nursing and Midwifery Council (Constitution) Order 2008, SI 2008/2553.

### **694 Constitution of the Council during the transitional periods**

NOTE 1--SI 2004/1765 art 1 amended: SI 2005/641 (England), SI 2006/1015.

NOTE 5--Definition of 'lay member' amended: SI 2008/1485.

NOTES 6, 8--Definitions of 'alternate member' and 'corresponding practitioner member' omitted: SI 2008/1485.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/(1) THE NURSING AND MIDWIFERY COUNCIL/695. Constitution of the Council after the transitional periods.

### **695. Constitution of the Council after the transitional periods.**

After the transitional periods<sup>1</sup>, the Nursing and Midwifery Council is to consist of 12 members appointed by the Council known as 'registrant members'<sup>2</sup>, a further 12 members appointed by the Council<sup>3</sup> known as 'alternate members'<sup>4</sup>, and 11 members appointed by the Privy Council<sup>5</sup> known as 'lay members'<sup>6</sup>. The Nursing and Midwifery Council must provide in rules for an election scheme<sup>7</sup> to elect the registrant members and alternate members and may provide in the rules for by-elections<sup>8</sup>. The Council must provide such information and advice for voters and candidates about the purpose and conduct of the elections as it considers appropriate<sup>9</sup>.

On a proposal from the Council or otherwise, the Privy Council may by order vary the size or composition of the Council, provided that: (1) the number of registrant members constitutes no less than half the total number of members and the number of registrant members does not exceed the number of lay members by more than one<sup>10</sup>; (2) the members live or work wholly or mainly in the United Kingdom<sup>11</sup>; (3) there is at least one registrant member and one alternate member from each part of the register<sup>12</sup>, and the number of registrant and alternate members from each part is equal<sup>13</sup>; (4) the registrant and alternate members appointed in respect of each part of the register include at least one member appointed from each of the countries of the United Kingdom<sup>14</sup> and that member must live or work wholly or mainly in the country concerned<sup>15</sup>; (5) the members who are not registered professionals include at least one member appointed from each of the countries of the United Kingdom and that member must live or work wholly or mainly in the country concerned<sup>16</sup>.

<sup>1</sup> As to the initial constitution of the Nursing and Midwifery Council, and the transitional periods, see PARA 694 ante. As to the creation of the Nursing and Midwifery Council see PARA 691 ante.

<sup>2</sup> Nursing and Midwifery Order 2001, SI 2002/253, art 3, Sch 1 para 1(1)(a). See also note 4 infra. 'Registrant member' means a member who is appointed by the Council on being elected under the election scheme made under Sch 1 para 2 (see the text to notes 7-9 infra): art 2, Sch 4. The Council must appoint an elected candidate to be a registrant member in accordance with criteria set out in the election scheme: Sch 1 para 1(4).

<sup>3</sup> On being elected under the election scheme made under *ibid* Sch 1 para 2: see the text to notes 7-9 infra. The Council must appoint an elected candidate to be an alternate member in accordance with criteria set out in the election scheme: Sch 1 para 1(4).

<sup>4</sup> *Ibid* Sch 1 para 1(1)(c). The Council must appoint an alternate member for each registrant member: Sch 1 para 1(2). An alternate member has the same functions as a registrant member but he may attend a Council meeting in his capacity as an alternate member, and vote, only if his corresponding registrant member is unable to do so: Sch 1 para 1(3). 'Corresponding registrant member' means the registrant member elected from the same part of the register and from the same country of the United Kingdom as the alternate member concerned: Sch 4. For the meaning of 'alternate member' see PARA 694 note 6 ante.

<sup>5</sup> As to the exercise by the Privy Council of its powers under the Nursing and Midwifery Order 2001, SI 2002/253 (as amended) see PARA 706 post. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

<sup>6</sup> Nursing and Midwifery Order 2001, SI 2002/253, Sch 1 para 1(1)(b). For the meaning of 'lay member' see PARA 694 note 5 ante. Having consulted such persons as it considers appropriate, the Privy Council must appoint lay members from among persons who are not and never have been on the register or on the register kept under the Nurses, Midwives and Health Visitors Act 1997 (repealed) and who have such qualifications, interests and experience as, in the opinion of the Privy Council, will be of value to the Nursing and Midwifery Council in the performance of its functions: Nursing and Midwifery Order 2001, SI 2002/253, Sch 1 para 3. Of the members appointed by the Privy Council, there must be at least one appointed from each country of the United Kingdom and that member must live or work wholly or mainly in the country concerned: Sch 1 para 4. Where a member

appointed by the Privy Council ceases to be a member, the Nursing and Midwifery Council must inform the Privy Council and, subject to Sch 1 para 7(3) (see PARA 696 post), the Privy Council must replace him: Sch 1 para 6. If, under the Health and Social Care (Community Health and Standards) Act 2003 s 187, the Secretary of State has given a direction to a special health authority to exercise any function of a Minister of the Crown relating to the making of appointments to a body mentioned in s 187, the Privy Council may direct the special health authority to exercise to the extent specified in the direction its functions in relation to the appointment, replacement and removal (see PARA 696 text to notes 6-8 post) of members of the Nursing and Midwifery Council: Nursing and Midwifery Order 2001, SI 2002/253, Sch 1 para 15A (added by the Health and Social Care (Community Health and Standards) Act 2003 s 187(8), Sch 12 para 7). As to the Secretary of State see PARA 5 ante. As to special health authorities see HEALTH SERVICES vol 54 (2008) PARA 136 et seq.

7 The Council must provide in rules for such an election scheme no later than six months before the end of the second transitional period (see PARA 694 note 1 ante): Nursing and Midwifery Order 2001, SI 2002/253, Sch 2 para 7. At the date at which this volume states the law no such rules had been made. As to the making of rules by the Council see PARA 701 post.

8 Ibid Sch 1 para 2(1). The election scheme must provide that:

164 (1) a person seeking election:

7. (a) is registered in the part of the register for which he seeks election but no person may be elected for more than one part of the register at a time (Sch 1 para 2(2)(a)(i));

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8. (b) in respect of a national constituency, lives or works wholly or mainly in that national constituency (Sch 1 para 2(2)(a)(ii));

8

9. (c) is not the subject of any allegation, investigation or proceedings concerning his fitness to practise (Sch 1 para 2(2)(a)(iii)); and

9

10. (d) is wholly or mainly engaged in the practice, teaching or management of the profession in respect of which he is registered and seeks election or in research in those fields (Sch 1 para 2(2)(a)(iv));

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165 (2) at least one registrant member and one alternate member are appointed from each part of the register and the number of members from each part is equal (Sch 1 para 2(2)(b));

166 (3) at least one member is elected from each of the national constituencies for each part of the register (Sch 1 para 2(2)(c));

167 (4) a person may only vote:

11. (a) in respect of one part of the register (Sch 1 para 2(2)(d)(i));

11

12. (b) for candidates who represent a part of the register in which he is registered at the time of the election (Sch 1 para 2(2)(d)(ii)); and

12

13. (c) for a candidate seeking election for the constituency in which he wholly or mainly lives or works or, if he does not wholly or mainly live or work in any constituency, the constituency he has selected or to which he has been assigned in accordance with prescribed criteria (Sch 1 para 2(2)(d)(iii));

13

168 (5) a person may vote even if he lives or works outside the United Kingdom (Sch 1 para 2(2)(e));

169 (6) where someone ceases to be a registrant member or alternate member, a replacement is, subject to Sch 1 para 7(3) (see PARA 696 post), appointed by the Council (Sch 1 para 2(2)(f)).

'Prescribed' means prescribed in rules made by the Council: Sch 4. 'National constituency' means England, Scotland, Wales or Northern Ireland: Sch 4. For the meaning of 'United Kingdom' see PARA 1 note 3 ante. As to fitness to practise see PARA 747 et seq post.

9 Ibid Sch 1 para 2(3).

10 Ibid Sch 1 para 5(a).

- 11 Ibid Sch 1 para 5(b).
- 12 For the meaning of 'register' see PARA 717 note 2 post.
- 13 Nursing and Midwifery Order 2001, SI 2002/253, Sch 1 para 5(c).
- 14 For the meaning of 'United Kingdom country' see PARA 694 note 8 ante.
- 15 Nursing and Midwifery Order 2001, SI 2002/253, Sch 1 para 5(d).
- 16 Ibid Sch 1 para 5(e).

## **UPDATE**

### **691-697 The Nursing and Midwifery Council and its committees ... The president**

The Nursing and Midwifery Order 2001, SI 2002/253, Sch 1 paras 1, 2, 8 are amended by SI 2008/1485 so as to make temporary measures pending the reconstitution of the Nursing and Midwifery Council by order of the Privy Council (see SI 2002/253 art 3(7A), Sch 1 paras 1A, 1B (art 3(7A) added, Sch 1 paras 1A, 1B substituted for Sch 1 Pt 1 (paras 1-11) by SI 2008/1485; Sch 1 para 1B amended by SI 2009/1182). For further transitional provision relating to the cancellation of elections that would otherwise have been held in 2008 and 2009, see the Nursing and Midwifery (Amendment) Order 2008, SI 2008/1485, art 3. See now the Nursing and Midwifery Council (Constitution) Order 2008, SI 2008/2553.

### **695 Constitution of the Council after the transitional periods**

NOTES 4, 8--Definitions of 'corresponding registrant member' and 'national constituency' omitted: SI 2008/1485.

NOTE 6--SI 2002/253 Sch 1 para 15A revoked: Health Act 2006 Sch 9.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/(1) THE NURSING AND MIDWIFERY COUNCIL/696. Members tenure of office.

#### **696. Members tenure of office.**

The term of office of each member of the Nursing and Midwifery Council<sup>1</sup> is for a period of four years<sup>2</sup>. No member may be appointed for more than three consecutive terms<sup>3</sup>. A member may resign at any time by notice in writing<sup>4</sup> addressed to the registrar<sup>5</sup>. A person must be removed from office as a Council member if:

- 866 (1) there is a change in his qualifications, interests or experience such that it appears to the Privy Council<sup>6</sup> that he will no longer contribute to the Nursing and Midwifery Council's exercise of its functions<sup>7</sup> in such a manner as justifies his continued membership<sup>8</sup>;
- 867 (2) he ceases to live or work wholly or mainly in the United Kingdom<sup>9</sup> or, if he has been appointed:
- 156 218. (a) in the case of a registrant or alternate member<sup>10</sup>, as a member in respect of one of the national constituencies<sup>11</sup>; or
- 219. (b) in the case of a lay member<sup>12</sup>, as a member in respect of one of the countries of the United Kingdom<sup>13</sup>,
- 157 868 in that national constituency or country<sup>14</sup>;
- 869 (3) he ceases to be registered in the part of the register<sup>15</sup> in respect of which he was appointed<sup>16</sup>;
- 870 (4) he ceases to be wholly or mainly engaged in the practice, teaching or management of the profession for which he is registered and in respect of which he was appointed or in the appropriate research<sup>17</sup>;
- 871 (5) an order has been made against him by a practice committee<sup>18</sup>;
- 872 (6) he is removed by a majority of at least two-thirds of the other members of the Council because of a serious and persistent deficiency in his attendance at meetings or in his conduct or performance at meetings<sup>19</sup>;
- 873 (7) such other circumstances as may be provided for by the Council in standing orders occur<sup>20</sup>.

Where a member does not complete his term of office his successor must be appointed for the remainder of the unexpired term<sup>21</sup>, in the case of registrant and alternate members by the Council<sup>22</sup>, and in the case of lay members by the Privy Council<sup>23</sup>, but if the unexpired term is less than 12 months the vacancy need not be filled<sup>24</sup>.

1 As to the creation of the Nursing and Midwifery Council see PARA 691 ante. As to the constitution of the Council see PARA 695 ante.

2 Nursing and Midwifery Order 2001, SI 2002/253, art 3, Sch 1 para 8(1). The Privy Council must determine the duration, which may not exceed four years, of the first term of office for members whose appointments take effect on the ending of the second transitional period and must ensure that: (1) the terms of office of equal proportions of registrant and lay members, being one quarter, or the nearest whole even number above one quarter, of the membership, expire at the end of one, two and three years respectively beginning with the day after the end of the second transitional period (Sch 2 para 6(a)); (2) the terms of office of the remaining members expire at the end of four years beginning with the day after the end of the second transitional period (Sch 2 para 6(b)); and (3) the terms of office of the registrant members appointed to any one national

constituency expire at the same time (Sch 2 para 6(c)). For the meaning of 'national constituency' see PARA 695 note 8 ante. As to members appointed during the transitional periods see PARA 694 ante.

3 Ibid Sch 1 para 10.

4 For the meaning of 'writing' see PARA 20 note 22 ante.

5 Nursing and Midwifery Order 2001, SI 2002/253, Sch 1 para 9. For the meaning of 'registrar' see PARA 716 note 2 post.

6 As to the appointment of members of the Nursing and Midwifery Council by the Privy Council see PARA 695 ante. As to the exercise by the Privy Council of its powers under the Nursing and Midwifery Order 2001, SI 2002/253 (as amended) see PARA 706 post. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

7 As to the functions of the Nursing and Midwifery Council see PARA 692 ante.

8 Nursing and Midwifery Order 2001, SI 2002/253, Sch 1 para 8(2)(a). As to the power of the Privy Council to delegate to a special health authority its power to remove members of the Nursing and Midwifery Council see Sch 1 para 15A (as added); and PARA 695 note 6 ante. As to special health authorities see HEALTH SERVICES vol 54 (2008) PARA 136 et seq.

9 Ibid Sch 1 para 8(2)(b). For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

10 For the meaning of 'registrant member' see PARA 695 note 2 ante; and for the meaning of 'alternate member' see PARA 694 note 6 ante.

11 Nursing and Midwifery Order 2001, SI 2002/253, Sch 1 para 8(2)(b)(i).

12 For the meaning of 'lay member' see PARA 694 note 5 ante.

13 Nursing and Midwifery Order 2001, SI 2002/253, Sch 1 para 8(2)(b)(ii). For the meaning of 'United Kingdom country' see PARA 694 note 8 ante.

14 Ibid Sch 1 para 8(2)(b).

15 For the meaning of 'register' see PARA 717 note 2 post.

16 Nursing and Midwifery Order 2001, SI 2002/253, Sch 1 para 8(2)(c).

17 Ie the research mentioned in ibid Sch 1 para 2(2)(a)(iv) (see PARA 695 note 8 ante): Sch 1 para 8(2)(d).

18 Ibid Sch 1 para 8(2)(e). For the meaning of 'practice committee' see PARA 699 note 3 post.

19 Ibid Sch 1 para 8(2)(f).

20 Ibid Sch 1 para 8(2)(g). As to the power of the Council to make standing orders see PARA 698 post.

21 'The unexpired term' means the period beginning with the date on which the member ceased to be a member and ending with the date on which his full term of office would have expired: ibid Sch 1 para 7(2).

22 Ibid Sch 1 para 7(1)(a). In the case of a registrant member or alternate member, the person appointed for the unexpired term must be registered in the same part of the register and live or work wholly or mainly in the same country of the United Kingdom as the member he is to replace: Sch 1 par 7(4).

23 Ibid Sch 1 para 7(1)(b).

24 Ibid Sch 1 para 7(3).

## UPDATE

### **691-697 The Nursing and Midwifery Council and its committees ... The president**

The Nursing and Midwifery Order 2001, SI 2002/253, Sch 1 paras 1, 2, 8 are amended by SI 2008/1485 so as to make temporary measures pending the reconstitution of the



Nursing and Midwifery Council by order of the Privy Council (see SI 2002/253 art 3(7A), Sch 1 paras 1A, 1B (art 3(7A) added, Sch 1 paras 1A, 1B substituted for Sch 1 Pt 1 (paras 1-11) by SI 2008/1485; Sch 1 para 1B amended by SI 2009/1182). For further transitional provision relating to the cancellation of elections that would otherwise have been held in 2008 and 2009, see the Nursing and Midwifery (Amendment) Order 2008, SI 2008/1485, art 3. See now the Nursing and Midwifery Council (Constitution) Order 2008, SI 2008/2553.

#### **696 Members tenure of office**

NOTE 8--SI 2002/253 Sch 1 para 15A revoked: Health Act 2006 Sch 9.

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### **697. The president.**

The president of the Nursing and Midwifery Council<sup>1</sup> is elected by the members of the Council from among themselves for a term of four years<sup>2</sup>. A person is not prevented from being elected president merely because he has previously been president<sup>3</sup>. The president holds office until whichever of the following first occurs: (1) he resigns as president<sup>4</sup>; (2) he ceases to be a member of the Council<sup>5</sup>; (3) he is removed by a majority vote of the other members of the Council<sup>6</sup>. The president may resign the office of president at any time by notice in writing<sup>7</sup> addressed to the registrar<sup>8</sup>.

1 As to the creation of the Nursing and Midwifery Council see PARA 691 ante.

2 Nursing and Midwifery Order 2001, SI 2002/253, art 3, Sch 1 para 11(1). As to the first president of the Council see PARA 694 ante. As to the membership of the Council see PARAS 694-695 ante.

3 Ibid Sch 1 para 11(3).

4 Ibid Sch 1 para 11(2)(a).

5 Ibid Sch 1 para 11(2)(b).

6 Ibid Sch 1 para 11(2)(c).

7 For the meaning of 'writing' see PARA 20 note 22 ante.

8 Nursing and Midwifery Order 2001, SI 2002/253, Sch 1 para 11(4). For the meaning of 'registrar' see PARA 716 note 2 post.

### **UPDATE**

#### **691-697 The Nursing and Midwifery Council and its committees ... The president**

The Nursing and Midwifery Order 2001, SI 2002/253, Sch 1 paras 1, 2, 8 are amended by SI 2008/1485 so as to make temporary measures pending the reconstitution of the Nursing and Midwifery Council by order of the Privy Council (see SI 2002/253 art 3(7A), Sch 1 paras 1A, 1B (art 3(7A) added, Sch 1 paras 1A, 1B substituted for Sch 1 Pt 1 (paras 1-11) by SI 2008/1485; Sch 1 para 1B amended by SI 2009/1182). For further transitional provision relating to the cancellation of elections that would otherwise have been held in 2008 and 2009, see the Nursing and Midwifery (Amendment) Order 2008, SI 2008/1485, art 3. See now the Nursing and Midwifery Council (Constitution) Order 2008, SI 2008/2553.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/(1) THE NURSING AND MIDWIFERY COUNCIL/698. Procedure of the Council and its committees.

### **698. Procedure of the Council and its committees.**

Subject to separate provision in respect of the midwifery committee<sup>1</sup>, the Nursing and Midwifery Council<sup>2</sup> must make standing orders in respect of the Council, its committees and sub-committees<sup>3</sup>, with the exception of the practice committees<sup>4</sup>, to provide for: (1) the quorum at meetings, which must in the case of meetings of the Council include at least one member appointed from each country of the United Kingdom<sup>5</sup> who must live or work wholly or mainly in the country in respect of which he is appointed<sup>6</sup>; (2) the procedure at meetings<sup>7</sup>; (3) establishing standards for the education and training, attendance and performance of members<sup>8</sup>; (4) the composition of any of its committees and sub-committees<sup>9</sup>; (5) the chairman of each of its committees to be a Council member<sup>10</sup>; (6) the procedure by which a person is removed from office<sup>11</sup>; (7) the functions of its officers<sup>12</sup>; and (8) circumstances in which meetings are to be in private<sup>13</sup>.

The Council must establish and maintain a system for the declaration and registration of private interests of its members and other members of its committees and sub-committees<sup>14</sup>, and publish entries recorded in the register of members' interests<sup>15</sup>.

With the exception of decisions of the statutory committees<sup>16</sup> and of the Council on appeals from decisions of the registrar<sup>17</sup>, decisions of the Council and committees are made by a majority vote of the members present and voting<sup>18</sup>, with the chairman having an additional casting vote in the event of a tie<sup>19</sup>.

No proceedings of the Council are invalidated by any defect in the election or appointment of a member<sup>20</sup>. No person who is a member of the Council or any of its committees or sub-committees by virtue of his membership of any profession may take part in any proceedings of the Council in any period during which he is the subject of any investigations, proceedings or determination against him concerning his fitness to practise his profession<sup>21</sup>.

1    Ie subject to the Nursing and Midwifery Order 2001, SI 2002/253, art 3, Sch 1 para 16: see PARA 708 post.

2    As to the creation of the Nursing and Midwifery Council see PARA 691 ante.

3    As to the committees see PARA 691 ante. As to the power to establish sub-committees and to abolish committees and sub-committees see PARA 693 ante.

4    As to provision in respect of the practice committees see PARA 699 post. For the meaning of 'practice committee' see PARA 699 note 3 post.

5    For the meaning of 'United Kingdom country' see PARA 694 note 8 ante.

6    Nursing and Midwifery Order 2001, SI 2002/253, Sch 1 para 12(1)(a). As to the membership of the Council see PARAS 694-695 ante.

7    Ibid Sch 1 para 12(1)(b).

8    Ibid Sch 1 para 12(1)(c).

9    Ibid Sch 1 para 12(1)(d).

10   Ibid Sch 1 para 12(1)(e).

11   Ie under ibid Sch 1 para 8(2) (see PARA 696 ante): Sch 1 para 12(1)(f).

- 12 Ibid Sch 1 para 12(1)(g). As to the appointment by the Council of a registrar see PARA 716 post.
- 13 Ibid Sch 1 para 12(1)(h).
- 14 Ibid Sch 1 para 13(3)(a).
- 15 Ibid Sch 1 para 13(3)(b).
- 16 For the meaning of 'the statutory committees' see PARA 691 note 2 ante.
- 17 The decisions under the Nursing and Midwifery Order 2001, SI 2002/253, art 37 (see PARAS 732, 733 post): Sch 1 para 14(4).
- 18 Ibid Sch 1 para 14(1). Where a matter to be dealt with by the Council or committee affects only one of the professions of nursing or midwifery, the chairman must be a member of the profession concerned and a decision on the matter must be reached on a majority vote of the members of that profession present and voting: Sch 1 para 14(3).
- 19 Ibid Sch 1 para 14(2).
- 20 Ibid Sch 1 para 15(7).
- 21 Ibid Sch 1 para 15(8). As to fitness to practise see PARA 747 et seq post.

## **UPDATE**

### **698 Procedure of the Council and its committees**

TEXT AND NOTES--See the Nursing and Midwifery Council (Midwifery and Practice Committees) (Constitution) Rules Order of Council 2008, SI 2008/3148.

TEXT AND NOTES 1-13--SI 2002/253 Sch 1 para 12 substituted: SI 2008/1485.

TEXT AND NOTES 16, 17--SI 2002/253 Sch 1 para 14(4) amended: SI 2008/1485.

NOTE 18--SI 2002/253 Sch 1 para 14(3) revoked: SI 2008/1485.

TEXT AND NOTE 19--SI 2002/253 Sch 1 para 14(2) amended: SI 2008/1485.

TEXT AND NOTE 20--SI 2002/253 Sch 1 para 15(7) revoked: SI 2008/1485.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/(1) THE NURSING AND MIDWIFERY COUNCIL/699. Power to make rules concerning the constitution and procedure of practice committees.

**699. Power to make rules concerning the constitution and procedure of practice committees.**

The Nursing and Midwifery Council<sup>1</sup> must<sup>2</sup> in respect of each practice committee<sup>3</sup> provide by rules<sup>4</sup> for: (1) the quorum at meetings of the committee<sup>5</sup>; (2) regulating its procedure<sup>6</sup>; (3) establishing standards for the education and training, attendance and performance of its members<sup>7</sup>; (4) regulating its composition<sup>8</sup>; and (5) the performance of its functions<sup>9</sup>. The members of each practice committee must include registered professionals<sup>10</sup> and other members, of whom at least one must be a registered medical practitioner<sup>11</sup>. The chairman of the committee must be a Council member<sup>12</sup>. No one may be a member of more than one practice committee; and a person must not be both a screener<sup>13</sup> and a member of a practice committee<sup>14</sup>.

The panel of a practice committee considering an allegation or taking any other action in respect of a fitness to practise matter<sup>15</sup> must comprise at least three members who are selected with due regard to the former, current or proposed professional field of the person concerned as the case may be and to the nature of the matters in issue, provided that: (a) at least one member is registered in that part of the register<sup>16</sup> in which, as the case may be, the person under consideration is or was registered or in respect of which he has made an application to be registered<sup>17</sup>; (b) there is at least one lay member<sup>18</sup>, who must not be a registered medical practitioner<sup>19</sup>; (c) where the health of the person is relevant to the case, there is at least one registered medical practitioner<sup>20</sup>; (d) the panel must comprise both registrant<sup>21</sup> and lay members none of whom is a Council member and the number of registrant members may exceed the number of lay members but may not exceed them by more than one<sup>22</sup>; (e) no one who has been involved in the case in any other capacity may sit on the panel<sup>23</sup>; and (f) the person presiding may, but need not, be a member of the Council<sup>24</sup>.

Decisions of a practice committee must be made by a majority vote of the members present and voting<sup>25</sup>. In the event of a tie, the chairman has an additional casting vote and, in respect of a decision relating to a fitness to practise matter, he must exercise his casting vote in favour of the person concerned<sup>26</sup>. Except when it is performing functions relating to a fitness to practise matter a practice committee may exercise its powers even though there is a vacancy among its members<sup>27</sup>.

Apart from proceedings relating to a fitness to practise matter, no proceedings of a practice committee are invalidated by any defect in the appointment of a member<sup>28</sup>. The Council must publish as soon as reasonably practicable particulars of: (i) any orders and decisions made by a practice committee<sup>29</sup>; (ii) its reasons for them; and (iii) any decision given on appeal<sup>30</sup>.

1 As to the creation of the Nursing and Midwifery Council see PARA 691 ante.

2 Ie subject to any provision made by or under the Nursing and Midwifery Order 2001, SI 2002/253 (as amended).

3 'Practice committees' means the investigating committee, the conduct and competence committee, and the health committee: *ibid* art 2, Sch 4. As to the practice committees as statutory committees see PARA 691 ante. As to the membership of the practice committees see PARA 700 post. As to the functions of the investigating committee see PARA 757 post; as to the functions of the conduct and competence committee see PARA 761 post; and as to the functions of the health committee see PARA 762 post.

4 As to the making of rules by the Council see PARA 701 post. As to the rules that have been made see the Nursing and Midwifery Council (Practice Committees) (Interim Constitution) Rules 2003, approved by the Nursing and Midwifery Council (Practice Committees) (Interim Constitution) Rules Order of Council 2003, SI 2003/1738; and PARA 700 post.

5 Nursing and Midwifery Order 2001, SI 2002/253, art 3, Sch 1 para 17(a). This provision is subject to Sch 1 para 18(6): see the text to notes 15-24 infra.

6 Ibid Sch 1 para 17(b).

7 Ibid Sch 1 para 17(c).

8 Ibid Sch 1 para 17(d).

9 Ibid Sch 1 para 17(e).

10 The number of registered professionals on a practice committee may, but need not, exceed the number of other members on the committee and must not in any case exceed that number by more than one: ibid Sch 1 para 18(2). No person who is a member of the Council or a committee by virtue of his membership of any profession may take part in any proceedings of a practice committee in any period during which he is the subject of any investigations, proceedings or determination against him concerning his fitness to practise his profession: Sch 1 para 18(11). As to the registration of nurses and midwives see PARA 716 et seq post; and as to fitness to practise proceedings see PARA 747 et seq post.

11 Ibid Sch 1 para 18(1). For the meaning of 'registered medical practitioner' see PARA 4 ante. The Council must, subject to other provisions in the Nursing and Midwifery Order 2001, SI 2002/253 (as amended), have regard when selecting non-Council members for a practice committee, to the guidance issued by the Commissioner for Public Appointments: Sch 1 para 18(5). As to the Commissioner for Public Appointments see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 953.

12 Ibid Sch 1 para 18(3). As to membership of the Council see PARAS 694-695 ante.

13 For the meaning of 'screener' see PARA 750 note 2 post.

14 Nursing and Midwifery Order 2001, SI 2002/253, Sch 1 para 18(4).

15 Ie under the Nursing and Midwifery Order 2001, SI 2002/253, Pt V (arts 21-36): see PARA 747 et seq post.

16 For the meaning of 'register' see PARA 717 note 2 post.

17 Nursing and Midwifery Order 2001, SI 2002/253, Sch 1 para 18(6)(a).

18 For the meaning of 'lay member' see PARA 694 note 5 ante.

19 Nursing and Midwifery Order 2001, SI 2002/253, Sch 1 para 18(6)(b).

20 Ibid Sch 1 para 18(6)(c).

21 For the meaning of 'registrant member' see PARA 695 note 2 ante.

22 Nursing and Midwifery Order 2001, SI 2002/253, Sch 1 para 18(6)(d). This provision is subject to Sch 1 para 18(6)(f): see the text to note 24 infra.

23 Ibid Sch 1 para 18(6)(e).

24 Ibid Sch 1 para 18(6)(f).

25 Ibid Sch 1 para 18(7).

26 Ibid Sch 1 para 18(8).

27 Ibid Sch 1 para 18(9).

28 Ibid Sch 1 para 18(10).

29 Ie under ibid art 26(7), (11) (see PARA 760 post), art 29(5) (see PARA 768 post), art 30(1), (2), (4), (6)-(8) (see PARA 769 post), art 33 (see PARA 770 post).

30 Ibid art 22(9). As to appeals see PARA 782 post.

## **UPDATE**

### **699 Power to make rules concerning the constitution and procedure of practice committees**

TEXT AND NOTES--See the Nursing and Midwifery Council (Midwifery and Practice Committees) (Constitution) Rules Order of Council 2008, SI 2008/3148.

TEXT AND NOTES 1-9--SI 2002/253 Sch 1 para 17 substituted by SI 2008/1485 and amended by SI 2009/1182.

NOTE 4--SI 2003/1738 revoked: SI 2006/1199.

TEXT AND NOTES 10-24--SI 2002/253 Sch 1 para 18(1)-(4), (6), (9), (11) revoked: SI 2008/1485, SI 2009/1182.

TEXT AND NOTE 26--SI 2002/253 Sch 1 para 18(8) amended: SI 2008/1485.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/(1) THE NURSING AND MIDWIFERY COUNCIL/700. Members of practice committees.

## **700. Members of practice committees.**

A practice committee<sup>1</sup> comprises a chairman and a deputy chairman who must be members of the Nursing and Midwifery Council<sup>2</sup>, and: (1) in the case of the conduct and competence committee, six other members appointed by the Council<sup>3</sup>; (2) in the case of the health committee, two other members appointed by the Council<sup>4</sup>; (3) in the case of the investigating committee, three other members appointed by the Council<sup>5</sup>. The quorum of a practice committee is three and must include at least one registrant<sup>6</sup> and one lay member<sup>7</sup>, and must comprise the chairman or deputy chairman<sup>8</sup> and two other members<sup>9</sup>. Subject to specified provisions<sup>10</sup>, a practice committee may regulate its own procedure<sup>11</sup>.

A member of a practice committee may resign at any time by giving notice in writing<sup>12</sup> addressed to the registrar<sup>13</sup>. The Council may remove a person from office as a member of a practice committee: (a) for a serious and persistent deficiency in his attendance, conduct or performance at meetings of the committee<sup>14</sup>; (b) if he is a member of the committee by virtue of his being a registered<sup>15</sup> professional and he ceases to be wholly or mainly engaged in the practice, teaching or management of the relevant profession or in research in those fields<sup>16</sup>, or ceases to be registered in the part of the register relating to that profession<sup>17</sup>; or (c) if he is a member of the committee by virtue of his being a registered medical practitioner<sup>18</sup> and he ceases to be so registered<sup>19</sup>. Where a person ceases to be a member of a practice committee, the Council may fill the vacancy and the person appointed serves for the remainder of the term of the member he has replaced<sup>20</sup>.

A member of a practice committee must: (i) attend all meetings of the committee unless there is good reason for him being unable to do so<sup>21</sup>; (ii) prepare for any meeting of the committee by reading the agenda and any papers issued by the committee or the Council which are relevant to any subject to be considered at that meeting<sup>22</sup>; and (iii) if he will not be attending a meeting of the committee, take all reasonable steps to give advance warning of his absence to the chairman<sup>23</sup>. A member of a practice committee must undertake education and training provided or organised by the Council from time to time so that he is properly informed about his responsibilities and, in particular, he must receive training in the functions of the Council and the role of the committee and its place in the work of the Council<sup>24</sup>, the effective conduct of proceedings by the committee<sup>25</sup>, and the discharge by the committee of its functions relating to fitness to practise<sup>26</sup> including the principles of natural justice, human rights and Community law<sup>27</sup>.

1 As to practice committees see PARA 699 ante.

2 Nursing and Midwifery Council (Practice Committees) (Interim Constitution) Rules Order of Council 2003, SI 2003/1738, r 3(a). As to the creation of the Nursing and Midwifery Council see PARA 691 ante. As to the membership of the Council see PARAS 694-695 ante.

3 Ibid r 3(b)(i). The appointment of the members under rr 3(b)(i)-(iii) must be in accordance with the Nursing and Midwifery Order 2001, SI 2002/253, art 3, Sch 1 para 18 (see PARA 699 ante): Nursing and Midwifery Council (Practice Committees) (Interim Constitution) Rules Order of Council 2003, SI 2003/1738, r 3(b). A member appointed to a practice committee before the end of the second transitional period serves until the end of that period: r 4(1). For the meaning of 'the second transitional period' see PARA 694 note 1 ante; definition applied by r 2. As to the functions of the conduct and competence committee see PARA 761 post.

4 Ibid r 3(b)(ii). See also note 3 supra. As to the functions of the health committee see PARA 762 post.



5 Ibid r 3(b)(iii). See also note 3 supra. As to the functions of the investigating committee see PARA 757 post.

6 'Registrant' means a person registered on the register maintained by the Council pursuant to the Nursing and Midwifery Order 2001, SI 2002/253, Sch 2 para 10 (see PARA 717 note 2 post): Nursing and Midwifery Council (Practice Committees) (Interim Constitution) Rules Order of Council 2003, SI 2003/1738, r 2.

7 Ibid r 7(a).

8 Ibid r 7(b)(i).

9 Ibid r 7(b)(ii).

10 le subject to the provisions of the Nursing and Midwifery Order 2001, SI 2002/253 (as amended), any rules made under it, and the Nursing and Midwifery Council (Practice Committees) (Interim Constitution) Rules Order of Council 2003, SI 2003/1738.

11 Ibid r 8.

12 For the meaning of 'writing' see PARA 20 note 22 ante.

13 Nursing and Midwifery Council (Practice Committees) (Interim Constitution) Rules Order of Council 2003, SI 2003/1738, r 4(2). As to the registrar see PARA 716 post.

14 Ibid r 4(3)(a). See also the text to notes 21-23 infra.

15 For the meaning of 'registered' see PARA 717 note 2 post.

16 Nursing and Midwifery Council (Practice Committees) (Interim Constitution) Rules Order of Council 2003, SI 2003/1738, r 4(3)(b)(i).

17 Ibid r 4(3)(b)(ii). As to the register and parts of the register see PARAS 718-719 post.

18 For the meaning of 'registered medical practitioner' see PARA 4 ante.

19 Nursing and Midwifery Council (Practice Committees) (Interim Constitution) Rules Order of Council 2003, SI 2003/1738, r 4(3)(c).

20 Ibid r 5.

21 Ibid r 6(1)(a).

22 Ibid r 6(1)(b).

23 Ibid r 6(1)(c).

24 Ibid r 6(2)(a). As to the functions of the Council see PARA 692 ante.

25 Ibid r 6(2)(b).

26 le under the Nursing and Midwifery Order 2001, SI 2002/253, Pt V (arts 21-36): see PARA 747 et seq post.

27 Nursing and Midwifery Council (Practice Committees) (Interim Constitution) Rules Order of Council 2003, SI 2003/1738, r 6(2)(c). As to the principles of natural justice see JUDICIAL REVIEW vol 61 (2010) PARA 629 et seq. As to human rights see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 101 et seq.

## UPDATE

### 700 Members of practice committees

TEXT AND NOTES--See the Nursing and Midwifery Council (Midwifery and Practice Committees) (Constitution) Rules Order of Council 2008, SI 2008/3148.

TEXT AND NOTES--SI 2003/1738 revoked: SI 2006/1199.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/(1) THE NURSING AND MIDWIFERY COUNCIL/701. Rules and orders.

### **701. Rules and orders.**

Before making any rules, the Nursing and Midwifery Council<sup>1</sup> must consult representatives of any group of persons who appear likely to be affected by the proposed rules and these may include such persons as appear to it to be representative of registrants<sup>2</sup> or classes of registrant<sup>3</sup>, employers of registrants<sup>4</sup>, users of the services of registrants<sup>5</sup>, or persons providing, assessing or funding education and training for registrants and prospective registrants<sup>6</sup>.

No rules made by the Council come into force until approved by order of the Privy Council<sup>7</sup>.

Any rules made by the Nursing and Midwifery Council and any order of the Privy Council may make different provision with respect to different cases or classes of case<sup>8</sup>.

1 As to the creation of the Nursing and Midwifery Council see PARA 691 ante.

2 For the meaning of 'registrant' see PARA 717 note 11 post.

3 Nursing and Midwifery Order 2001, SI 2002/253, art 47(3)(a).

4 Ibid art 47(3)(b).

5 Ibid art 47(3)(c).

6 Ibid art 47(3)(d). As to education and training see PARA 741 et seq post.

7 Ibid art 47(1). As to the exercise by the Privy Council of its powers under the Nursing and Midwifery Order 2001, SI 2002/253 (as amended) see PARA 706 post. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

8 Ibid art 47(2).

### **UPDATE**

### **701 Rules and orders**

TEXT AND NOTES--See the Nursing and Midwifery Council (Midwifery and Practice Committees) (Constitution) Rules Order of Council 2008, SI 2008/3148 (amended by SI 2009/2894).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/(1) THE NURSING AND MIDWIFERY COUNCIL/702. Annual reports.

## **702. Annual reports.**

The Nursing and Midwifery Council<sup>1</sup> must publish at least once in each calendar year a statistical report which indicates the efficiency and effectiveness of the arrangements it has put in place to protect the public from persons whose fitness to practise is impaired, together with the Council's observations on the report<sup>2</sup>.

The Council must also, within such time as directed by the Privy Council<sup>3</sup>, submit a report to the Privy Council on the exercise of its functions during the period specified by the Privy Council<sup>4</sup>, and thereafter submit such a report once in each calendar year in respect of the period since its last such report<sup>5</sup>. The Privy Council must lay before each House of Parliament a copy of any such report<sup>6</sup>.

1 As to the creation of the Nursing and Midwifery Council see PARA 691 ante.

2 Nursing and Midwifery Order 2001, SI 2002/253, art 50(1). As to fitness to practise see PARA 747 et seq post.

3 As to the exercise by the Privy Council of its powers under the Nursing and Midwifery Order 2001, SI 2002/253 (as amended) see PARA 706 post. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

4 Ibid art 50(2)(a).

5 Ibid art 50(2)(b).

6 Ibid art 50(3). As to the laying of documents before Parliament see PARLIAMENT vol 34 (Reissue) PARA 941.

## **UPDATE**

### **702 Annual reports**

TEXT AND NOTES--SI 2002/253 art 50 substituted: SI 2008/1485.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/(1) THE NURSING AND MIDWIFERY COUNCIL/703. Finances and accounts.

### **703. Finances and accounts.**

The Secretary of State<sup>1</sup> or an appropriate authority<sup>2</sup> may make grants or loans to the Nursing and Midwifery Council<sup>3</sup> towards expenses incurred, or to be incurred, by it in connection with the process of the implementation of the provisions relating to the regulation of the professions of nursing and midwifery<sup>4</sup>, or for such other purposes in connection with those professions as may be approved by the Secretary of State or the appropriate authority and agreed with the Council<sup>5</sup>. Subject to this, the expenses of the Council are to be met out of fees received by the Council and other sums paid to it in connection with the exercise of its functions<sup>6</sup>. The Council may charge such fees in connection with the exercise of its functions as it may, with the approval of the Privy Council, determine<sup>7</sup>.

The Nursing and Midwifery Council must keep accounts in such form as the Privy Council may determine<sup>8</sup>, and prepare annual accounts in respect of each financial year<sup>9</sup> in such form as the Privy Council may determine<sup>10</sup>. As soon as is reasonably practicable after the end of the financial year to which the annual accounts relate, the Nursing and Midwifery Council must cause them to be published together with any report on them made by the auditors<sup>11</sup>, and send a copy of the annual accounts and of any such report to the Privy Council and to the Comptroller and Auditor General<sup>12</sup>. The Comptroller and Auditor General must examine, certify and report on the annual accounts<sup>13</sup>. The Privy Council must lay before each House of Parliament a copy of the annual accounts certified by the Comptroller and Auditor General, together with his report and any report of the auditors<sup>14</sup>.

1 As to the Secretary of State see PARA 5 ante.

2 'Appropriate authority' means the National Assembly for Wales, the Scottish Ministers or the Department of Health, Social Services and Public Safety in Northern Ireland: Nursing and Midwifery Order 2001, SI 2002/253, art 51(4). As to the National Assembly for Wales and the Scottish Ministers see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

3 As to the creation of the Nursing and Midwifery Council see PARA 691 ante.

4 I.e. the provisions of the Nursing and Midwifery Order 2001, SI 2002/253 (as amended): art 51(3)(a).

5 Ibid art 51(3)(b).

6 Ibid art 51(2). As to the functions of the Council see PARA 692 ante.

7 Ibid art 51(1). As to fees see PARAS 722, 723, 727, 729, 770 post. As to the exercise by the Privy Council of its powers under the Nursing and Midwifery Order 2001, SI 2002/253 (as amended) see PARA 706 post. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

8 Ibid art 52(1)(a).

9 'Financial year' means the period beginning with the date on which the Nursing and Midwifery Council is established and ending with the next 31 March following that date (ibid art 52(8)(a)), and each successive period of 12 months ending with 31 March (art 52(8)(b)). The Nursing and Midwifery Council was established on 1 April 2002: see art 3; the London Gazette (25 March 2002); and PARA 691 ante.

10 Ibid art 52(1)(b). The annual accounts must be audited by persons the Council appoints: art 52(2). No person may be appointed as an auditor unless he is eligible for appointment as a company auditor under the Companies Act 1989 s 25 (see COMPANIES vol 15 (2009) PARA 969) or the Companies (Northern Ireland) Order 1990, SI 1990/593 (NI 5), art 28: Nursing and Midwifery Order 2001, SI 2002/253, art 52(3).

11 Ibid art 52(4)(a).

12 Ibid art 52(4)(b). For the purposes of his examination, the Comptroller and Auditor General may inspect the accounts of the Council and any records relating to them: art 52(6). As to the Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 724-726.

13 Ibid art 52(5).

14 Ibid art 52(7). As to the laying of documents before Parliament see PARLIAMENT vol 34 (Reissue) PARA 941.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/(1) THE NURSING AND MIDWIFERY COUNCIL/704. Inquiry by the Privy Council.

#### **704. Inquiry by the Privy Council.**

The Privy Council<sup>1</sup> may cause an inquiry to be held into any matter connected with the exercise by the Nursing and Midwifery Council<sup>2</sup> of its functions<sup>3</sup>. Before an inquiry is begun, the Privy Council may direct that it be held in public<sup>4</sup>. Where no direction has been given, the person holding the inquiry may if he thinks fit hold it, or any part of it, in private<sup>5</sup>.

For the purpose of any such inquiry, the person appointed to hold the inquiry may by summons<sup>6</sup> require any person to attend, at a time and place stated in the summons, to give evidence or to produce any documents in his custody or under his control which relate to any matter in question at the inquiry<sup>7</sup>; and may take evidence on oath<sup>8</sup>, and for that purpose administer oaths, or may, instead of administering an oath, require the person examined to make a solemn affirmation<sup>9</sup>.

Where the Privy Council causes an inquiry to be held, the costs incurred by it in relation to the inquiry, including such reasonable sum as it may determine for the services of any officer engaged in the inquiry, must be paid by such party to the inquiry as the Privy Council may direct<sup>10</sup>. The Privy Council may make orders as to the costs of the parties at the inquiry<sup>11</sup> and as to the parties by whom costs are to be paid<sup>12</sup>.

1 As to the exercise by the Privy Council of its powers under the Nursing and Midwifery Order 2001, SI 2002/253 (as amended) see PARA 706 post. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

2 As to the creation of the Nursing and Midwifery Council see PARA 691 ante. As to its functions see PARA 692 ante.

3 Nursing and Midwifery Order 2001, SI 2002/253, art 53(1).

4 Ibid art 53(2).

5 Ibid art 53(3).

6 As to witness summonses see CIVIL PROCEDURE vol 11 (2009) PARA 1004.

7 Nursing and Midwifery Order 2001, SI 2002/253, art 53(4)(a). Nothing in this provision requires a person, in obedience to such a summons, to attend to give evidence or to produce any documents unless the necessary expenses of his attendance are paid or tendered to him: art 53(5). Any person who refuses or deliberately fails to attend in obedience to a summons, or to give evidence, or who deliberately alters, suppresses, conceals, destroys, or refuses to produce any book or other document which he is required or is liable to be required to produce, is liable on summary conviction to a fine not exceeding level 5 on the standard scale: art 53(6). As to the standard scale see PARA 185 note 11 ante.

8 For the meaning of 'oath' see PARA 153 note 4 ante.

9 Nursing and Midwifery Order 2001, SI 2002/253, art 53(4)(b). As to oaths and affirmations see CIVIL PROCEDURE vol 11 (2009) PARA 1021 et seq.

10 Ibid art 53(7)(a). The Privy Council may cause the amount of the costs so incurred to be certified, and any amount so certified and directed to be paid by any person is recoverable from that person by the Privy Council summarily as a civil debt: art 53(7)(b). As to the summary recovery of civil debts see MAGISTRATES vol 29(2) (Reissue) PARA 826.

11 Ibid art 53(8)(a).

12 Ibid art 53(8)(b). Every such order may be made a rule of the appropriate court on the application of any party named in the order: art 53(8). For the meaning of 'appropriate court' see PARA 782 note 4 post: definition applied by art 53(9). As to costs generally see CIVIL PROCEDURE vol 12 (2009) PARA 1729 et seq.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/(1) THE NURSING AND MIDWIFERY COUNCIL/705. Default powers of the Privy Council.

### **705. Default powers of the Privy Council.**

If it appears to the Privy Council<sup>1</sup> that the Nursing and Midwifery Council<sup>2</sup> has failed to perform any functions which, in the opinion of the Privy Council, should have been performed, the Privy Council may notify the Council of its opinion and require the Council to make representations to it<sup>3</sup>. The Privy Council may, having considered the representations of the Council, give such directions, if any, to the Council as it considers appropriate<sup>4</sup>. If the Council fails to comply with any such directions, the Privy Council may give effect to the direction<sup>5</sup>. For the purpose of giving effect to a direction, the Privy Council may exercise any power of the Council or do any act or other thing authorised to be done by the Council<sup>6</sup>, and do, of its own motion, any act or other thing which it is otherwise authorised to do<sup>7</sup> at the instigation of the Council<sup>8</sup>.

1 As to the exercise by the Privy Council of its powers under the Nursing and Midwifery Order 2001, SI 2002/253 (as amended) see PARA 706 post. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

2 As to the creation of the Nursing and Midwifery Council see PARA 691 ante. As to its functions see PARA 692 ante.

3 Nursing and Midwifery Order 2001, SI 2002/253, art 49(1). The powers under art 49(1), (2) (see the text to note 4 infra) may be exercised by a person authorised or designated by the Privy Council for that purpose: art 49(6).

4 Ibid art 49(2). See also note 3 supra.

5 Ibid art 49(3).

6 Ibid art 49(4)(a). However, the Privy Council may not exercise such power to make, amend, remove or restore an entry in the register in respect of an individual, nor to refuse to do so: art 49(5). As to the powers of the Nursing and Midwifery Council generally see PARA 693 ante. For the meaning of 'register' see PARA 717 note 2 post; and as to registration see PARA 721 et seq post.

7 Ie under the Nursing and Midwifery Order 2001, SI 2002/253 (as amended).

8 Ibid art 49(4)(b).



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/(1) THE NURSING AND MIDWIFERY COUNCIL/706. Exercise of powers by the Privy Council.

### **706. Exercise of powers by the Privy Council.**

For the purpose of exercising any of its powers conferred by the Nursing and Midwifery Order 2001<sup>1</sup>, the quorum of the Privy Council<sup>2</sup> is two<sup>3</sup>. Any act of the Privy Council under those powers is sufficiently signified by an instrument signed by the clerk of the Privy Council<sup>4</sup>; and any document purporting to be an instrument made by the Privy Council under those powers<sup>5</sup> and signed by the clerk is evidence of the fact that the instrument was so made and of its terms<sup>6</sup>.

Where the approval of the Privy Council is required in respect of the making of any rules by the Nursing and Midwifery Council<sup>7</sup>, it must be given by an order made by the Privy Council<sup>8</sup>. Any power of the Privy Council to make an order is exercisable by statutory instrument<sup>9</sup>.

1    Ie the Nursing and Midwifery Order 2001, SI 2002/253 (as amended).

2    As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

3    Nursing and Midwifery Order 2001, SI 2002/253, art 48(4).

4    Ibid art 48(5).

5    Ibid art 48(6)(a).

6    Ibid art 48(6)(b).

7    As to the creation of the Nursing and Midwifery Council see PARA 691 ante. As to the making of rules by the Council see PARA 701 ante.

8    Nursing and Midwifery Order 2001, SI 2002/253, art 48(1).

9    Ibid art 48(2). Any order is subject to annulment in pursuance of a resolution of either House of Parliament: art 48(3). As to the annulment of statutory instruments see STATUTES vol 44(1) (Reissue) PARA 1516.

### **UPDATE**

### **706 Exercise of powers by the Privy Council**

NOTE 9--For the purposes of the Statutory Instruments Act 1946 s 1 (definition of 'statutory instrument'), SI 2002/253 art 48(2) has effect as if contained in an Act of Parliament: art 48(2A) (added by SI 2008/1485).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/(1) THE NURSING AND MIDWIFERY COUNCIL/707. External regulation.

### **707. External regulation.**

The Nursing and Midwifery Council<sup>1</sup> is subject to the oversight of the Council for the Regulation of Health Care Professionals<sup>2</sup> and must in the exercise of its functions co-operate with that Council<sup>3</sup>. Where it considers the decision to be unduly lenient, or that it should not have been made, and that it would be desirable for the protection of members of the public<sup>4</sup>, the Council for the Regulation of Health Care Professionals has powers to refer to the High Court a decision that the fitness to practise of a nurse or midwife<sup>5</sup> was impaired otherwise than by reason of his physical or mental health<sup>6</sup>, a final decision not to take any disciplinary measure in relation to such fitness to practise<sup>7</sup>, and a decision to restore a person to the register following removal from it following disciplinary proceedings<sup>8</sup>.

Her Majesty may by Order in Council<sup>9</sup> make provision modifying the regulation of the professions of nursing and midwifery<sup>10</sup> so far as appears to be necessary or expedient for the purpose of securing or improving the regulation of the professions or the services which the professions provide or to which they contribute<sup>11</sup>, and modifying, as respects the Nursing and Midwifery Council, the range of functions of that body in relation to which the Council for the Regulation of Health Care Professionals performs its functions<sup>12</sup>.

The provisions of the Competition Act 1998 prohibiting agreements which have as their object the prevention, restriction or distortion of competition within the United Kingdom apply to rules made by professional bodies<sup>13</sup>.

1 As to the creation of the Nursing and Midwifery Council see PARA 691 ante.

2 See the National Health Service Reform and Health Care Professions Act 2002 s 25(2); and PARA 303 ante. As to the Council for the Regulation of Health Care Professionals, its duties and powers see PARA 294 et seq ante.

3 See *ibid* s 27(1); and PARA 304 ante. As to the power of the Council for the Regulation of Health Care Professionals to give directions requiring the Nursing and Midwifery Council to make rules where it considers that it would be desirable to do so for the protection of members of the public see PARA 304 ante. As to the power of the Secretary of State to make provision in regulations about the investigation by the Council for the Regulation of Health Care Professionals of complaints made to it about the way in which the Nursing and Midwifery Council has exercised any of its functions see PARA 305 ante. As to the Secretary of State see PARA 5 ante.

4 See the National Health Service Reform and Health Care Professions Act 2002 s 29; and PARA 306 ante.

5 As to proceedings relating to fitness to practise see PARA 747 et seq post.

6 See the National Health Service Reform and Health Care Professions Act 2002 s 29(1)(i); and PARA 306 ante.

7 See *ibid* s 29(2)(b); and PARA 306 ante.

8 See *ibid* s 29(2)(c); and PARA 306 ante.

9 As to Orders in Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 907.

10 *Ie* the professions regulated by the Nursing and Midwifery Order 2001, SI 2002/253 (as amended).

11 See the Health Act 1999 s 60(1)(a), (2)(b) (amended by the Nursing and Midwifery Order 2001, SI 2002/253, art 54(3), Sch 5 para 16(a)); and PARA 291 ante.

12 See the Health Act 1999 s 60(1)(e); and PARA 291 ante. As to the scope of such orders and the procedure for making them see PARAS 292-293 ante.

13 See the Competition Act 1998 Ch 1 (ss 1-11); and COMPETITION vol 18 (2009) PARA 116 et seq.

## **UPDATE**

### **707 External regulation**

TEXT AND NOTES--Council for the Regulation of Health Care Professionals renamed as the Council for Healthcare Regulatory Excellence: see the Health and Social Care Act 2008 s 113(1).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/ (2) THE PRACTICE OF MIDWIFERY/708. The midwifery committee.

## **(2) THE PRACTICE OF MIDWIFERY**

### **708. The midwifery committee.**

The role of the midwifery committee is to advise the Nursing and Midwifery Council<sup>1</sup>, at the Council's request or otherwise, on any matters affecting midwifery<sup>2</sup>. The Council must consult the committee on the exercise of its functions<sup>3</sup> in so far as it affects midwifery, including any proposal to make rules as to midwifery practice<sup>4</sup>.

The Council must by standing orders provide in respect of the committee for its composition<sup>5</sup>; the appointment of members<sup>6</sup>; the quorum at its meetings<sup>7</sup>; its procedure<sup>8</sup>; standards for the education and training, attendance and performance of its members<sup>9</sup>; and the performance of its functions<sup>10</sup>. The standing orders must, in particular, provide for: (1) the chairman of the committee to be a member of the Council<sup>11</sup>; (2) the majority of members of the committee to be practising midwives<sup>12</sup>; (3) the Council to have regard<sup>13</sup> when selecting non-Council members for the committee to the guidance issued by the Commissioner for Public Appointments<sup>14</sup>.

No person who is a member of the Council or midwifery committee by virtue of his membership of any profession may take part in any proceedings of the committee in any period during which he is the subject of any investigations, proceedings or determination against him concerning his fitness to practise his profession<sup>15</sup>.

The powers of the committee may be exercised even though there is a vacancy among its members<sup>16</sup>; and no proceedings of the committee are invalidated by any defect in the appointment of a member<sup>17</sup>.

1 As to the Nursing and Midwifery Council see PARA 691 et seq ante; and as to its committees see PARA 691 ante.

2 Nursing and Midwifery Order 2001, SI 2002/253, art 41(1).

3 As to the functions of the Council see PARA 692 ante.

4 The rules under the Nursing and Midwifery Order 2001, SI 2002/253, art 42 (see PARA 709 post): art 41(2).

5 Ibid art 3, Sch 1 para 16(1)(a).

6 Ibid Sch 1 para 16(1)(b).

7 Ibid Sch 1 para 16(1)(c).

8 Ibid Sch 1 para 16(1)(d).

9 Ibid Sch 1 para 16(1)(e).

10 Ibid Sch 1 para 16(1)(f).

11 Ibid Sch 1 para 16(2)(a). As to the membership of the Council see PARAS 694-695 ante.

12 Ibid Sch 1 para 16(2)(b). 'Practising' means working as a registered nurse or midwife: art 2, Sch 4.

13 The subject to other provisions in the Nursing and Midwifery Order 2001, SI 2002/253 (as amended).

14 Ibid Sch 1 para 16(2)(c). As to the Commissioner for Public Appointments see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 953.

15 Ibid Sch 1 para 16(3). As to fitness to practise in respect of nurses and midwives see PARA 747 et seq post.

16 Ibid Sch 1 para 16(4).

17 Ibid Sch 1 para 16(5).

## **UPDATE**

### **708 The midwifery committee**

TEXT AND NOTES 5-14--SI 2002/253 Sch 1 para 16(1), (2), (2A), (2B) substituted for Sch 1 para 16(1), (2): SI 2008/1485.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/ (2) THE PRACTICE OF MIDWIFERY/709. Rules as to midwifery practice.

### **709. Rules as to midwifery practice.**

In addition to its other functions, the Nursing and Midwifery Council<sup>1</sup> must by rules<sup>2</sup> regulate the practice of midwifery and the rules may in particular: (1) determine the circumstances in which and the procedure by means of which a midwife may be suspended from practice<sup>3</sup>; (2) require midwives to give notice of their intention to practise to the local supervising authority for the area in which they intend to practise<sup>4</sup>; (3) require midwives to attend courses of instruction in accordance with the rules<sup>5</sup>.

1 As to the Nursing and Midwifery Council see PARA 691 et seq ante.

2 As to the making of rules by the Council see PARA 701 ante. As to the rules that have been made see the Nursing and Midwifery Council (Midwives) Rules Order of Council 2004, approved by the Nursing and Midwifery Council (Midwives) Rules Order of Council 2004, SI 2004/1764; and PARA 711 et seq post.

3 Nursing and Midwifery Order 2001, SI 2002/253, art 42(1)(a). As to suspension from practice see PARA 715 post.

4 Ibid art 42(1)(b). If rules are made requiring midwives to give such notice, the local supervising authority must inform the Council of any notice given to it under those rules: art 42(2). As to such notice see PARA 713 post. For the meaning of 'local supervising authority' see PARA 710 note 1 post.

5 Ibid art 42(1)(c).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/ (2) THE PRACTICE OF MIDWIFERY/710. Local supervising authorities.

## **710. Local supervising authorities.**

Each local supervising authority<sup>1</sup> must: (1) exercise general supervision in accordance with the rules made<sup>2</sup> by the Nursing and Midwifery Council<sup>3</sup> over all midwives practising<sup>4</sup> in its area<sup>5</sup>; (2) where it appears to it that the fitness to practise of a midwife in its area is impaired, report it to the Council<sup>6</sup>; and (3) have power in accordance with such rules to suspend a midwife from practice<sup>7</sup>. The Council may prescribe<sup>8</sup> the qualifications of persons who may be appointed by the local supervising authority to exercise supervision over midwives in its area, and no one may be so appointed who is not so qualified<sup>9</sup>. The Council must by rules<sup>10</sup> from time to time establish standards for the exercise by local supervising authorities of their functions and may give guidance to local supervising authorities on these matters<sup>11</sup>.

Each local supervising authority must publish: (a) the name and address of its midwifery officer<sup>12</sup>, together with the procedure for reporting all adverse incidents relating to midwifery practice or allegations of impaired fitness to practise of practising midwives<sup>13</sup> within its area and the procedure by which it will investigate any such reports<sup>14</sup>; (b) the procedure by which it will deal with complaints or allegations against its midwifery officer or supervisors of midwives within its area<sup>15</sup>.

Each year every local supervising authority must submit a written report to the Council by such date and containing such information as the Council may specify<sup>16</sup>.

1 'Local supervising authority' means in England, strategic health authorities, and in Wales, health authorities, both as established under the National Health Service Act 1977 s 8: Nursing and Midwifery Order 2001, SI 2002/253, art 2, Sch 4 (definition amended by SI 2002/2469). As to such authorities see HEALTH SERVICES vol 54 (2008) PARAS 74-75, 94 et seq.

2 See under the Nursing and Midwifery Order 2001, SI 2002/253, art 42: see PARA 709 ante.

3 As to the Nursing and Midwifery Council see PARA 691 et seq ante.

4 For the meaning of 'practising' see PARA 708 note 12 ante.

5 Nursing and Midwifery Order 2001, SI 2002/253, art 43(1)(a).

6 Ibid art 43(1)(b).

7 Ibid art 43(1)(c). As to the suspension of midwives from practice see PARA 715 post.

8 For the meaning of 'prescribed' see PARA 695 note 8 ante.

9 Nursing and Midwifery Order 2001, SI 2002/253, art 43(2).

10 As to the making of rules by the Council see PARA 701 ante.

11 Nursing and Midwifery Order 2001, SI 2002/253, art 43(3). As to the rules that have been made see the Nursing and Midwifery Council (Midwives) Rules 2004, approved by the Nursing and Midwifery Council (Midwives) Rules Order of Council 2004, SI 2004/1764; and PARA 712 post.

12 As to midwifery officers see PARA 711 post.

13 'Practising midwife' means a registered midwife who notifies his intention to practise to a local supervising authority and who has updated his practice in accordance with the standards published by the Council, and who: (1) is in attendance upon a woman and baby during the antenatal, intranatal or postnatal period; or (2) holds a post for which a midwifery qualification is required: Nursing and Midwifery Council

(Midwives) Rules Order of Council 2004, SI 2004/1764, r 2. 'Attendance upon' means providing care or advice to a woman or care to a baby whether or not the midwife is physically present; 'woman and baby' means any woman, regardless of her age, and where reference is made to 'baby' in conjunction with 'woman', it is taken as including reference to the woman's unborn baby during the antenatal and intranatal periods; and 'postnatal period' means the period after the end of labour during which the attendance of a midwife upon a woman and baby is required, being not less than ten days and for such longer period as the midwife considers necessary: r 2.

14 Ibid r 15(a).

15 Ibid r 15(b). For the meaning of 'supervisor of midwives' see PARA 712 note 2 post.

16 Ibid r 16.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/ (2) THE PRACTICE OF MIDWIFERY/711. Local supervising authority midwifery officers.

### **711. Local supervising authority midwifery officers.**

Each local supervising authority<sup>1</sup> must appoint a local supervising authority midwifery officer<sup>2</sup> who is responsible for exercising its functions in relation to the supervision of midwives including in relation to the appointment of supervisors of midwives<sup>3</sup>. A local supervising authority must not appoint a person to the post of local supervising authority midwifery officer unless he is a practising midwife<sup>4</sup>, and he meets the standards of experience and education<sup>5</sup> set by the Nursing and Midwifery Council<sup>6</sup> from time to time<sup>7</sup>. Where a local supervising authority, in relation to the exercise of its functions as to the supervision of midwives, has concerns about whether a local supervising authority midwifery officer meets the Council's standards, it must discuss those concerns with the Council<sup>8</sup>.

1 As to local supervising authorities see PARA 710 ante.

2 'Local supervising authority midwifery officer' means the midwifery officer appointed by a local supervising authority in accordance with the Nursing and Midwifery Council (Midwives) Rules Order of Council 2004, SI 2004/1764, r 13(1) (see the text and note 3 infra): r 2. Any person appointed pursuant to the Nurses, Midwives and Health Visitors Rules Approval Order 1983, SI 1983/873 (lapsed) is regarded as validly appointed for these purposes until the termination of the appointment: Nursing and Midwifery Order 2001 (Transitional Provisions) Order of Council 2004, SI 2004/1762, art 14(1). However, from 1 August 2006, art 14(1) does not apply in respect of the appointment of a local supervising authority midwifery officer, if that officer does not meet the criteria for appointment as a local supervising authority midwifery officer set out in the Nursing and Midwifery Council (Midwives) Rules Order of Council 2004, SI 2004/1764, art 13(2) (see the text and notes 4-7 infra): Nursing and Midwifery Order 2001 (Transitional Provisions) Order of Council 2004, SI 2004/1762, art 14(2).

3 *Ie* under the Nursing and Midwifery Council (Midwives) Rules Order of Council 2004, SI 2004/1764, r 11(1) (see PARA 712 post): r 13(1).

4 *Ibid* r 13(2)(a). For the meaning of 'practising midwife' see PARA 710 note 13 ante.

5 'Education' includes training: *ibid* r 2.

6 As to the Nursing and Midwifery Council see PARA 691 et seq ante.

7 Nursing and Midwifery Council (Midwives) Rules Order of Council 2004, SI 2004/1764, r 13(2)(b).

8 *Ibid* r 14. See also PARA 712 post.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/ (2) THE PRACTICE OF MIDWIFERY/712. Supervision of midwives.

## **712. Supervision of midwives.**

A local supervising authority<sup>1</sup> must appoint an adequate number of supervisors of midwives<sup>2</sup> to exercise supervision over practising midwives<sup>3</sup> in its area<sup>4</sup>. To be appointed for the first time as a supervisor of midwives, a person must: (1) be a practising midwife<sup>5</sup>; (2) have three years' experience as a practising midwife of which at least one must have been in the two year period immediately preceding the appointment<sup>6</sup>; and (3) have successfully completed a programme within the three year period prior to his first appointment as a supervisor of midwives<sup>7</sup>. For any subsequent appointment as a supervisor of midwives, a person must have practised in such a role for three years within the five year period prior to the new appointment<sup>8</sup>. Following his appointment, a supervisor of midwives must complete such periods of study relating to the supervision of midwives as the Nursing and Midwifery Council may from time to time require<sup>9</sup>. Where a local supervising authority, in relation to the exercise of its functions as to the supervision of midwives, has concerns about whether a supervisor of midwives meets the Council's standards, it must discuss those concerns with the Council<sup>10</sup>.

Each practising midwife must have a named supervisor of midwives from among the supervisors of midwives appointed by the local supervising authority covering his main area of practice<sup>11</sup>. A local supervising authority must ensure that: (a) each practising midwife within its area has a named supervisor of midwives<sup>12</sup>; (b) at least once a year, a supervisor of midwives meets each midwife for whom he is the named supervisor of midwives to review the midwife's practice and to identify his training needs<sup>13</sup>; (c) all supervisors of midwives within its area maintain records of their supervisory activities, including any meeting with a midwife<sup>14</sup>; and (d) all practising midwives within its area have 24-hour access to a supervisor of midwives<sup>15</sup>.

A practising midwife must give to a supervisor of midwives, a local supervising authority and the Council, every reasonable facility to monitor his standards and methods of practice and to inspect his records<sup>16</sup>, his equipment and any premises that he is entitled to permit them to enter, which may include such part of the midwife's residence as may be used for professional purposes<sup>17</sup>. A practising midwife must use his best endeavours to permit inspection from time to time of all places of work in which he practises, other than the private residence of a woman and baby<sup>18</sup> he is attending, by persons nominated by the Council for this purpose, one of whom must be a practising midwife<sup>19</sup>.

1 As to local supervising authorities see PARA 710 ante.

2 'Supervisor of midwives' means a person appointed by a local supervising authority to exercise supervision over midwives practising in its area in accordance with the Nursing and Midwifery Council (Midwives) Rules Order of Council 2004, SI 2004/1764, r 11(1) (see the text and note 4 infra): r 2.

3 For the meaning of 'practising midwife' see PARA 710 note 13 ante.

4 Nursing and Midwifery Council (Midwives) Rules Order of Council 2004, SI 2004/1764, r 11(1).

5 Ibid r 11(2)(a). In the case of a national of an EEA state (or other person entitled to be treated, for the purpose of appointment as a supervisor of midwives, no less favourably than a national of such a state by virtue of an enforceable Community law right or any enactment giving effect to a Community obligation), the conditions in r 11(2), (3) (see the text to notes 6-8 infra) are satisfied if, in the opinion of the Nursing and Midwifery Council, a person has had comparable training or experience within or outside the EEA: r 11(4). 'EEA state' and 'national' in relation to an EEA state are not defined in the Nursing and Midwifery Council (Midwives) Rules Order of Council 2004, SI 2004/1764; as to the definitions in the Nursing and Midwifery Order 2001, SI 2002/253, see PARAS 720 note 14, 721 note 7 post. For the meanings of 'enforceable Community right' and

'Community obligation' see the European Communities Act 1972 ss 1, 2(1), Sch 1 Pt II; and the Interpretation Act 1978 s 5, Sch 1.

6 Nursing and Midwifery Council (Midwives) Rules Order of Council 2004, SI 2004/1764, r 11(2)(b). See also note 5 supra.

7 Ibid r 11(2)(c). See also note 5 supra. The provider, content and duration of such a programme must be such as the Nursing and Midwifery Council may from time to time specify for these purposes: r 11(5). As to the Nursing and Midwifery Council see PARA 691 et seq ante.

8 Ibid r 11(3). See also note 5 supra.

9 Ibid r 11(6).

10 Ibid r 14.

11 Ibid r 12(1). 'Main area of practice' means the geographical location where the midwife has been, or will be, practising most often in the 12 month period related to the most recent notification of intention to practise (see PARA 713 post): r 2.

12 Ibid r 12(2)(a).

13 Ibid r 12(2)(b).

14 Ibid r 12(2)(c).

15 Ibid r 12(2)(d).

16 As to records see PARA 714 post.

17 Nursing and Midwifery Council (Midwives) Rules Order of Council 2004, SI 2004/1764, r 10(1).

18 For the meaning of 'woman and baby' see PARA 710 note 13 ante.

19 Nursing and Midwifery Council (Midwives) Rules Order of Council 2004, SI 2004/1764, r 10(2).

## **UPDATE**

### **712 Supervision of midwives**

TEXT AND NOTES 1-9--SI 2004/1764 r 11 substituted: SI 2007/1887.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/ (2) THE PRACTICE OF MIDWIFERY/713. Notification of intention to practise.

### **713. Notification of intention to practise.**

If a midwife intends either to be in attendance upon a woman or baby<sup>1</sup> during the antenatal, intranatal or postnatal period<sup>2</sup> or to hold a post for which a midwifery qualification is required, he must give notice<sup>3</sup> to each local supervising authority<sup>4</sup> in whose area he intends to practise or continue to practise before commencing to practise there<sup>5</sup>, and thereafter in respect of each period of 12 months beginning on a date specified by the Nursing and Midwifery Council from time to time<sup>6</sup>.

1 For the meanings of 'attendance upon' and 'woman or baby' see PARA 710 note 13 ante.

2 For the meaning of 'postnatal period' see PARA 710 note 13 ante.

3 Nursing and Midwifery Council (Midwives) Rules Order of Council 2004, SI 2004/1764, r 3(1). A notice must contain such particulars and be in such form as the Nursing and Midwifery Council may from time to time specify: r 3(4). As to the Nursing and Midwifery Council see PARA 691 et seq ante.

4 A local supervising authority must publish: (1) the name and address of its midwifery officer for the submission of such a notice (ibid r 4(1)(a)); and (2) the date by which a midwife must give such a notice in accordance with r 3(2)(b) (see the text to note 6 infra) (r 4(1)(b)). Each local supervising authority must inform the Council, in such form and at such frequency as requested by the Council, of any notice given to it under r 3: r 4(2). As to local supervising authorities see PARA 710 ante. For the meaning of 'local supervising authority midwifery officer' see PARA 711 note 2 ante.

5 Ibid r 3(2)(a). Notwithstanding r 3(2), the notice may, in an emergency, be given after the time when he commences to practise provided that it is given within 48 hours of that time: r 3(3). 'Emergency' means a sudden, unexpected, event relating to the health or condition of a woman or baby which requires immediate attention: r 2.

6 Ibid r 3(2)(b). See also notes 4, 5 supra. Any notice given pursuant to the Nurses, Midwives and Health Visitors Rules Approval Order 1983, SI 1983/873 (lapsed) is regarded as validly given for these purposes until the expiry of the notice: Nursing and Midwifery Order 2001 (Transitional Provisions) Order of Council 2004, SI 2004/1762, art 14(1).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/ (2) THE PRACTICE OF MIDWIFERY/714. Practice responsibilities.

#### **714. Practice responsibilities.**

A practising midwife<sup>1</sup> is responsible for providing midwifery care, in accordance with such standards as the Nursing and Midwifery Council<sup>2</sup> may specify from time to time, to a woman and baby<sup>3</sup> during the antenatal, intranatal and postnatal periods<sup>4</sup>. Except in an emergency<sup>5</sup>, a practising midwife must not provide any care, or undertake any treatment, which he has not been trained to give<sup>6</sup>. A practising midwife must only supply and administer those medicines, including analgesics, in respect of which he has received the appropriate training as to use, dosage and methods of administration<sup>7</sup>. A practising midwife may only participate in clinical trials if there is a protocol approved by a relevant ethics committee<sup>8</sup>.

A practising midwife must keep, as contemporaneously as is reasonable, continuous and detailed records of observations made, care given and medicine and any form of pain relief administered by him to a woman or baby<sup>9</sup>. The records must be kept, in the case of a midwife employed by an NHS authority<sup>10</sup>, in accordance with any directions given by his employer<sup>11</sup>, and, in any other case, in a form approved by the local supervising authority<sup>12</sup> covering his main area of practice<sup>13</sup>. A midwife must not destroy or permit the destruction of records which have been made whilst he is in attendance upon a woman or baby<sup>14</sup>. Immediately before ceasing to practise or if he finds it impossible or inconvenient to preserve his records safely, a midwife must transfer them if he is employed by an NHS authority, to that authority<sup>15</sup>; if he is employed by a private sector employer, to that employer<sup>16</sup>; if he is not covered by the preceding categories, to the local supervising authority in whose area the care took place<sup>17</sup>. Any such transfer must be duly recorded by each party to the transfer<sup>18</sup>.

1 For the meaning of 'practising midwife' see PARA 710 note 13 ante.

2 As to the Nursing and Midwifery Council see PARA 691 et seq ante.

3 For the meaning of 'woman and baby' see PARA 710 note 13 ante.

4 Nursing and Midwifery Council (Midwives) Rules Order of Council 2004, SI 2004/1764, r 6(1). For the meaning of 'postnatal period' see PARA 710 note 13 ante.

5 In an emergency, or where a deviation from the norm which is outside his current sphere of practice becomes apparent in a woman or baby during the antenatal, intranatal or postnatal periods, a practising midwife must call such qualified health professional as may reasonably be expected to have the necessary skills and experience to assist him in the provision of care: *ibid* r 6(3). For the meaning of 'emergency' see PARA 713 note 5 ante.

6 *Ibid* r 6(2).

7 *Ibid* r 7.

8 *Ibid* r 8(1). For these purposes, 'ethics committee' means an ethics committee established or recognised by the United Kingdom Ethics Committees Authority or established or recognised for the purposes of advising on the ethics of research investigations on human beings prior to 1 May 2004 by the Secretary of State, the Scottish Ministers, the National Assembly for Wales, the Department of Health, Social Services and Public Safety in Northern Ireland, a strategic health authority, a health board, or a health and social services board: r 8(2). As to clinical trials and the United Kingdom Ethics Committees Authority see MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 82 et seq. As to the Secretary of State see PARA 5 ante. As to the National Assembly for Wales and the Scottish Ministers see CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to strategic health authorities and health boards see HEALTH SERVICES vol 54 (2008) PARAS 74-75, 94 et seq.

9 *Ibid* r 9(1).

10 'NHS authority' means any body established under the National Health Service Act 1977 or the National Health Service and Community Care Act 1990 which employs midwives (see HEALTH SERVICES vol 54 (2008) PARA 75 et seq): Nursing and Midwifery Council (Midwives) Rules Order of Council 2004, SI 2004/1764, r 9(6).

11 Ibid r 9(2)(a).

12 As to local supervising authorities see PARA 710 ante.

13 Nursing and Midwifery Council (Midwives) Rules Order of Council 2004, SI 2004/1764, r 9(2)(b). For the meaning of 'main area of practice' see PARA 712 note 11 ante.

14 Ibid r 9(3). For the meaning of 'attendance upon' see PARA 710 note 13 ante.

15 Ibid r 9(4)(a).

16 Ibid r 9(4)(b). 'Private sector employer' means an organisation other than an NHS authority or a limited company or partnership in which the midwife or any member of his family has or has had a substantial interest: r 9(6). As to limited companies see COMPANIES; and as to partnership see PARTNERSHIP.

17 Ibid r 9(4)(c).

18 Ibid r 9(5).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/ (2) THE PRACTICE OF MIDWIFERY/715. Suspension from practice by a local supervising authority.

### **715. Suspension from practice by a local supervising authority.**

Subject to the following provisions, a local supervising authority<sup>1</sup> may, following an appropriate investigation (which is to include, where appropriate, seeking the views of the midwife concerned), suspend from practice: (1) a midwife against whom it has reported a case for investigation to the Nursing and Midwifery Council<sup>2</sup>, pending the outcome of the Council's investigation<sup>3</sup>; or (2) a midwife who has been referred to a practice committee of the Council<sup>4</sup>, pending the outcome of that referral<sup>5</sup>. Where it exercises its power to suspend a midwife from practice, a local supervising authority must: (a) immediately notify the midwife concerned in writing<sup>6</sup> of the decision to suspend him and the reason for the suspension, and supply him with a copy of the documentation which it intends to submit to the Council<sup>7</sup>; and thereafter (b) immediately report to the Council in writing any such suspension, the reason for that suspension and details of the investigation carried out by the local supervising authority that led to that suspension<sup>8</sup>.

The practice committee to which the midwife concerned is referred by the Council must consider whether or not to make an interim suspension order or interim conditions of practice order<sup>9</sup> in respect of the midwife concerned<sup>10</sup>. Unless that practice committee makes an interim suspension order, the local supervising authority must revoke the suspension once the committee has determined whether or not to make an interim suspension order<sup>11</sup>. If the practice committee does make an interim suspension order but that order is subsequently revoked, the local supervising authority must revoke its suspension<sup>12</sup>.

1 As to local supervising authorities see PARA 710 ante.

2 As to the Nursing and Midwifery Council see PARA 691 et seq ante. As to the power of a local supervising authority to refer cases to the Council see PARA 710 ante.

3 Nursing and Midwifery Council (Midwives) Rules Order of Council 2004, SI 2004/1764, r 5(1)(a).

4 As to such committees see PARA 699 ante.

5 Nursing and Midwifery Council (Midwives) Rules Order of Council 2004, SI 2004/1764, r 5(1)(b).

6 For the meaning of 'writing' see PARA 20 note 22 ante.

7 In accordance with the Nursing and Midwifery Council (Midwives) Rules Order of Council 2004, SI 2004/1764, r 5(1)(b) (see the text to note 5 supra): r 5(2)(a).

8 Ibid r 5(2)(b).

9 As to such orders see PARA 771 post.

10 Nursing and Midwifery Council (Midwives) Rules Order of Council 2004, SI 2004/1764, r 5(3).

11 Ibid r 5(4).

12 Ibid r 5(5).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/(3) REGISTRATION OF NURSES AND MIDWIVES/(i) The Register/716. The registrar.

### **(3) REGISTRATION OF NURSES AND MIDWIVES**

#### **(i) The Register**

##### **716. The registrar.**

The Nursing and Midwifery Council<sup>1</sup> must appoint a registrar<sup>2</sup> who holds office for such period and on such terms as the Council may determine<sup>3</sup>. The registrar has such functions as the Council may direct<sup>4</sup>. The terms on which the registrar holds office may, in addition to providing for his remuneration, include provision for the payment of such pensions, allowances or gratuities to or in respect of him, or such contributions or payments towards provision for such pensions, allowances or gratuities, as may be determined by the Council<sup>5</sup>.

1 As to the Nursing and Midwifery Council see PARA 691 et seq ante.

2 'Registrar' means the person appointed under the Nursing and Midwifery Order 2001, SI 2002/253, art 4 (see the text and notes 3-5 infra): art 2, Sch 4. If the Council appoints a deputy or assistant registrar and that deputy or assistant registrar is authorised by the registrar to act for him in any matter, any reference to the registrar includes a reference to that deputy or assistant registrar: art 4(5).

3 Ibid art 4(1). The Secretary of State had power to appoint the first registrar, but otherwise the registrar is appointed by the Council; and he is appointed on such terms and conditions as the body appointing him sees fit: art 54(1), Sch 2 para 13. If the first registrar ceases to hold office before a registrar is appointed under art 4, the Secretary of State or the Council, as the case may be, may appoint a replacement: Sch 2 para 14. As to the Secretary of State see PARA 5 ante.

4 Ibid art 4(2).

5 Ibid art 4(3). Where the terms on which the registrar holds office include provision for the payment to him of any allowances or expenses, the rate at which those allowances or expenses are paid is determined by the Council: art 4(4).



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/(3) REGISTRATION OF NURSES AND MIDWIVES/(i) The Register/717. Establishment and maintenance of the register.

### **717. Establishment and maintenance of the register.**

The Nursing and Midwifery Council<sup>1</sup> must establish and maintain a register of qualified nurses and midwives<sup>2</sup>. The Council must from time to time: (1) establish the standards of proficiency<sup>3</sup> necessary to be admitted to the different parts of the register, being the standards it considers necessary for safe and effective practice under that part of the register<sup>4</sup>; and (2) prescribe<sup>5</sup> the requirements to be met as to the evidence of good health and good character in order to satisfy the registrar<sup>6</sup> that an applicant is capable of safe and effective practice as a nurse or midwife<sup>7</sup>. Before prescribing such requirements, the Council must consult the conduct and competence committee<sup>8</sup> in addition to other specified persons<sup>9</sup>, and the Council must publish those requirements<sup>10</sup>. The register must show, in relation to each registrant<sup>11</sup>, such address and other details as the Council may prescribe<sup>12</sup>.

The register must be divided into such parts as the Privy Council may by order determine<sup>13</sup>, on a proposal by the Nursing and Midwifery Council or otherwise<sup>14</sup>. Each part must have a designated title indicative of different qualifications and different kinds of education or training and a registrant is entitled to use the title corresponding to the part of the register in which he is registered<sup>15</sup>.

The Nursing and Midwifery Council must make rules in connection with registration and the register, and as to the payment of fees<sup>16</sup>. The rules must, in particular, make provision as to: (a) the form and keeping of the register<sup>17</sup>; (b) the procedure for the making, alteration and deletion of entries in the register<sup>18</sup>; (c) the form and manner in which applications are to be made and the fee to be charged for registration, renewal of registration and readmission to the register<sup>19</sup>, for the making of any additional entry in the register<sup>20</sup>, and for registration to lapse<sup>21</sup>; (d) the documentary and other evidence which is to accompany such applications<sup>22</sup>.

1 As to the Nursing and Midwifery Council see PARA 691 et seq ante.

2 Nursing and Midwifery Order 2001, SI 2002/253, art 5(1). 'Register' means the register established and maintained under art 5: art 2, Sch 4. In any enactment or instrument (past or future and including the Nursing and Midwifery Order 2001, SI 2002/253 (as amended)), except where the context otherwise provides, 'registered' in relation to nurses and midwives means registered in the register maintained under art 5 by virtue of qualifications in nursing or midwifery, as the case may be: art 5(5). For the meaning of 'enactment' see PARA 4 note 1 ante. As to the transitional provisions relating to the establishment of the register see Sch 2 paras 9-12.

3 'Standards of proficiency' means the standards established by the Council under ibid art 5(2): Sch 4.

4 Ibid art 5(2)(a).

5 For the meaning of 'prescribed' see PARA 695 note 8 ante.

6 For the meaning of 'registrar' see PARA 716 note 2 ante.

7 Nursing and Midwifery Order 2001, SI 2002/253, art 5(2)(b). As to the rules that have been made see the Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules 2004, approved by the Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767; and PARA 718 et seq post.

8 As to the conduct and competence committee see PARA 761 post.

9 I.e. the persons referred to in the Nursing and Midwifery Order 2001, SI 2002/253, art 3(14) (see PARA 692 ante): art 5(3)(a).

10 Ibid art 5(3)(b).

11 'Registrant' means a member of the profession of nursing or midwifery who has been admitted to the register maintained under ibid art 5: Sch 4.

12 Ibid art 5(4). See note 7 supra.

13 Subject to ibid art 7 (see the text to notes 16-22 infra), the Privy Council may by order, on a proposal by the Nursing and Midwifery Council or otherwise, make such other provision in connection with the register as it considers appropriate and in particular may provide for: (1) the register to include entries indicating the possession of qualifications (whether or not they are approved qualifications) or competence in a particular field or at a particular level of practice, or for the use of a particular category of entry to be discontinued (art 6(3)(a)); (2) persons to be registered in one or more parts of the register by virtue of having been included in the register maintained under the Nurses, Midwives and Health Visitors Act 1997 (Nursing and Midwifery Order 2001, SI 2002/253, art 6(3)(b)); (3) the recording of additional entries by virtue of their having been in the register maintained under the Nurses, Midwives and Health Visitors Act 1997 (Nursing and Midwifery Order 2001, SI 2002/253, art 6(3)(c)); (4) a specified part of the register to be closed, as from a date specified in the order, so that on or after that date no further person may become registered in that part (art 6(3)(d)); (5) a specified part of the register to be sub-divided into two or more parts, or for two or more parts to be combined into one (art 6(3)(e)); (6) persons to be registered in one or more parts of the register by virtue of having been registered in a part or parts of the register which have been closed, sub-divided or combined (art 6(3)(f)); (7) the register to include a part or parts for specialists in community and public health (art 6(3)(g)); (8) the recording in Welsh of titles, qualifications and other entries referred to in heads (1)-(7) supra in respect of those members of the professions of nursing and midwifery whose registered address is in Wales (art 6(3)(h)). See also note 14 infra. As to the exercise by the Privy Council of its powers see PARA 706 ante. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

14 Ibid art 6(1). References to parts of the register are to the parts so determined: art 6(1). The Privy Council, except where acting in accordance with a proposal made by the Nursing and Midwifery Council, must consult the Council before making, varying or revoking any such order: art 6(4). Before making any proposal referred to in art 6(1), (3) (see note 13 supra), the Nursing and Midwifery Council must consult representatives of any group of persons who appear likely to be affected by the proposed order: art 6(5). As to the order that has been made see the Nurses and Midwives (Parts of and Entries in the Register) Order of Council 2004, SI 2004/1765; and PARA 719 post.

15 Nursing and Midwifery Order 2001, SI 2002/253, art 6(2).

16 Ibid art 7(1). As to the making of rules by the Council see PARA 701 ante. As to the rules that have been made see the Nursing and Midwifery Council (Fees) Rules 2004, approved by the Nursing and Midwifery Council (Fees) Rules Order of Council 2004, SI 2004/1654 (see PARAS 722, 723, 727, 729, 770 post); and the Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules 2004, approved by the Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767 (see PARA 718 et seq post).

17 Nursing and Midwifery Order 2001, SI 2002/253, art 7(2)(a).

18 Ibid art 7(2)(b).

19 Ibid art 7(2)(c)(i). Before determining or varying any such fees, the Council must consult such of those persons mentioned in art 3(14) (see PARA 692 ante) as it considers appropriate: art 7(3).

20 Ibid art 7(2)(c)(ii). See also note 19 supra.

21 Ibid art 7(2)(c)(iii). See also note 19 supra.

22 Ibid art 7(2)(d).

## UPDATE

### 717 Establishment and maintenance of the register

TEXT AND NOTES--As to temporary annotations of the register in circumstances where a major emergency such as one involving the loss of human life or illness has occurred, is occurring or is about to occur, see SI 2002/253 art 6A (added by SI 2008/1485 and amended by SI 2009/1182).

NOTE 7--2004 Rules amended: 2005 Rules approved by SI 2005/3354.

TEXT AND NOTE 9--The Council no longer needs to consult the conduct and competence committee before prescribing the requirements to be met: SI 2002/253 art 5(3)(a) (amended by SI 2009/1182).

TEXT AND NOTES 13-22--SI 2002/253 arts 6, 7 amended: SI 2007/3101.

NOTES 16-22--Rules may not be made under SI 2002/253 art 7 in connection with annotations under art 6A (as added: see TEXT AND NOTES): art 7(5) (added by SI 2008/1485).

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### **718. The register.**

The registrar<sup>1</sup> must enter in the register<sup>2</sup> against the full name of each registrant his personal identification number<sup>3</sup>, his address for correspondence<sup>4</sup>, any registrable qualification<sup>5</sup> including any mark which denotes his field of practice as it applies to that qualification<sup>6</sup>, and any recordable qualification<sup>7</sup>. The registrar may enter on the register any other information which is material to a registrant's registration<sup>8</sup>. The registrar must keep the register electronically in a form and manner which guards against falsification and must take all reasonable steps to ensure that only he, and such persons as have been authorised by him in writing for the purpose, are able to amend the register<sup>9</sup>.

1 As to the registrar see PARA 716 ante.

2 As to the establishment and maintenance of the register see PARA 717 ante.

3 Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 4(1)(a). 'Personal identification number' means the unique number allocated to each applicant on first registration: r 2.

4 Ibid r 4(1)(b). The home address of a registrant must not be included in any published version of the register without his consent: r 4(2). As to publication of the register see PARA 720 post.

5 'Registrable qualification' means a qualification leading to admission to a part of the register: ibid r 2.

6 Ibid r 4(1)(c).

7 Ibid r 4(1)(d). 'Recordable qualification' means a qualification which is not a registrable qualification and which meets the standards set by the Nursing and Midwifery Council, or is obtained outside the United Kingdom and which the Council is satisfied is equivalent to such a qualification: r 2. As to the Nursing and Midwifery Council see PARA 691 et seq ante. For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

8 Ibid r 4(3).

9 Ibid r 4(4). As to amendments to the register see PARA 730 post.

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## **719. Parts of the register.**

The register<sup>1</sup> must be divided into the following parts<sup>2</sup>: (1) nurses<sup>3</sup>; (2) midwives<sup>4</sup>; and (3) specialist community public health nurses<sup>5</sup>. There are designated titles in relation to each part or sub-part of the register<sup>6</sup>. A title, qualification or other entry<sup>7</sup> which is entered on the register in respect of a registered<sup>8</sup> nurse or midwife whose registered address is in Wales may be entered on the register in Welsh as well as in English<sup>9</sup>. The entries in the register are to include such entry as the Nursing and Midwifery Council<sup>10</sup> considers appropriate to indicate a qualification held by, or field of practice of, a registrant<sup>11</sup>.

1 As to the register see PARA 718 ante.

2 Nurses and Midwives (Parts of and Entries in the Register) Order of Council 2004, SI 2004/1765, art 2. If a person immediately before 1 August 2004, being the day on which the Nurses and Midwives (Parts of and Entries in the Register) Order of Council 2004, SI 2004/1765, came into force, was registered in the register maintained under the Nurses, Midwives and Health Visitors Act 1997, that person must be registered with effect from that date in the appropriate part or sub-part of the register: Nurses and Midwives (Parts of and Entries in the Register) Order of Council 2004, SI 2004/1765, art 4. As to the appropriate parts or sub-parts of the register see Sch 2. Additional entries included in respect of a nurse or midwife in the register maintained under the Nurses, Midwives and Health Visitors Act 1997 immediately before 1 August 2004 must be included in the register with effect from that date: Nurses and Midwives (Parts of and Entries in the Register) Order of Council 2004, SI 2004/1765, art 5.

3 Ibid Sch 1. The part relating to nurses is divided into two sub-parts, sub-part 1 and sub-part 2: Sch 1.

4 Ibid Sch 1.

5 Ibid Sch 1.

6 See ibid art 3. The designated title in relation to the part of the register dealing with nurses (sub-part 1) is 'registered nurse: first level'; the designated title in relation to the part of the register dealing with nurses (sub-part 2) is 'registered nurse: second level'; the designated title in relation to the part of the register dealing with midwives is 'midwife'; and the designated title in relation to the part of the register dealing with specialist community public health nurses is 'specialist community public health nurse': Sch 1. 'Specialist community public health nurse' means a registered nurse or midwife who is also registered in the specialist community public health nurses part of the register: art 2.

7 As referred to in the Nursing and Midwifery Order 2001, SI 2002/253, art 6(3): see PARA 717 note 13 ante.

8 For the meaning of 'registered' see PARA 717 note 2 ante.

9 Nurses and Midwives (Parts of and Entries in the Register) Order of Council 2004, SI 2004/1765, art 6.

10 As to the Nursing and Midwifery Council see PARA 691 et seq ante.

11 Nurses and Midwives (Parts of and Entries in the Register) Order of Council 2004, SI 2004/1765, art 7(1). The following entries are provided for:

170 (1) in the case of a nurse registered in the nurses register sub-part 1, a midwife or a specialist community public health nurse, a qualification to order drugs, medicines and appliances from the District Nurse and Health Visitor Formulary, from the Extended Formulary, or as a supplementary prescriber (art 7(2));

171 (2) in the case of a nurse registered in the nurses register sub-part 1, a recordable qualification in adult nursing, mental health nursing, learning disabilities nursing, children's

nursing, general practice nursing, community mental health nursing, community learning disabilities nursing, community children's nursing, and district nursing (art 7(3));

- 172 (3) in the case of a nurse registered in the nurses register sub-part 1 or a midwife, a recordable qualification as a lecturer or practice educator (art 7(4));
- 173 (4) in the case of a nurse registered in the nurses register sub-part 1, his field of practice, that is to say adult nursing, mental health nursing, learning disabilities nursing or children's nursing (art 7(5));
- 174 (5) in the case of a nurse registered in the nurses register sub-part 2, his field of practice, that is to say adult nursing, mental health nursing, learning disabilities nursing, general nursing or fever nursing (art 7(6));
- 175 (6) in the case of a specialist community public health nurse, a qualification in health visiting, occupational health nursing, school nursing or family health nursing which meets the standards set by the Council, or is obtained outside the United Kingdom and which the Council is satisfied is equivalent to such a qualification (art 7(7)).

The Council may also include such entry as it considers appropriate to indicate that a registrant possesses any other qualification (whether or not it is an approved qualification) or competence in a particular field or at a particular level of practice: art 7(8).

'District Nurse and Health Visitor Formulary' means the Nurse Prescribers' Formulary for District Nurses and Health Visitors Appendix in the British National Formulary, or the Nurse Prescribers' Formulary for District Nurses and Health Visitors in the Drug Tariff Pt XVII B(i); 'Extended Formulary' means the Nurse Prescribers' Extended Formulary Appendix in the British National Formulary or the Nurse Prescribers' Extended Formulary in the Drug Tariff Pt XVII B(ii); and 'Drug Tariff' means the drug tariff published under the National Health Service (Pharmaceutical Services) Regulations 1992, SI 1992/662, reg 18 (see HEALTH SERVICES vol 54 (2008) PARA 411): Nurses and Midwives (Parts of and Entries in the Register) Order of Council 2004, SI 2004/1765, art 2. For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

## **UPDATE**

### **719 Parts of the register**

NOTE 11--In relation to England, SI 1992/662 reg 18 now National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 56 (substituted by SI 2007/674). In relation to Wales, SI 1992/662 reg 18 substituted: SI 2007/1112. Head (1). SI 2004/1765 art 7(2) amended: SI 2006/1015. See also SI 2004/1765 reg 8 (annotations denoting visiting nurses or midwives from relevant European states) (added by SI 2007/3101).

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## **720. Access to register; certificates of registration.**

The Nursing and Midwifery Council<sup>1</sup> must make the register<sup>2</sup> available for inspection by members of the public at all reasonable times<sup>3</sup> and must publish the register maintained by it in such manner, and at such times, as it considers appropriate<sup>4</sup>.

Any copy of, or extract from, the published register is evidence of the matters mentioned in it<sup>5</sup>. A certificate purporting to be signed by the registrar<sup>6</sup>, certifying that a person:

- 874 (1) is registered in a specified category<sup>7</sup>;
- 875 (2) is not registered<sup>8</sup>;
- 876 (3) was registered in a specified category at a specified date or during a specified period<sup>9</sup>;
- 877 (4) was not registered in a specified category, or in any category, at a specified date or during a specified period<sup>10</sup>; or
- 878 (5) has never been registered<sup>11</sup>,

is evidence of the matters certified<sup>12</sup>.

On application by a registrant<sup>13</sup> who wishes to practise in another EEA state<sup>14</sup>, the Council must provide him with such documentary evidence as is required<sup>15</sup>.

1 As to the Nursing and Midwifery Council see PARA 691 et seq ante.

2 For the meaning of 'register' see PARA 717 note 2 ante.

3 Nursing and Midwifery Order 2001, SI 2002/253, art 8(1).

4 Ibid art 8(2).

5 Ibid art 8(3).

6 For the meaning of 'registrar' see PARA 716 note 2 ante.

7 Nursing and Midwifery Order 2001, SI 2002/253, art 8(4)(a).

8 Ibid art 8(4)(b).

9 Ibid art 8(4)(c).

10 Ibid art 8(4)(d).

11 Ibid art 8(4)(e).

12 Ibid art 8(4).

13 For the meaning of 'registrant' see PARA 717 note 11 ante.

14 'EEA state' means a contracting party to the EEA Agreement or Switzerland: Nursing and Midwifery Order 2001, SI 2002/253, art 2, Sch 4 (definition amended by SI 2003/3148). 'EEA Agreement' means the agreement on the European Economic Area signed at Oporto on 2 May 1992 as adjusted by the Protocol signed at Brussels on 17 March 1993 and as amended by Decision of the EEA Joint Committee 84/2002 of 25 June 2002 and by the agreement on the participation of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of

Poland, the Republic of Slovenia and the Slovak Republic signed at Luxembourg on 14 October 2003: Nursing and Midwifery Order 2001, SI 2002/253, Sch 4 (definition substituted by SI 2003/3148; and amended by SI 2004/1947).

15 le by the relevant EC directive: Nursing and Midwifery Order 2001, SI 2002/253, art 8(5). The relevant directives are the Second Nursing Directive and the Second Midwifery Directive: see PARA 741 note 5 post.

## **UPDATE**

### **720 Access to register; certificates of registration**

TEXT AND NOTES--SI 2002/253 art 8 amended: SI 2007/3101.



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## (ii) Registration

### 721. Approved qualifications.

A person is to be regarded as having an approved qualification<sup>1</sup> if:

- 879 (1) he has a qualification awarded in the United Kingdom<sup>2</sup> which has been approved by the Nursing and Midwifery Council<sup>3</sup> as attesting to the standard of proficiency<sup>4</sup> it requires for admission to the part of the register<sup>5</sup> in respect of which he is applying<sup>6</sup>;
  - 880 (2) he is an EEA national<sup>7</sup> and has an EEA qualification<sup>8</sup>; or
  - 881 (3) he has, elsewhere than in the United Kingdom, undergone training in nursing or midwifery and either:
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- 220. (a) holds a qualification which the Council is satisfied attests to a standard of proficiency comparable to that attested to by a qualification referred to in head (1) above<sup>9</sup>; or
  - 221. (b) the Council is not so satisfied, but the applicant has undergone in the United Kingdom or elsewhere such additional training or experience as satisfies the Council, following any test of competence as it may require him to take, that he has the requisite standard of proficiency for admission to the part of the register in respect of which he is applying<sup>10</sup>,
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- 882 and in either case, he is not an EEA national or exempt person<sup>11</sup> and he satisfies prescribed<sup>12</sup> requirements as to knowledge of English<sup>13</sup>.

The Council must determine procedures: (i) to assess whether a qualification awarded outside the United Kingdom is of a comparable standard to a qualification awarded in the United Kingdom<sup>14</sup> and it must, where it sees fit, keep a list of qualifications which are of a comparable standard which it must publish and keep under review<sup>15</sup>; and (ii) to assess other training or professional experience acquired outside the United Kingdom and to compare it, together with qualifications mentioned in head (i) above where appropriate, with the standard of proficiency required for admission to any part of the register<sup>16</sup>.

1 'Approved qualification' has the meaning given to it in the Nursing and Midwifery Order 2001, SI 2002/253, arts 13, 15 (see PARA 741 post): art 2, Sch 4.

2 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

3 As to the Nursing and Midwifery Council see PARA 691 et seq ante.

4 For the meaning of 'standards of proficiency' see PARA 717 note 3 ante.

5 For the meaning of 'register' see PARA 717 note 2 ante. As to the parts of the register see PARA 719 ante.

6 Nursing and Midwifery Order 2001, SI 2002/253, art 13(1)(a).

7 'EEA national' means a national of an EEA state; and 'national', in relation to an EEA state, means the same as it does for the purposes of the Community Treaties but does not include a person who by virtue of the Treaty of Accession Protocol No 3 (Channel Islands and Isle of Man) art 2 is not to benefit from Community provisions

relating to the free movement of persons and services: Nursing and Midwifery Order 2001, SI 2002/253, Sch 4. For the meaning of 'EEA state' see PARA 720 note 14 ante. For the meaning of 'the Community Treaties' see the Interpretation Act 1978 s 5, Sch 1; and the European Communities Act 1972 s 1(2).

8 Nursing and Midwifery Order 2001, SI 2002/253, art 13(1)(b). For these purposes, an EEA qualification is one obtained outside the United Kingdom, to which an EC directive applies and which the Privy Council has by order designated as being an approved qualification for the purposes of registration in the relevant part of the register: art 14(1). Such an order may provide: (1) that a qualification is designated for the purposes of registration in a particular part of the register only if prescribed conditions required by a directive issued by the Council of the European Communities are fulfilled, and different conditions may be prescribed with respect to the same qualification for different circumstances (art 14(2)(a)); and (2) that the Nursing and Midwifery Council may require the applicant to satisfy specified additional conditions before being registered including the undertaking of training or education, working under supervision or the taking and passing of a test of competence (art 14(2)(b)). A person falling within the definition of 'exempt person' (see note 11 infra) is treated for these purposes as if he were an EEA national: art 14(3). As to the designated qualifications see the European Nursing and Midwifery Qualifications Designation Order of Council 2004, SI 2004/1766. As to the exercise by the Privy Council of its powers see PARA 706 ante. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

9 Nursing and Midwifery Order 2001, SI 2002/253, art 13(1)(c)(i).

10 Ibid art 13(1)(c)(ii).

11 'Exempt person' means any person who is not an EEA national but is, by virtue of a right conferred by EC Council Regulation 1612/68 (OJ L257, 19.10.1968, p 2) art 11 or any other enforceable Community right, entitled to be treated for the purposes of access to the nursing or midwifery profession no less favourably than a national of such a state: Nursing and Midwifery Order 2001, SI 2002/253, Sch 4. As to the meaning of 'enforceable Community right' see the European Communities Act 1972 s 2(1); and the Interpretation Act 1978 s 5, Sch 1.

12 For the meaning of 'prescribed' see PARA 695 note 8 ante.

13 Nursing and Midwifery Order 2001, SI 2002/253, art 13(1)(c)(iii). The registrar may require an applicant who is not an EEA national exercising an enforceable Community right, or an exempt person, to produce evidence that he has sufficient knowledge of spoken and written English to enable him to practise as a registered nurse or registered midwife safely and competently in the United Kingdom: Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 9. As to the registrar see PARA 716 ante. For the meaning of 'registered' see PARA 717 note 2 ante.

14 Is a qualification mentioned in the Nursing and Midwifery Order 2001, SI 2002/253, art 13(1)(a): see the text to notes 1-6 supra.

15 Ibid art 13(2)(a).

16 Ibid art 13(2)(b). As to offences relating to false claims to qualifications see PARA 784 post.

## UPDATE

### 721 Approved qualifications

TEXT AND NOTES--SI 2002/253 arts 13, 14 amended: SI 2007/3101.

NOTE 7--As to the meaning of 'the Community Treaties' see EUROPEAN COMMUNITIES vol 51 PARA 1•22.

NOTE 8--SI 2004/1766 amended: SI 2007/3101.

NOTE 13--2004 Rules amended: 2005 Rules (approved by SI 2005/3354), SI 2007/3101.

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## **722. Registration.**

A person seeking admission to a part of the register<sup>1</sup> must apply to the Nursing and Midwifery Council<sup>2</sup> and if he satisfies the following conditions he is entitled<sup>3</sup> to be registered<sup>4</sup> in that part<sup>5</sup>. The conditions are that: (1) the application is made in the prescribed form and manner<sup>6</sup>; (2) the applicant satisfies the registrar<sup>7</sup> that he holds an approved qualification<sup>8</sup>; (3) the applicant satisfies the registrar<sup>9</sup> that he is capable of safe and effective practice as a nurse or midwife<sup>10</sup>; and (4) he has paid the prescribed fee<sup>11</sup>.

The registrar must give his decision on an application as soon as reasonably practicable and in any event within three months from the date by which the application together with full supporting documentation has been received<sup>12</sup> or, in respect of certain applications<sup>13</sup> within the period specified<sup>14</sup>. The registrar must notify the applicant in writing<sup>15</sup> of his decision and, where that decision is unfavourable to the applicant, of his reasons for reaching that decision, and of the applicant's right of appeal<sup>16</sup>.

The Nursing and Midwifery Council, being the designated authority for the profession of nursing<sup>17</sup> in the United Kingdom<sup>18</sup>, may not, on grounds of inadequate qualifications, refuse to authorise a national of a European Union member state<sup>19</sup>, Iceland, Norway, Liechtenstein or Switzerland to practise the profession on the same conditions as apply to a United Kingdom applicant, if that person holds the diploma required to practise in another such state or can satisfy certain other conditions as to experience and qualifications<sup>20</sup>.

1 For the meaning of 'register' see PARA 717 note 2 ante. As to the parts of the register see PARA 719 ante.

2 As to the Nursing and Midwifery Council see PARA 691 et seq ante.

3 Ie subject to the provisions of the Nursing and Midwifery Order 2001, SI 2002/253 (as amended).

4 For the meaning of 'registered' see PARA 717 note 2 ante.

5 Nursing and Midwifery Order 2001, SI 2002/253, art 9(1).

6 Ibid art 9(2). For the meaning of 'prescribed' see PARA 695 note 8 ante. As to the form and manner of applications see PARA 723 post.

7 For the meaning of 'registrar' see PARA 716 note 2 ante.

8 Nursing and Midwifery Order 2001, SI 2002/253, art 9(2)(a). For the meaning of 'approved qualification' see PARA 721 note 1 ante. The qualification must be awarded: (1) within such period, not exceeding five years ending with the date of the application, as may be prescribed (see art 9(2)(a)(i)); or (2) before the prescribed period, if he has met such requirements as to additional education, training and experience as the Council may specify under art 19(3) (see PARA 745 post) and which apply to him (see art 9(2)(a)(ii)). The prescribed period between the award of an approved qualification and application for registration is five years: Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 7.

Where the applicant is already registered in the register and wishes to be registered in an additional part of the register or to have additional entries recorded, the Nursing and Midwifery Order 2001, SI 2002/253, art 9(2)(a) applies only to the qualifications on which his application is based: art 9(3). In respect of additional qualifications which may be recorded on the register, the Council may establish standards of education and training and art 15(3)-(9) (see PARA 741 post) and arts 16-18 (see PARAS 742-744 post) apply in respect of those standards as if they were standards established under art 15(1)(a) (see PARA 741 post): art 19(6).

9 Ie in accordance with the Council's requirements mentioned in ibid art 5(2): see PARA 717 ante.

10 Ibid art 9(2)(b).

11 Ibid art 9(2)(c). As to the appropriate fees see the Nursing and Midwifery Council (Fees) Rules 2004, SI 2004/1654.

12 Nursing and Midwifery Order 2001, SI 2002/253, art 9(4)(a). If the Nursing Directive or the Midwifery Directive applies, the period is such longer period as may be allowed by the relevant directive: art 9(4)(a). 'Midwifery Directive' means EC Council Directive 80/154 (OJ L33, 11.2.80, p 8), concerning the mutual recognition of diplomas, certificates and other evidence of the formal qualifications in midwifery, as adapted, amended or extended by EC Council Directive 80/1273 (OJ L375, 31.12.80, p 74), the Accession of Spain and Portugal Act, EC Council Directive 89/594 (OJ L341, 23.11.89, p 19), EC Council Directive 90/658 (OJ L353, 17.12.90, p 73), EC Council Directive 2001/19 (OJ L206, 13.7.2001, p 1), the EEA Agreement, the Accession of Austria, Finland and Sweden Act, the Swiss Agreement and the Act of Accession 2003; and 'Nursing Directive' means EC Council Directive 77/452 (OJ L176, 15.7.77, p 1), concerning the mutual recognition of diplomas, certificates and other evidence of the formal qualifications of nurses responsible for general care, as adapted, amended or extended by the Accession of Greece Act, EC Council Directive 81/1057 (OJ L385, 31.12.81, p 25), the Accession of Spain and Portugal Act, EC Council Directive 89/594 (OJ L341, 23.11.89, p 19), EC Council Directive 89/595 (OJ L341, 23.11.89, p 30), EC Council Directive 90/658 (OJ L353, 17.12.90, p 73), EC Council Directive 2001/19 (OJ L206, 13.7.2001, p 1), the EEA Agreement, the Accession of Austria, Finland and Sweden Act, the Swiss Agreement and the Act of Accession 2003: Nursing and Midwifery Order 2001, SI 2002/253, art 2, Sch 4 (definitions amended by SI 2003/3148; SI 2004/1947).

'The Accession of Greece Act' means the Act annexed to the Treaty relating to the Accession of the Hellenic Republic to the European Community signed at Athens on the 28 May 1979; 'the Accession of Spain and Portugal Act' means the Act annexed to the Treaty relating to the Accession of the Kingdom of Spain and the Portuguese Republic to the European Community signed at Madrid and Lisbon on the 12 June 1985; 'the Accession of Austria, Finland and Sweden Act' means the Act annexed to the Treaty relating to the Accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the European Union, signed at Corfu on the 24 June 1994, as adjusted by the Decision of the Council of the European Union of 1 January 1995 adjusting the instruments concerning the accession of new member states to the European Union: Nursing and Midwifery Order 2001, SI 2002/253, Sch 4. 'The Swiss Agreement' means the agreement between the European Community and its member states, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, signed at Luxembourg on 21 June 1999: Nursing and Midwifery Order 2001, SI 2002/253, Sch 4 (definition added by SI 2003/3148). 'The Act of Accession 2003' means the Act annexed to the Treaty relating to the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the Adjustments to the Treaties on which the European Union is founded signed at Athens on 16 April 2003: Nursing and Midwifery Order 2001, SI 2002/253, Sch 4 (definition added by SI 2004/1947). For the meaning of 'EEA Agreement' see PARA 720 note 14 ante.

13 I.e. applications to which the European Communities (Recognition of Professional Qualifications) Regulations 1991, SI 1991/824, or the European Communities (Recognition of Professional Qualifications) (Second General System) Regulations 1996, SI 1996/2374, apply.

14 I.e. in the relevant regulations (see note 13 supra): Nursing and Midwifery Order 2001, SI 2002/253, art 9(4)(b).

15 For the meaning of 'writing' see PARA 20 note 22 ante.

16 I.e. under the Nursing and Midwifery Order 2001, SI 2002/253, art 37 (see PARAS 732, 733 post): art 9(5). Failure to notify the applicant of the registrar's decision within the time specified in art 9(4) (see the text to notes 12-14 supra) is treated as a decision from which the applicant may appeal under art 37: art 9(6). As to offences in relation to registration see PARA 784 post.

17 I.e. for those registered in sub-part 1 of the nurses' part of the register maintained by the Council (see PARA 719 note 3 ante): European Communities (Recognition of Professional Qualifications) (First General System) Regulations 2005, SI 2005/18, reg 2(1), Sch 1 Pt 1.

18 Ibid reg 4(1), Sch 1 Pt 1. 'The United Kingdom', as the context requires, includes any of the following: England and Wales, Scotland, and Northern Ireland: reg 2(2).

19 For the meaning of 'member state' see the Interpretation Act 1978 s 5, Sch 1; and the European Communities Act 1972 s 1(2), Sch 1 Pt II.

20 See the European Communities (Recognition of Professional Qualifications) (First General System) Regulations 2005, SI 2005/18, reg 5. As to proof of experience and qualifications see further regs 6-9. A national of a European Union member state, Iceland, Norway, Liechtenstein or Switzerland who has been granted authorisation to practise has the right: (1) to use the professional title and designatory letters applicable to the

nursing profession in the United Kingdom; and (2) the lawful academic title, and where appropriate its abbreviation, acquired by him in the relevant state in which he formerly qualified and in the language of that state: reg 10(1)(a), (b). Where a person makes use of an academic title, the Council may require that the title be followed by the name and location of the establishment or examining board which awarded it: reg 10(2).

## **UPDATE**

### **722 Registration**

TEXT AND NOTES--SI 2002/253 art 9 amended: SI 2007/3101.

NOTE 11--SI 2004/1654 amended: SI 2005/3353, SI 2007/1885, SI 2007/3101.

NOTES 13, 17, 20--SI 1991/824 replaced, SI 2005/18 revoked: European Communities (Recognition of Professional Qualifications) Regulations 2007, SI 2007/2781 (amended by SI 2008/2683, SI 2009/1587, SI 2009/1885).

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### **723. Application for admission to a part of the register.**

An application for admission to a part of the register<sup>1</sup> must be: (1) made in writing<sup>2</sup> using the personalised documentation provided by the Nursing and Midwifery Council<sup>3</sup> which must include a declaration by the applicant as to his good health and good character and the other specified information<sup>4</sup>; (2) signed by the applicant<sup>5</sup>; (3) sent or delivered to the registrar<sup>6</sup>; (4) supported by payment of the appropriate fee<sup>7</sup>; (5) accompanied by evidence of his qualification<sup>8</sup> and a supporting declaration as to his good health and good character<sup>9</sup>.

Where an application for registration is made on the basis of an overseas qualification<sup>10</sup> which does not satisfy the registrar that the applicant meets the standards of proficiency required for admission to the register, the application will be retained until the time for making an appeal<sup>11</sup> has elapsed<sup>12</sup> and the applicant will not be entitled to any refund of the fee paid in respect of an unsuccessful application<sup>13</sup>. The applicant may make a new application for registration after the period for an appeal has elapsed and any such application must be accompanied by the relevant fee<sup>14</sup>.

A person who first applies for registration more than five years after being awarded an approved qualification must undertake such education and training or gain such experience as the Council specifies in standards<sup>15</sup>.

1 As to the register and parts of the register see PARAS 718-719 ante.

2 For the meaning of 'writing' see PARA 20 note 22 ante.

3 As to the Nursing and Midwifery Council see PARA 691 et seq ante.

4 Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 5(1)(a). The following information must be provided by an applicant: his surname; his forenames; his personal identification number or personal reference number as applicable; his address for correspondence; the part of the register to which his application relates; details of his qualification; a declaration by the applicant as to his good health and good character; confirmation that he has not been convicted of any criminal offence or been issued with a formal caution and, if he has, details of such conviction or formal caution: Sch 3. 'Personal reference number' means the unique number allocated to each applicant prior to registration: r 2. For the meaning of 'personal identification number' see PARA 718 note 3 ante.

5 Ibid r 5(1)(b).

6 Ibid r 5(1)(c). As to the registrar see PARA 716 ante.

7 Ibid r 5(1)(d). As to the appropriate fee see the Nursing and Midwifery Council (Fees) Rules 2004, SI 2004/1654.

8 The applicant must provide the following evidence of his qualification: (1) where the applicant is relying on the Nursing and Midwifery Order 2001, SI 2002/253, art 13(1)(a) (qualification awarded in the United Kingdom: see PARA 721 ante), evidence that he has obtained an approved qualification of a type mentioned in that provision (Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 5(2)(a)(i)); (2) where the applicant is relying on the Nursing and Midwifery Order 2001, SI 2002/253, art 13(1)(b) (EEA qualification: see PARA 721 ante), the certificate or other document issued by the competent authority of the relevant EEA state attesting to his qualification and, where appropriate, evidence that all the conditions imposed pursuant to art 14(2) (see PARA 721 note 8 ante) have been met (Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 5(2)(a)(ii)); or (3) where the applicant is relying on the Nursing and Midwifery Order 2001, SI 2002/253, art 13(1)(c) (other overseas qualification: see PARA 721 ante), evidence of his qualification and, where appropriate, such other evidence as the Council may reasonably require (such as a document that details his training and

references) in order to satisfy the Council that he has met the requisite standard of proficiency for admission to the part of the register in respect of which he is applying (Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 5(2)(a)(iii)). The applicant must also provide such other documents, information or evidence as the registrar may reasonably require for the purposes of verifying the information in and determining the application: r 5(2)(b).

9 Ibid r 5(1)(e). As to declarations of good health and good character see PARA 724 post.

10 Ibid under the Nursing and Midwifery Order 2001, SI 2002/253, art 13(1)(c): see PARA 721 ante.

11 Ibid set out in the Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 20: see PARA 732 note 10 post.

12 Ibid r 8(a).

13 Ibid r 8(b).

14 Ibid r 8(c). As to the appropriate fee see the Nursing and Midwifery Council (Fees) Rules 2004, SI 2004/1654.

15 Ibid in accordance with the Nursing and Midwifery Order 2001, SI 2002/253, art 19(3) (see PARA 745 post): Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 3(4)(a).

## **UPDATE**

### **723 Application for admission to a part of the register**

NOTES--2004 Rules amended: 2005 Rules (approved by SI 2005/3354), SI 2007/3101.

NOTES 7, 14--SI 2004/1654 amended: SI 2005/3353, SI 2007/1885, SI 2007/3101.

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#### **724. Declarations of good health and good character.**

The declaration by an applicant for registration<sup>1</sup> as to his good health and good character must be supported:

- 883 (1) for an applicant applying for admission to the register<sup>2</sup> on, or within six months of, completion of a pre-registration programme<sup>3</sup> or for readmission following a return to practice programme, by a declaration signed by the registered<sup>4</sup> nurse, whose name has been notified to the Nursing and Midwifery Council<sup>5</sup>, who is responsible for directing the educational programme at the relevant approved educational institution<sup>6</sup>, or his designated registered nurse substitute<sup>7</sup>, or by the lead midwife for education, whose name has been notified to the Council, who is responsible for midwifery education in the relevant approved educational institution, or his designated registered midwife substitute<sup>8</sup>;
  - 884 (2) for an applicant who has not applied to join the register within six months of the award of his registrable qualification<sup>9</sup> but who makes an application to join the register<sup>10</sup> within five years of completing a pre-registration programme by a declaration signed by a registered nurse or lead midwife<sup>11</sup>, and by a declaration signed by a registrant who is registered in the part or sub-part of the register in which the applicant is applying to be registered, who has known the applicant for at least one year and who has been in contact with him during the preceding six months and who is able to attest to the matters set out in the declaration<sup>12</sup>;
  - 885 (3) for an applicant applying for readmission to the register who has not completed a return to practice programme, by a declaration signed by a registrant who is registered in the part or sub-part of the register in which the applicant is applying to be registered, who has known the applicant for at least one year and who has been in contact with him during the preceding six months and who is able to attest to the matters set out in the declaration<sup>13</sup>;
  - 886 (4) for an applicant applying to join the register who is relying on an EEA qualification<sup>14</sup>:
- 160
- 222. (a) by the document required by the competent authority of his member state of origin<sup>15</sup>, attesting to his good health, issued within the three months preceding the date of his application<sup>16</sup>, or where such document is not required by the competent authority of his member state of origin, by a document issued by a competent authority which attests to the applicant's good health<sup>17</sup>; and
  - 223. (b) by the document issued within the three months preceding the date of his application, required by the competent authority of his member state of origin, attesting to his good character, and confirming he has not been suspended or prohibited from practising the profession to which the application relates because of professional misconduct or the commission of a criminal offence<sup>18</sup>; or where the competent authority of his member state of origin does not issue such documents, by a declaration on oath<sup>19</sup> or solemn declaration to the same effect, made by the applicant before a competent judicial or administrative authority or, where appropriate, a notary or duly qualified professional body of the relevant state, provided in each case that such declaration is authenticated by a certificate issued by the authority, notary or body<sup>20</sup>;



887 (5) for an applicant applying to join the register who is relying on an overseas qualification<sup>21</sup>, by a declaration signed on behalf of the licensing body in the country in which the applicant is registered to practise<sup>22</sup> by a member of the occupational health department of a body that has employed or engaged the applicant who, on the basis of a health assessment of the applicant undertaken by that department, is able to attest to the matters set out in the declaration<sup>23</sup>, or by a registered medical practitioner<sup>24</sup> who has undertaken a health assessment of the applicant within the last six months<sup>25</sup>.

The person who makes the supporting declaration of good health and good character must not be a relative or employee of the applicant<sup>26</sup>.

1 As to applications for registration see PARA 723 ante. As to determinations as to health and character see PARA 725 post.

2 As to the register and parts of the register see PARAS 718-719 ante.

3 Ie in accordance with the Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 5(2)(a)(i): see PARA 723 note 8 ante.

4 For the meaning of 'registered' see PARA 717 note 2 ante.

5 As to the Nursing and Midwifery Council see PARA 691 et seq ante.

6 'Approved educational institution' means an institution or part of an institution or a combination of institutions approved by the Nursing and Midwifery Council under the Nursing and Midwifery Order 2001, SI 2002/253, art 15(6)(c) (see PARA 741 note 10 post): Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 2.

7 Ibid r 6(1)(a)(i).

8 Ibid r 6(1)(a)(ii).

9 For the meaning of 'registrable qualification' see PARA 718 note 5 ante.

10 Ie in accordance with the Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 5(2)(a)(i): see PARA 723 note 8 ante.

11 Ie in accordance with ibid r 6(1)(a)(i), (ii) (see the text to notes 1-8 supra): r 6(1)(b)(i).

12 Ibid r 6(1)(b)(ii).

13 Ibid r 6(1)(c). As to readmission to the register see PARA 729 post.

14 Ie under the Nursing and Midwifery Order 2001, SI 2002/253, art 13(1)(b): see PARA 721 ante.

15 'Member state of origin' means the EEA state from which the applicant originated or comes, or from which the applicant obtained his registrable qualification, or in which he practised prior to making an application to join the register: Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 6(7).

16 Ibid r 6(1)(d)(i)(aa). For the purposes of r 6(5), (6) (see PARA 725 post), any such document as is mentioned in r 6(1)(d)(i), (ii) is to be treated as a supporting declaration: r 6(1)(d).

17 Ibid r 6(1)(d)(i)(bb). See also note 16 supra.

18 Ibid r 6(1)(d)(ii)(aa). See also note 16 supra.

19 For the meaning of 'oath' see PARA 153 note 4 ante.

20 Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 6(1)(d)(ii)(bb). See also note 16 supra.

21 Ie under the Nursing and Midwifery Order 2001, SI 2002/253, art 13(1)(c): see PARA 721 ante.

22 Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 6(1)(e)(i). In the case of an applicant who is a nurse to whom r 6(1)(e) applies and who has successfully completed a period of supervised practice in the United Kingdom, the declaration by the applicant must be supported by a declaration signed by the nurse registrant, whose name has been notified to the Nursing and Midwifery Council, responsible for supervising and assessing him during his period of supervised practice: r 6(2). In the case of an applicant who is a midwife to whom r 6(1)(e) applies and who has successfully completed an adaptation programme in the United Kingdom, the declaration by the applicant must be supported by a declaration signed by the lead midwife for education, whose name has been notified to the Council, who is responsible for midwifery education in the relevant approved educational institution or his designated registered midwife substitute: r 6(3). For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

23 Ibid r 6(1)(e)(ii).

24 For the meaning of 'registered medical practitioner' see PARA 4 ante.

25 Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 6(1)(e)(iii).

26 Ibid r 6(4). 'Relative' in relation to any person means: (1) his spouse; (2) his lineal ancestor, lineal descendent, brother, sister, aunt, uncle, nephew, niece or first cousin of his or of his spouse; or (3) the spouse of any relative mentioned in head (2) above, and for the purposes of deducing any such relationship 'spouse' includes a former spouse, a partner to whom the person is not married, and a partner of the same sex: r 6(7).

## **UPDATE**

### **724 Declarations of good health and good character**

NOTES--2004 Rules amended: 2005 Rules (approved by SI 2005/3354), SI 2007/3101.

NOTE 26--Definition of 'relative' in SI 2004/1767 r 6(7) amended: SI 2005/2114.

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## **725. Determinations as to good health and good character.**

For the purposes of satisfying himself as to the good health of an applicant for registration<sup>1</sup>, the registrar<sup>2</sup> must have regard to the declaration provided by the applicant<sup>3</sup>, the supporting declaration provided by him<sup>4</sup> and such other matters as appear to him to be relevant<sup>5</sup>. The registrar may also seek information additional to that provided with the application for registration<sup>6</sup>.

For the purposes of satisfying himself as to the good character of the applicant, the registrar must have regard to the declaration provided by the applicant<sup>7</sup>, the supporting declaration provided by him<sup>8</sup>, any conviction or caution which the applicant has received in the United Kingdom<sup>9</sup> for a criminal offence or a conviction received elsewhere for an offence which if committed in England and Wales would constitute a criminal offence<sup>10</sup>, any determination by a body responsible for regulating or licensing a health or social care profession to the effect that the applicant's fitness to practise is impaired<sup>11</sup> and any other matters which, in the opinion of the registrar, appear to be relevant<sup>12</sup>. The registrar may also seek information additional to that provided with the application for registration<sup>13</sup>.

1 As to applications for registration see PARA 723 ante.

2 As to the registrar see PARA 716 ante.

3 Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 6(5)(a). As to declarations of good health and character see PARA 724 ante.

4 *Ibid* r 6(1)(a)-(c), (d)(i), (e), (2), (3) (see PARA 724 ante): r 6(5)(b).

5 *Ibid* r 6(5)(c).

6 *Ibid* r 6(5).

7 *Ibid* r 6(6)(a).

8 *Ibid* r 6(1)(a)-(c), (d)(ii), (e), (2), (3) (see PARA 724 ante): r 6(6)(b).

9 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

10 Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 6(6)(c).

11 *Ibid* r 6(6)(d).

12 *Ibid* r 6(6)(e).

13 *Ibid* r 6(6).

## **UPDATE**

## **725 Determinations as to good health and good character**

TEXT AND NOTES--SI 2004/1767 r 6 amended: SI 2007/3101.

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## **726. Registration period.**

A person's first registration period<sup>1</sup> begins on the day on which he is first registered<sup>2</sup> in the part of the register<sup>3</sup> concerned<sup>4</sup> and ends on the last day of the month of registration in the third calendar year after the year in which he was first registered<sup>5</sup>. Any subsequent registration in another part of the register ends on the same date<sup>6</sup>.

In respect of any registrant, a registration period subsequent to the first registration period begins on the day after the previous registration period ends and ends on the third anniversary of the day the previous registration period ended<sup>7</sup>. However, if a person's registration lapses and he is thereafter readmitted to the register<sup>8</sup>, his registration period begins on the day on which he is readmitted and ends on the last day of the month of registration in the third calendar year after the year in which he was readmitted<sup>9</sup>; and if a person has been struck off the register and he is thereafter eligible to be restored to the register<sup>10</sup>, his registration period begins on the day on which he is restored to the register and ends on the last day of the month of registration in the third calendar year after the year in which he was restored<sup>11</sup>.

1 'Registration period' is to be construed in accordance with the Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 10: r 2.

2 For the meaning of 'registered' see PARA 717 note 2 ante.

3 As to the register and parts of the register see PARAS 718-719 ante.

4 Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 10(1), (3)(a). As to applications for registration see PARA 723 ante.

5 Ibid r 10(1), (3)(b). The first registration period of a person who on 1 August 2004 is transferred to the register from the register maintained under the transitional arrangements relating to the establishment of the register (see PARA 717 note 2 ante) ends on the date that his last renewal of registration on that register would have expired: r 10(1), (2).

6 Ibid r 10(1), (4).

7 Ibid r 10(1), (5).

8 As to readmission to the register see PARA 729 post.

9 Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 10(1), (6).

10 Ie under the Nursing and Midwifery Order 2001, SI 2002/253, art 33(7): see PARA 770 post.

11 Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 10(1), (7).

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## **727. Renewal of registration.**

Where a person is registered<sup>1</sup> and wishes to renew his registration at the end of a prescribed<sup>2</sup> period, he must make an application for renewal to the registrar<sup>3</sup> in accordance with rules<sup>4</sup> made by the Nursing and Midwifery Council<sup>5</sup>. Prior to the last day of a registrant's registration period<sup>6</sup>, the Council must send him the following personalised documentation: (1) an application form for the renewal of his registration requiring him to provide specified information<sup>7</sup>; (2) notice of the renewal fee<sup>8</sup>; and (3) a notice warning him that unless the completed application form, accompanied by the prescribed renewal fee, is received by the registrar on or before the date specified in the notice, his registration will lapse<sup>9</sup>. No later than the date specified in the notice to renew his registration, the registrar must have received: (a) an application on the personalised documentation provided by the Council which must include a declaration by the applicant as to his good health and good character<sup>10</sup>; (b) confirmation from the applicant that he has undertaken continuing professional development<sup>11</sup> and has recorded such learning activity in accordance with standards provided by the Council<sup>12</sup>, and he has practised for no fewer than 450 hours in the three years preceding the date of his application for renewal of his registration<sup>13</sup>; (c) the fee for renewal<sup>14</sup>.

The registrar must grant the application for renewal if the applicant satisfies him that he is capable of safe and effective practice as a nurse or midwife, has paid the prescribed fee<sup>15</sup>, has met any prescribed requirements for continuing professional development within the prescribed time<sup>16</sup>, and where he has not practised, or has practised for less than the prescribed period, since his first registration or, as the case may be, his latest renewal, has met such requirements as to additional education, training or experience as the Council may specify<sup>17</sup> and which apply to him<sup>18</sup>. A registrant's registration in a part of the register lapses<sup>19</sup> at the end of the registration period unless it has been renewed in accordance with the provisions described above<sup>20</sup>.

1 For the meaning of 'registered' see PARA 717 note 2 ante.

2 For the meaning of 'prescribed' see PARA 695 note 8 ante.

3 For the meaning of 'registrar' see PARA 716 note 2 ante.

4 As to such rules see the text to notes 6-14, 19-20 infra. As to the making of rules by the Nursing and Midwifery Council see PARA 701 ante. As to the Nursing and Midwifery Council see PARA 691 et seq ante.

5 Nursing and Midwifery Order 2001, SI 2002/253, art 10(1). The provisions of art 9(4)-(6) (see PARA 722 ante) apply to such applications: art 10(5).

6 For the meaning of 'registration period' see PARA 726 note 1 ante.

7 Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 11(a). The following information must be provided by the registrant: his surname; his initials; his personal identification number; the date upon which his existing period of registration ends; a declaration that he has complied with r 13(1) (see the text to notes 10-14 infra) in respect of the part or parts of the register in relation to which he is seeking to renew his registration; and a declaration by the registrant as to his good health and good character: r 11(a), Sch 4 para 1. For the meaning of 'personal identification number' see PARA 718 note 3 ante. Any registrant who has been convicted of any criminal offence or been issued with a formal caution, since his registration or last renewal of registration, must provide details of the same in a manner which the Council may from time to time determine: Sch 4 para 2.

Any form, warning or notice sent by the Council or the registrar to a registrant may be sent by post to the last known address for correspondence and is presumed to have been sent on the date which appears on the form, warning or notice: r 12.

8 Ibid r 11(b). See also note 7 supra. As to the appropriate fee see the Nursing and Midwifery Council (Fees) Rules 2004, SI 2004/1654, r 3(e).

9 Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 11(c). See also note 7 supra.

10 Ibid r 13(1)(a).

11 Ie in accordance with ibid r 3(3): see PARA 745 note 4 post.

12 Ibid r 13(1)(b)(i).

13 Ibid r 13(1)(b)(ii). A person who has practised for less than 450 hours in the three years preceding the date of an application for renewal of registration must undertake such education and training or gain such experience as the Council specifies in standards in accordance with the Nursing and Midwifery Order 2001, SI 2002/253, art 19(3) (see PARA 745 post): Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 3(4)(c).

14 Ibid r 13(1)(c). A person who satisfies the Council that he has retired on reaching his occupational retirement age, or on the grounds of ill-health, leaving unexpired any complete year of a registration period, must, on written application to the Council, be given a refund of the proportion of the fee paid by him in respect of each such year: r 17.

15 Ie that he meets the conditions set out in the Nursing and Midwifery Order 2001, SI 2002/253, art 9(2)(b), (c) (see PARA 722 ante): art 10(2)(a).

16 Ibid art 10(2)(b). Where an applicant does not satisfy the registrar that he has met the requirements mentioned in art 10(2)(b), (c) (see the text to notes 17-18 infra), the registrar may renew the applicant's registration on condition that he satisfy those requirements within a specified time and if the person fails to comply with the condition, subject to art 12(3) and art 37(3) (see PARAS 728 note 5, 732 post), his registration lapses and, in accordance with prescribed procedure, his name will be removed from the register: art 10(3). When a registrant's registration lapses under art 10(3), the registrar must remove the registrant's name from the register, notifying him accordingly and advising him of his right of appeal under art 37 (see PARAS 732, 733 post) except in cases where art 37(2) applies: Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 14(3).

17 Ie under the Nursing and Midwifery Order 2001, SI 2002/253, art 19(3): see PARA 745 post.

18 Ibid art 10(2)(c). See also note 16 supra.

19 Ie subject to the Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 14(4): see PARA 728 note 8 post.

20 Ibid r 13(2).

## **UPDATE**

### **727 Renewal of registration**

TEXT AND NOTES 1-5, 15-18--SI 2002/253 art 10 amended: SI 2007/3101.

NOTE 8--SI 2004/1654 r 3(e) amended: SI 2005/3353, SI 2007/1885.

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## **728. Lapse of registration.**

The Nursing and Midwifery Council<sup>1</sup> may make rules<sup>2</sup> providing for the procedure by which and the circumstances in which a registrant's<sup>3</sup> name may be removed from the register<sup>4</sup> on his own application or after the expiry of a specified period<sup>5</sup>. Where a person's name is removed in accordance with such rules or following conditional registration<sup>6</sup>, his registration is referred to as lapsed<sup>7</sup>.

Without prejudice to any other power of the registrar to remove a registrant's name from the register because his registration has lapsed, the registrar may remove a registrant's name from the register upon application made by or on behalf of that registrant<sup>8</sup>. Such an application must be made in writing<sup>9</sup> and must be accompanied by a declaration that the registrant concerned is not aware of any matter which could give rise to an allegation against him<sup>10</sup> that his fitness to practise is impaired or that an entry in the register relating to him has been fraudulently procured or incorrectly made<sup>11</sup>.

1 As to the Nursing and Midwifery Council see PARA 691 et seq ante.

2 As to such rules see the text to notes 8-11 infra. As to the making of rules by the Council see PARA 701 ante.

3 For the meaning of 'registrant' see PARA 717 note 11 ante.

4 For the meaning of 'register' see PARA 717 note 2 ante.

5 Nursing and Midwifery Order 2001, SI 2002/253, art 12(1). Any such rules must provide that a person's registration does not lapse under art 10(3) (see PARA 727 note 16 ante) or art 12: (1) where the person concerned is the subject of an allegation, or is treated under art 22(6) (see PARA 748 post) as if he were the subject of an allegation, or is the subject of any investigations or proceedings under Pt V (arts 21-36) (fitness to practise), Pt VI (arts 37-38) (appeals), on the grounds only that he has not paid the prescribed fee or has failed to apply for renewal in the prescribed form or within the prescribed time (art 12(3)(a)); or (2) if the person concerned is the subject of a suspension order, a conditions of practice order, an interim suspension order or an interim conditions of practice order (art 12(3)(b)). As to such orders see PARA 771 post. For the meaning of 'prescribed' see PARA 695 note 8 ante.

6 *Ie* in accordance with *ibid* art 10(3): see PARA 727 note 16 ante.

7 *Ibid* art 12(2).

8 Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 14(1). However, a registrant's registration does not lapse under r 13 (see PARA 727 ante) or r 14: (1) where the person concerned is the subject of an allegation under the Nursing and Midwifery Order 2001, SI 2002/253, art 22(1) (see PARA 748 post), or is treated under art 22(6) (see PARA 748 post) as if he were the subject of an allegation, or is the subject of any investigations or proceedings under Pts V, VI, on the grounds only that he has not paid the prescribed fee in accordance with the Nursing and Midwifery Council (Fees) Rules 2004, SI 2004/1654, or has failed to apply for renewal in the prescribed form or within the prescribed time (Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 14(4)(a)); or (2) if the person concerned is the subject of a suspension order, a conditions of practice order, an interim suspension order or an interim conditions of practice order (r 14(4)(b)).

9 For the meaning of 'writing' see PARA 20 note 22 ante.

10 *Ie* under the Nursing and Midwifery Order 2001, SI 2002/253, art 22: see PARA 748 post.

11 Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 14(2).





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## **729. Readmission to the register.**

Where a person's registration has lapsed<sup>1</sup>, he may apply to the registrar<sup>2</sup> to be readmitted and the registrar must grant the application if the applicant satisfies him that he is capable of safe and effective practice as a nurse or midwife and has paid the prescribed fee<sup>3</sup>, and that he has met such requirements as to additional education, training or experience as the Nursing and Midwifery Council<sup>4</sup> may specify<sup>5</sup> and which apply to him<sup>6</sup>.

Where a registrant's registration has lapsed he may, subject to compliance with the Council's requirements as to education and training<sup>7</sup>, apply to the registrar to be readmitted to the register<sup>8</sup>. To allow the Council to take up references, the Council may require of the applicant the names and addresses of at least three referees, two of whom must have known him for at least one out of the previous three years<sup>9</sup>, and one of whom must have worked with him during his most recent period of employment or self-employment, if any<sup>10</sup>.

1 As to the lapse of registration see PARAS 727 text to notes 19-20, 728 ante. As to registration see PARA 721 et seq ante.

2 The provisions of the Nursing and Midwifery Order 2001, SI 2002/253, art 9(4)-(6) (see PARA 722 ante) apply to such applications: art 10(5). For the meaning of 'registrar' see PARA 716 note 2 ante.

3 He that he meets the conditions set out in ibid art 9(2)(b), (c) (see PARA 722 ante): art 10(4)(a).

4 As to the Nursing and Midwifery Council see PARA 691 et seq ante.

5 He under the Nursing and Midwifery Order 2001, SI 2002/253, art 19(3): see PARA 745 post.

6 Ibid art 10(4)(b).

7 A person whose registration has lapsed and who applies for readmission to the register, unless in the five years before the date of his application for readmission to the register he has practised for at least 750 hours, must undertake such education and training or gain such experience as the Council specifies in standards in accordance with the Nursing and Midwifery Order 2001, SI 2002/253, art 19(3) (see PARA 745 post): Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 3(4) (b).

8 Ibid r 15(1). Rules 5(1), 6(1) (see PARAS 723, 724 ante) apply to an application for readmission as they apply to an application for admission: r 15(2).

9 Ibid r 15(3)(a).

10 Ibid r 15(3)(b). For an applicant mentioned in r 6(1)(a), (c) (see PARA 724 ante), one of the referees will be required to provide a supporting declaration in accordance with r 6(1)(a), (c): r 15(3)(c).

## **UPDATE**

### **729 Readmission to the register**

TEXT AND NOTES 1-6--SI 2002/253 art 10 amended: SI 2007/3101.

TEXT AND NOTES 8-10--SI 2004/1767 r 15 amended: SI 2007/3101.

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### **730. Amendments to the register.**

A registrant<sup>1</sup> must notify the registrar<sup>2</sup> in writing<sup>3</sup> within one month<sup>4</sup> of any change in his name or address<sup>5</sup>. The registrar must amend the register<sup>6</sup>, so far as may be necessary: (1) in consequence of any such notification<sup>7</sup>; (2) to give effect to any order made by a practice committee<sup>8</sup>; (3) to give effect to any decision made on an appeal<sup>9</sup>; (4) to reflect any other information which comes to his attention and which in his opinion requires an amendment to be made to the register in order to maintain its accuracy<sup>10</sup>. Before making any amendment under head (1) or head (4) above, the registrar may make such further enquiries, or require such further evidence from the registrant concerned, as appears to him to be appropriate<sup>11</sup>.

1 As to registration see PARA 722 ante.

2 As to the registrar see PARA 716 ante.

3 For the meaning of 'writing' see PARA 20 note 22 ante.

4 For the meaning of 'month' see PARA 13 note 14 ante.

5 Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 16(1).

6 As to the register see PARAS 718-719 ante.

7 Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 16(2)(a).

8 *Ie* under the Nursing and Midwifery Order 2001, SI 2002/253, Pt V (arts 21-36) (fitness to practise: see PARA 747 et seq post): Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 16(2)(b).

9 *Ie* under the Nursing and Midwifery Order 2001, SI 2002/253, arts 37, 38 (see PARAS 732, 733, 782 post): Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 16(2)(c).

10 *Ibid* r 16(2)(d). As to offences relating to fraudulently procuring the making, amendment, removal or restoration of an entry in the register see PARA 784 post.

11 *Ibid* r 16(3).

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### **731. Registration of visiting EEA nurses and midwives.**

A visiting EEA nurse<sup>1</sup> may practise as a nurse responsible for general care during the period specified in his relevant documents<sup>2</sup>, and while he is so practising he is deemed to be registered<sup>3</sup> as a nurse responsible for general care<sup>4</sup>. A visiting EEA midwife is deemed to be registered as a midwife during the period specified in his relevant documents<sup>5</sup>.

Before he provides any services as a nurse or midwife in the United Kingdom, a visiting EEA nurse or midwife<sup>6</sup> must provide the Nursing and Midwifery Council with the relevant documents<sup>7</sup>, and where he is not required to provide evidence of good character and good health before being authorised to practise by the EEA state in which he is lawfully practising, he must satisfy the registrar<sup>8</sup> as to his good character and good health<sup>9</sup>. However, in a case of sudden or urgent necessity, a nurse may provide the documents as soon as possible after he has provided his services as a nurse<sup>10</sup>.

1 'Visiting EEA nurse' and 'visiting EEA midwife' mean a person who: (1) is a national of any EEA state (Nursing and Midwifery Order 2001, SI 2002/253, art 39(1)(a)); (2) is lawfully practising in an EEA state other than the United Kingdom as a nurse responsible for general care or, as the case may be, as a midwife (art 39(1)(b)); (3) holds the appropriate diploma (art 39(1)(c)); (4) is temporarily in the United Kingdom as a visitor (art 39(1)(d)); and (5) provides the Nursing and Midwifery Council with the relevant documents (art 39(1)(e)). Any person who is not a national of an EEA state, but is, by virtue of a right conferred by EC Council Regulation 1612/68 (OJ L257, 19.10.1968, p 2) art 11 or any other enforceable Community right, entitled to be treated, for the purposes of access to the nursing profession, or the profession of midwifery, no less favourably than a national of such a state, is treated for these purposes as if he were such a national: Nursing and Midwifery Order 2001, SI 2002/253, art 39(2). 'The appropriate diploma' means a diploma, certificate or other evidence of formal qualifications which EEA states are required to recognise in the case of a nurse by the Nursing Directive or, in the case of a midwife, by the Midwifery Directive: Nursing and Midwifery Order 2001, SI 2002/253, art 39(4). For the meaning 'national', in relation to an EEA state, see PARA 721 note 7 ante; and for the meaning of 'EEA state' see PARA 720 note 14 ante. For the meaning of 'United Kingdom' see PARA 1 note 3 ante. As to the meaning of 'enforceable Community right' see the European Communities Act 1972 s 2(1); and the Interpretation Act 1978 s 5, Sch 1. For the meanings of 'Nursing Directive' and 'Midwifery Directive' see PARA 722 note 12 ante. As to the Nursing and Midwifery Council see PARA 691 et seq ante.

2 'Relevant documents', in relation to any person, means: (1) a written declaration stating that he is intending to practise in the United Kingdom as a nurse responsible for general care or, as the case may be, as a midwife, and the address of the place where and the period during which he intends so to practise (Nursing and Midwifery Order 2001, SI 2002/253, art 39(5)(a)(i), (ii)); and (2) a certificate or certificates issued, not more than 12 months before the date on which the Nursing and Midwifery Council is provided with the relevant documents, by the competent authority of the EEA state in which he is practising certifying that he is lawfully practising as a nurse responsible for general care or, as the case may be, as a midwife in that state, and that he holds an appropriate diploma (art 39(5)(b)(i), (ii)).

3 For the meaning of 'registered' see PARA 717 note 2 ante.

4 Nursing and Midwifery Order 2001, SI 2002/253, art 11(1). As to the withdrawal of authority to provide services from visiting EEA nurses see PARA 749 post.

5 Ibid art 11(2). As to the withdrawal of authority to provide services from visiting EEA midwives see PARA 749 post.

6 This provision is without prejudice to the provisions relating to the local supervision of midwives under ibid art 43: see PARA 710 ante.

7 Ibid art 39(3)(a).

8 For the meaning of 'registrar' see PARA 716 note 2 ante.

9 Nursing and Midwifery Order 2001, SI 2002/253, art 39(3)(b).

10 Ibid art 39(3).

## **UPDATE**

### **731 Registration of visiting EEA nurses and midwives**

TEXT AND NOTES--Revoked: SI 2007/3101.

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### **(iii) Registration Appeals**

#### **732. Grounds of appeal.**

Where the registrar<sup>1</sup>: (1) refuses an application for registration, readmission or renewal or for the inclusion of an additional entry<sup>2</sup>; (2) in determining such an application imposes additional conditions which must be satisfied before the applicant may be admitted to, readmitted to or retained on the register<sup>3</sup>; (3) removes the name of a registrant<sup>4</sup> from the register on the ground that he has breached a condition in respect of continuing professional development or additional education, training or experience<sup>5</sup> subject to which his registration has effect<sup>6</sup>; or (4) fails<sup>7</sup> to issue a decision<sup>8</sup>, the person aggrieved may appeal to the Nursing and Midwifery Council<sup>9</sup> within the prescribed period<sup>10</sup>. No appeal lies to the Council where the person aggrieved has been refused registration solely because he has failed to pay the prescribed fee for registration or has failed to apply in the prescribed form and manner<sup>11</sup>. No decision removing a registrant from the register against which an appeal to the Council may be made under these provisions has effect before the expiry of the period within which such an appeal may be made<sup>12</sup> or, if an appeal is made, the appeal is withdrawn or otherwise finally disposed of<sup>13</sup>.

1 For the meaning of 'registrar' see PARA 716 note 2 ante.

2 Nursing and Midwifery Order 2001, SI 2002/253, art 37(1)(a). As to applications for registration, readmission and renewal see PARAS 723, 727, 729 ante.

3 Ibid art 37(1)(b). For the meaning of 'register' see PARA 717 note 2 ante.

4 For the meaning of 'registrant' see PARA 717 note 11 ante.

5 Ie as is mentioned in the Nursing and Midwifery Order 2001, SI 2002/253, art 19(3); see PARA 745 post.

6 Ibid art 37(1)(c).

7 Ie within the terms of ibid art 9(6); see PARA 722 note 16 ante.

8 Ibid art 37(1)(d).

9 As to the Nursing and Midwifery Council see PARA 691 et seq ante.

10 Nursing and Midwifery Order 2001, SI 2002/253, art 37(1). For the meaning of 'prescribed' see PARA 695 note 8 ante. The period within which a person may appeal to the Council is: (1) where the appeal is against a decision referred to in art 37(1)(a)-(c) (see the text to notes 1-6 supra), before the end of the period of 28 days beginning with the date of the decision letter (Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 20(a)); or (2) where the appeal is against a failure to issue a decision as referred to in the Nursing and Midwifery Order 2001, SI 2002/253, art 37(1)(d) (see the text to notes 7-8 supra), before the end of the period of 28 days beginning with the day after the expiry of the period referred to in art 9(4) (see PARA 722 ante); Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 20(b). 'Decision letter' means a letter so headed notifying the applicant of the registrar's decision in respect of his application: r 18.

11 Nursing and Midwifery Order 2001, SI 2002/253, art 37(2).

12 Ibid art 37(3)(a).

13 Ibid art 37(3)(b).

## **UPDATE**

### **732 Grounds of appeal**

NOTES--No appeal lies to the Council where the registrar has refused to make, or has removed, an annotation under SI 2002/253 art 6A (see PARA 717): art 37(2A) (added by SI 2008/1485).

NOTES 2, 10--SI 2002/253 art 37(1)(aa) added, SI 2004/1767 r 20(a) amended: SI 2007/3101.

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### **733. Appeals rules.**

Any appeal<sup>1</sup> is subject to such rules as the Nursing and Midwifery Council<sup>2</sup> may make for the purpose of regulating such appeals<sup>3</sup>. The rules must in particular provide:

- 888 (1) for the quorum of the Council considering such an appeal<sup>4</sup>;
  - 889 (2) that the members considering the appeal are to include registrants<sup>5</sup> and lay members<sup>6</sup> and that the number of members who are registrants may exceed the number of lay members but may not exceed them by more than one<sup>7</sup>;
  - 890 (3) for a panel considering an appeal to consist of no fewer than three members who are to be selected with due regard to the matter under consideration and to include:
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- 224. (a) one registrant registered<sup>8</sup> in the same part of the register<sup>9</sup> as the one in which the person concerned is, or is applying to be, registered<sup>10</sup>;
  - 225. (b) one lay member, who must not be a registered medical practitioner<sup>11</sup>; and
  - 226. (c) where the health of the person concerned is in issue, one registered medical practitioner<sup>12</sup>;
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- 891 (4) for the person presiding to be a Council member<sup>13</sup>;
  - 892 (5) that no one who has been involved in any other capacity in the case to be considered is to be a member of the panel<sup>14</sup>;
  - 893 (6) for the decision to be made by a majority vote of the persons present<sup>15</sup>;
  - 894 (7) in the event of a tie, for the chairman to have an additional casting vote which he must exercise in the favour of the person concerned<sup>16</sup>;
  - 895 (8) for the registrar<sup>17</sup> to be made a party to the proceedings<sup>18</sup>.

A hearing provided for by such rules is to be held: (i) in the United Kingdom country<sup>19</sup> in which the registered address of the person concerned is situated<sup>20</sup>; (ii) if he is not registered and resides in the United Kingdom, in the country in which he resides<sup>21</sup>; or (iii) in any other case, in England<sup>22</sup>.

Each stage in the proceedings must be dealt with expeditiously and the committee concerned may give directions as to the conduct of the case and for the consequences of failure to comply with such directions, which may include the making of an order or refusal of an application if the failure to comply was without reasonable excuse<sup>23</sup>.

1 As to grounds of appeal see PARA 732 ante.

2 As to the Nursing and Midwifery Council see PARA 691 et seq ante. As to the making of rules by the Council see PARA 701 ante.

3 Nursing and Midwifery Order 2001, SI 2002/253, art 37(4). As to the rules that have been made see the Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767; and PARAS 732 note 10 ante, 734-740 post.

4 Nursing and Midwifery Order 2001, SI 2002/253, art 37(5)(a).

5 For the meaning of 'registrant' see PARA 717 note 11 ante.

- 6 For the meaning of 'lay member' see PARA 694 note 5 ante.
- 7 Nursing and Midwifery Order 2001, SI 2002/253, art 37(5)(b).
- 8 For the meaning of 'registered' see PARA 717 note 2 ante.
- 9 For the meaning of 'register' see PARA 717 note 2 ante. As to parts of the register see PARA 719 ante.
- 10 Nursing and Midwifery Order 2001, SI 2002/253, art 37(5)(c)(i).
- 11 Ibid art 37(5)(c)(ii). For the meaning of 'registered medical practitioner' see PARA 4 ante.
- 12 Ibid art 37(5)(c)(iii).
- 13 Ibid art 37(5)(d).
- 14 Ibid art 37(5)(e).
- 15 Ibid art 37(5)(f).
- 16 Ibid art 37(5)(g).
- 17 For the meaning of 'registrar' see PARA 716 note 2 ante.
- 18 Nursing and Midwifery Order 2001, SI 2002/253, art 37(5)(h). The rules must also include provision similar to that in art 32(2)(b), (f), (g), (i)-(k), (m)-(o) (see PARA 752 post): art 37(5)(i). Article 32(3) (see PARA 752 post) applies to appeals as if a reference to the committee concerned were a reference to the Council (art 37(6)); and art 25 (see PARA 751 post), with the exception of art 25(2), applies as if a reference to a practice committee were a reference to the Council: art 37(7).
- 19 For the meaning of 'United Kingdom country' see PARA 694 note 8 ante.
- 20 Nursing and Midwifery Order 2001, SI 2002/253, art 37(8)(a).
- 21 Ibid art 37(8)(b). For the meaning of 'United Kingdom' see PARA 1 note 3 ante.
- 22 Ibid art 37(8)(c).
- 23 Ibid art 32(3).

## **UPDATE**

### **733 Appeals rules**

TEXT AND NOTE 11--Head 3(b) is now a person who (i) is not and never has been a registered nurse or midwife (and SI 2002/253 art 5(5) (see PARA 717) does not apply for these purposes); (ii) is not and never has been a registered medical practitioner; and (iii) does not hold qualifications which would entitle him to apply for registration as a registered nurse, a registered midwife or a registered medical practitioner: SI 2002/253 art 37(5)(c)(ii)(aa)-(cc) (substituted by SI 2009/1182).

TEXT AND NOTE 16--SI 2002/253 art 37(5)(g) amended: SI 2008/1485.



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### **734. Notices of appeal and hearing.**

An appeal<sup>1</sup> must be made by giving notice in writing<sup>2</sup> addressed to the registrar<sup>3</sup> at the offices of the Nursing and Midwifery Council<sup>4</sup>, and must include the specified information<sup>5</sup>, state that the notice is a notice of appeal<sup>6</sup> and be signed by or on behalf of the appellant<sup>7</sup>. The appellant must attach to the notice of appeal a copy of any documents on which he proposes to rely for the purposes of his appeal<sup>8</sup>.

Upon receiving a valid notice of appeal, the Council must send the appellant a notice acknowledging its receipt and informing the appellant that he may request that a hearing be held<sup>9</sup>, that even if he does not request a hearing the Council may hold one if it considers it to be desirable<sup>10</sup>, and that he may be heard and be represented at such a hearing<sup>11</sup>. If the appellant has requested that a hearing be held, or the Council considers that it would be desirable to hold a hearing, the Council must fix a date on which it is to hear the appeal and send notice to the parties of the day, time and venue for the hearing<sup>12</sup>. The Council must give the appellant at least 28 days notice of the date of such a hearing<sup>13</sup>.

1 'Appeal' means an appeal which is made to the Nursing and Midwifery Council in accordance with the Nursing and Midwifery Order 2001, SI 2002/253, art 37(1) (see PARA 732 ante): Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 18.

2 Ibid r 21(1). For the meaning of 'writing' see PARA 20 note 22 ante. A reference to the sending of a notice or other document to any person is a reference to it being sent: (1) in the case of the Nursing and Midwifery Council, an appeal panel or the registrar, to the offices of the Council (r 19(1)(a)); (2) in the case of the appellant, to the address identified in his notice of appeal (r 19(1)(b)); and (3) in all other cases, to the last known address of that person (r 19(1)(c)). All communications may be sent by post and any such communication is treated as having been sent on the date which appears on the letter or document: r 19(2). For the meaning of 'appeal panel' see PARA 736 note 3 post.

3 As to the registrar see PARA 716 ante.

4 Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 21(2). As to the Nursing and Midwifery Council see PARA 691 et seq ante.

5 Ibid r 21(2)(a). The notice must include: (1) the name and address of the appellant; (2) his personal identification number or his personal reference number; (3) where the appeal is against a decision referred to in the Nursing and Midwifery Order 2001, SI 2002/253, art 37(1)(a)-(c) (see PARA 732 ante), the date, nature and other relevant details of the decision against which the appeal is brought; (4) where the appeal is against a failure to issue a decision as referred to in art 37(1)(d) (see PARA 732 ante), the date, nature and other relevant details of the application in respect of which there has been a failure to issue a decision; (5) a concise statement of the grounds of the appeal; and (6) the name and address of the appellant's representative (if any) and a statement as to whether the Council should correspond with that representative concerning the appeal instead of with the appellant: Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 21(2)(a)(i)-(vi). For the meaning of 'personal identification number' see PARA 718 note 3 ante; and for the meaning of 'personal reference number' see PARA 723 note 4 ante.

6 Ibid r 21(2)(b).

7 Ibid r 21(2)(c). 'Appellant' means a person who has lodged an appeal against the registrar's decision: art 18.

8 Ibid r 21(3).

9 Ibid r 22(1)(a). See also note 2 supra. Such a request must be made before the end of the period of 28 days beginning with the date on which the notice was sent: r 22(1)(a). The period within which the appellant may make a request that a hearing be held may be extended by the Council at its discretion: r 22(2).

- 10 Ibid r 22(1)(b).
- 11 Ibid r 22(1)(c). As to representation see PARA 735 post.
- 12 Ibid r 23(1). See also note 2 supra. As to the parties see PARA 735 post.
- 13 Ibid r 23(2).

## **UPDATE**

### **734 Notices of appeal and hearing**

NOTE 5--SI 2004/1767 r 21(2)(a)(iii) amended: SI 2007/3101.

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### **735. Parties and representation.**

The registrar<sup>1</sup> is the respondent in any proceedings<sup>2</sup>. The appellant<sup>3</sup> may be represented in any proceedings by any person, whether or not legally qualified, except a member of the Nursing and Midwifery Council<sup>4</sup> or any of its committees or a person employed by the Council<sup>5</sup>. Before the end of the period of 28 days beginning with the day on which the notice of hearing<sup>6</sup> is sent, the parties must inform the Council whether they intend to attend the hearing, whether they will be represented at it and whether they intend to call any witnesses and, if so, they must provide the names and addresses of their witnesses to the Council<sup>7</sup>. An appellant who does not intend to attend or be represented at a hearing may, before the beginning of the period of seven days ending with the date on which the hearing is to be held, send to the Council additional written<sup>8</sup> representations in support of his appeal<sup>9</sup>. The Council may invite any person<sup>10</sup> who, in its opinion, has an interest in the proceedings to make written representations and any such representations must be sent to the Council within 14 days of the date on which the invitation is sent to that person<sup>11</sup>.

1 As to the registrar see PARA 716 ante.

2 Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 24(3).

3 For the meaning of 'appellant' see PARA 734 note 7 ante.

4 As to the Nursing and Midwifery Council see PARA 691 et seq ante.

5 Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 24(4). As to the power of the Council to appoint staff see PARA 693 ante.

6 As to the notice of hearing see *ibid* r 23(1); and PARA 734 ante.

7 *Ibid* r 24(1).

8 For the meaning of 'written' see PARA 20 note 22 ante.

9 Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 24(2). For the meaning of 'appeal' see PARA 734 note 1 ante.

10 For the meaning of 'person' see PARA 7 note 5 ante.

11 Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 24(5).

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### **736. Appeal panels.**

Except where the Nursing and Midwifery Council<sup>1</sup> considers an appeal itself<sup>2</sup>, an appeal must be considered by an appeal panel<sup>3</sup> appointed by the Council for that purpose<sup>4</sup>. An appeal panel must comprise not fewer than three persons selected with due regard to the matter under consideration and must include: (1) a person who is registered<sup>5</sup> in the same part of the register<sup>6</sup> as that in which the appellant<sup>7</sup> is, or is applying to be, registered<sup>8</sup>; (2) a person who has never been admitted to the register and who is not a registered medical practitioner<sup>9</sup>; and (3) where the health of the appellant is in issue, a registered medical practitioner<sup>10</sup>. A person who has been involved in any other capacity in a case which is to be considered by an appeal panel must not be appointed as a member of that panel<sup>11</sup>. A member of the Council must be appointed as chair<sup>12</sup>. Decisions by an appeal panel are made by a majority vote of those present and, in the event of a tie, the chair has an additional casting vote which must be cast in favour of the appellant<sup>13</sup>.

1 As to the Nursing and Midwifery Council see PARA 691 et seq ante.

2 The quorum of the Council when considering an appeal is seven, and must consist of registrant members and lay members; and the number of members who are registrants may exceed the number of lay members but may not exceed them by more than one: Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 25(2). As to the membership of the Council see PARAS 694-695 ante. Where the Council considers an appeal, references in the Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, to an appeal panel, other than in the definition of 'appeal panel' (see note 3 infra), and r 19(1)(a) (see PARA 734 note 2 ante), r 25(1), (3) (see the text to notes 5-10 infra), are to be construed as references to the Council: r 33. For the meaning of 'appeal' see PARA 734 note 1 ante.

3 'Appeal panel' means a panel appointed under ibid r 25 to consider an appeal: r 18.

4 Ibid r 25(1).

5 For the meaning of 'registered' see PARA 717 note 2 ante.

6 As to the register and parts of the register see PARAS 718-719 ante.

7 For the meaning of 'appellant' see PARA 734 note 7 ante.

8 Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 25(3)(a).

9 Ibid r 25(3)(b). For the meaning of 'registered medical practitioner' see PARA 4 ante.

10 Ibid r 25(3)(c).

11 Ibid r 25(5).

12 Ibid r 25(4). 'Chair' means the chair of an appeal panel: r 18.

13 Ibid r 25(6).

### **UPDATE**

### **736 Appeal panels**

TEXT AND NOTE 9--Head (2) is now a person who (a) is not and never has been a registered nurse or midwife (and SI 2002/253 art 5(5) (see PARA 717) does not apply for these purposes); (b) is not and never has been a registered medical practitioner; and (c) does not hold qualifications which would entitle him to apply for registration as a registered nurse, a registered midwife or a registered medical practitioner: SI 2004/1767 art 25(3)(b)(i)-(iii) (substituted by SI 2009/1182).

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### **737. Powers of appeal panels.**

An appeal panel<sup>1</sup> or the chair<sup>2</sup> may hold a preliminary meeting in private with the parties, their representatives<sup>3</sup> and any other person it or he considers appropriate if such a meeting would, in its or his opinion, assist the panel to perform its functions<sup>4</sup>.

An appeal panel may determine an appeal<sup>5</sup> without an oral hearing on the basis of any documents provided by the appellant<sup>6</sup> where: (1) the appellant indicates<sup>7</sup> that he does not wish to attend or be represented at the hearing, or the Nursing and Midwifery Council<sup>8</sup> does not receive a reply, within the specified time<sup>9</sup>, from the appellant whether he intends to attend the hearing and the panel is satisfied that all reasonable steps have been taken to give notice of the hearing<sup>10</sup>; (2) the panel has notified the appellant and the registrar<sup>11</sup> of its intention to do so<sup>12</sup>; and (3) the panel considers it desirable to do so having taken into account any representations received in response to that notice<sup>13</sup>. If the panel decides to determine an appeal without an oral hearing, it must take into account any written representations provided by any person invited to submit them<sup>14</sup> or written representations from the registrar received by the Council before the beginning of the period of seven days ending with the date on which the panel determines the appeal<sup>15</sup>. Where the Council has fixed a date for a hearing<sup>16</sup> and the appellant has informed the Council that he intends to attend or be represented<sup>17</sup> but he does not attend and is not represented<sup>18</sup>, the panel may nevertheless proceed with the hearing if it is satisfied that all reasonable steps have been taken to give notice of the hearing to the appellant<sup>19</sup>.

An appeal panel, either of its motion or at the request of a party to the hearing, may postpone a hearing at any time before it begins and may adjourn the proceedings from time to time as it thinks fit<sup>20</sup>. Where a hearing is postponed the registrar must send the appellant notice of the date on which the panel is to hold the postponed hearing<sup>21</sup>.

1 For the meaning of 'appeal panel' see PARA 736 note 3 ante.

2 For the meaning of 'chair' see PARA 736 note 12 ante.

3 As to the parties and representation see PARA 735 ante.

4 Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 26(1). At any such meeting which the chair conducts, he may give directions under the Nursing and Midwifery Order 2001, SI 2002/253, art 32(3) (see PARA 752 post) and take any action which the appeal panel would be competent to take at such a meeting: Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 26(2).

5 For the meaning of 'appeal' see PARA 734 note 1 ante.

6 *Ie* under the Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, rr 21, 24(2): see PARAS 734-735 ante. For the meaning of 'appellant' see PARA 734 note 7 ante.

7 *Ie* under *ibid* r 24(1): see PARA 735 ante.

8 As to the Nursing and Midwifery Council see PARA 691 et seq ante.

9 *Ie* the time specified in the Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 24(1): see PARA 735 ante.

10    le under *ibid* r 23(1) (see *PARA 734 ante*): r 27(1)(a).

11    As to the registrar see *PARA 716 ante*.

12    Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 27(1)(b).

13    *Ibid* r 27(1)(c).

14    le in accordance with *ibid* r 24(5): see *PARA 735 ante*.

15    *Ibid* r 27(2).

16    *Ibid* r 29(a).

17    *Ibid* r 29(b).

18    *Ibid* r 29(c).

19    *Ibid* r 29.

20    *Ibid* r 28(1).

21    *Ibid* r 28(2). The date for a postponed hearing must not be fixed for any date before the end of the period of 14 days beginning with the day on which the registrar sends the notice to the appellant: r 28(3). As to the sending of notices and other documents see *PARA 734 note 2 ante*.

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### **738. Conduct of the hearing.**

The hearing must be held in public unless the appeal panel<sup>1</sup> is satisfied that, in the interests of justice or for the protection of the private life of the appellant<sup>2</sup>, any person giving evidence, or any patient or client, the public should be excluded from all or part of the hearing<sup>3</sup>. At the beginning of the hearing the chair<sup>4</sup> must explain to the parties<sup>5</sup> the order of proceedings which the panel proposes to adopt<sup>6</sup>. The panel may conduct the hearing in such manner as it considers most suitable to the clarification of the issues before it and generally to the just handling of the proceedings and the parties may be heard in such order as the panel determines having regard to the following: (1) the appellant may present his case in support of his appeal<sup>7</sup>; (2) the appellant or any person called on his behalf may be cross-examined by the registrar and, in the case of a person called on his behalf, re-examined by the appellant<sup>8</sup>; (3) the registrar may present his case in support of the decision appealed against or his failure to issue a decision<sup>9</sup>; (4) the registrar or any person called on his behalf may be cross-examined by the appellant and, in the case of a person called on the registrar's behalf, re-examined by the registrar<sup>10</sup>; (5) the registrar may address the panel on his case in respect of the decision appealed against or his failure to issue a decision<sup>11</sup>; and (6) the appellant may address the panel on his case in respect of his appeal<sup>12</sup>. The parties are entitled to give evidence, to call witnesses, to question any witnesses and to address the panel both on the evidence and generally on the subject matter of the appeal<sup>13</sup>.

1 For the meaning of 'appeal panel' see PARA 736 note 3 ante.

2 For the meaning of 'appellant' see PARA 734 note 7 ante.

3 Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 30(1).

4 For the meaning of 'chair' see PARA 736 note 12 ante.

5 As to the parties see PARA 735 ante.

6 Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 30(2).

7 Ibid r 30(3)(a). For the meaning of 'appeal' see PARA 734 note 1 ante. Where the appellant or the registrar is represented, references in r 30(3), (4) to the appellant or the registrar presenting the case, calling, or questioning witnesses, cross-examining or re-examining witnesses, or addressing the panel, are to be read as references to the representative of the appellant or the registrar, as the case may be: r 30(5). Except as so provided, references to the registrar are references to the registrar or any other person nominated by him to appear on his behalf: r 30(6). As to the registrar see PARA 716 ante.

8 Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 30(3)(b). See also note 7 supra.

9 Ibid r 30(3)(c). See also note 7 supra.

10 Ibid r 30(3)(d). See also note 7 supra.

11 Ibid r 30(3)(e). See also note 7 supra.

12 Ibid r 30(3)(f). See also note 7 supra.

13 Ibid r 30(4). See also note 7 supra. As to evidence see PARA 739 post.





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### **739. Evidence.**

The rules on admissibility of evidence that apply in civil proceedings in the county court apply to a hearing before an appeal panel<sup>1</sup>. However, the panel may hear or receive evidence which would not be admissible in such proceedings if it is satisfied that admission of that evidence is necessary in order to protect members of the public<sup>2</sup>. The panel may require any person, other than the appellant<sup>3</sup>, to attend a hearing and give evidence or produce documents<sup>4</sup>. At any hearing, the panel may, if it is satisfied that it is just and reasonable to do so, permit a party to rely on grounds not stated in the notice of appeal<sup>5</sup> or to adduce any evidence not presented to the registrar before he took the disputed decision<sup>6</sup>. The panel may require evidence to be given on oath or affirmation, and for that purpose may administer oaths or affirmations in an appropriate form<sup>7</sup>. Where the appellant has been convicted of a criminal offence, a certified copy of the certificate of conviction is admissible as proof of that conviction and of the findings of fact upon which it was based<sup>8</sup>.

<sup>1</sup> Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 31(1), (2). For the meaning of 'appeal panel' see PARA 736 note 3 ante. As to evidence in civil proceedings see CIVIL PROCEDURE vol 11 (2009) PARA 749 et seq. As to county courts see COURTS.

<sup>2</sup> Ibid r 31(3).

<sup>3</sup> For the meaning of 'appellant' see PARA 734 note 7 ante.

<sup>4</sup> Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 31(4).

<sup>5</sup> As to the notice of appeal see PARA 734 ante. For the meaning of 'appeal' see PARA 734 note 1 ante.

<sup>6</sup> Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 31(5).

<sup>7</sup> Ibid r 31(7). For the meaning of 'oath' see PARA 153 note 4 ante. As to oaths and affirmations see CIVIL PROCEDURE vol 11 (2009) PARA 1021 et seq.

<sup>8</sup> Ibid r 31(6). As to certificates of conviction see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1500.

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#### **740. Disposal of cases.**

Having considered an appeal, the Nursing and Midwifery Council<sup>1</sup> may: (1) dismiss the appeal<sup>2</sup>; (2) allow the appeal and quash the decision appealed against<sup>3</sup>; (3) substitute for the decision appealed against any other decision that the registrar<sup>4</sup> could have made<sup>5</sup>; or (4) remit the case to the registrar to be disposed of in accordance with its directions<sup>6</sup>. The Council must publish its decision as soon as reasonably practicable, together with the reasons for it<sup>7</sup>. However, if the decision is favourable to the person concerned, the Council is not required to publish it unless the person concerned so requests but it may do so with the consent of the person concerned<sup>8</sup>. The person concerned may appeal to a county court against an unfavourable decision made under head (1), (3) or (4) above<sup>9</sup>.

1 As to the Nursing and Midwifery Council see PARA 691 et seq ante.

2 Nursing and Midwifery Order 2001, SI 2002/253, art 37(9)(a).

3 Ibid art 37(9)(b).

4 For the meaning of 'registrar' see PARA 716 note 2 ante.

5 Nursing and Midwifery Order 2001, SI 2002/253, art 37(9)(c).

6 Ibid art 37(9)(d).

7 Ibid art 37(11). An appeal panel must notify the appellant of its decision and the reasons for reaching that decision, and inform the appellant of his right to appeal to a county court: Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 32. For the meaning of 'appeal panel' see PARA 736 note 3 ante; and for the meaning of 'appellant' see PARA 734 note 7 ante. As to the sending of notices see PARA 734 note 2 ante. As to the consideration of appeals by appeal panels see PARA 736 ante.

8 Nursing and Midwifery Order 2001, SI 2002/253, art 37(12).

9 Ibid art 37(10). Article 38 (see PARA 782 post) applies to that appeal: art 37(10). As to county courts see COURTS.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/(4) EDUCATION AND TRAINING/741. Standards of education and training.

## **(4) EDUCATION AND TRAINING**

### **741. Standards of education and training.**

The Nursing and Midwifery Council<sup>1</sup> must from time to time establish the standards of education and training necessary to achieve the standards of proficiency<sup>2</sup> it has established<sup>3</sup>, and the requirements to be satisfied for admission to, and continued participation in, such education and training which may include requirements as to good health and good character<sup>4</sup>. So far as is necessary to implement the requirements provided for in the Second Nursing Directive and the Second Midwifery Directive<sup>5</sup>, the standards and requirements must be set out in rules<sup>6</sup> made by the Council<sup>7</sup>.

The Council must ensure that universities and other bodies in the United Kingdom<sup>8</sup> concerned with such education and training are notified of the standards and requirements established by it<sup>9</sup>, and must take appropriate steps to satisfy itself that those standards and requirements are met<sup>10</sup>. The Council must from time to time publish a statement of the criteria which will be taken into account in deciding whether to give approval of a course of education or training, qualifications and other tests or institutions<sup>11</sup>; and must maintain and publish a list of the courses of education or training, qualifications and institutions which are for the time being approved<sup>12</sup>, or which have been approved but which are no longer so approved together with a record of the periods in respect of which they were approved<sup>13</sup>.

1 As to the Nursing and Midwifery Council see PARA 691 et seq ante.

2 For the meaning of 'standards of proficiency' see PARA 717 note 3 ante.

3 Nursing and Midwifery Order 2001, SI 2002/253, art 15(1)(a). Such standards must include such matters as the outcomes to be achieved by that education and training: art 15(3). A reference to education or training includes any course of education or training or test referred to in art 15(6) (see note 10 infra): art 15(10).

4 Ibid art 15(1)(b). Before establishing such requirements, the Council must consult such of those persons mentioned in art 3(14) (see PARA 692 ante) as it considers appropriate: art 15(4).

5 'Second Nursing Directive' means EC Council Directive 77/453 (OJ L176, 15.7.77, p 8) concerning the co-ordination of provisions laid down by law, regulation or administrative action in respect of the activities of nurses responsible for general care, as adapted, amended or extended by the Accession of Greece Act, EC Council Directive 81/1057 (OJ L385, 31.12.81, p 25), the Accession of Spain and Portugal Act, EC Council Directive 89/595 (OJ L341, 23.11.89, p 30), EC Council Directive 2001/19 (OJ L206, 13.7.2001, p 1), the EEA Agreement and the Accession of Austria, Finland and Sweden Act; and 'Second Midwifery Directive' means EC Council Directive 80/155 (OJ L033, 11.2.80, p 8), concerning the co-ordination of provisions laid down by law, regulation or administrative action relating to the taking up and pursuit of the activities of midwives, as adapted, amended or extended by the Accession of Spain and Portugal Act, EC Council Directive 89/594 (OJ L341, 23.11.89, p 19), EC Council Directive 2001/19 (OJ L206, 13.7.2001, p 1), the EEA Agreement and the Accession of Austria, Finland and Sweden Act: Nursing and Midwifery Order 2001, SI 2002/253, art 2, Sch 4. For the meanings of 'the Accession of Greece Act', 'the Accession of Spain and Portugal Act', and 'the Accession of Austria, Finland and Sweden Act' see PARA 722 note 12 ante. For the meaning of 'EEA Agreement' see PARA 720 note 14 ante.

6 As to the making of rules by the Council see PARA 701 ante.

7 Nursing and Midwifery Order 2001, SI 2002/253, art 15(2). As to the rules that have been made see the Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767; and note 10 infra.

8 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

9 Nursing and Midwifery Order 2001, SI 2002/253, art 15(5)(a).

10 Ibid art 15(5)(b). In performing this function, the Council may in particular, approve, or arrange with others to approve: (1) a course of education or training which the Council is satisfied confers or would confer on persons completing it successfully the established standards of proficiency (art 15(6)(a)); (2) qualifications which are granted following success in an examination, or some other appropriate assessment, taken as part of an approved course of education or training (art 15(6)(b)); (3) institutions which the Council considers to be properly organised and equipped for conducting the whole or part of an approved course of education or training (art 15(6)(c)); (4) such tests of competence or knowledge of English as it may require (art 15(6)(d)). In connection with art 15(6), the Council may approve or arrange with others to approve a course of education or training run outside the United Kingdom by an institution to which head (3) supra applies: art 15(7). 'Approved course of education or training' means a course approved under art 15(6)(a): Sch 4.

Where an approved programme of education leads to the award of a qualification listed in the Annex to the Nursing Directive or the Annex to the Midwifery Directive, it must comply with the training requirements in the Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767: art 3(1). For the requirements see Sch 1 para 1, 2(b), 3, 4, A, B, Sch 2 paras 1, 2, 3, 4, A, B. The requirements for entry to an approved programme of education must include the specified requirements: art 3(2). For the specified requirements see Sch 1 para 2(a), Sch 2 para 2. 'Approved programme of education' means an integrated theoretical and clinical practice programme that has been approved by the Council under the Nursing and Midwifery Order 2001, SI 2002/253, art 15(6)(a): Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 2.

11 le under the Nursing and Midwifery Order 2001, SI 2002/253, art 15(6) (see note 10 supra): art 15(8).

12 Ibid art 15(9)(a).

13 Ibid art 15(9)(b).

## **UPDATE**

### **741 Standards of education and training**

NOTE 7--SI 2002/253 art 15(2) amended: SI 2007/3101.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/(4) EDUCATION AND TRAINING/742. Visitors.

## **742. Visitors.**

The Nursing and Midwifery Council<sup>1</sup> may appoint visitors<sup>2</sup> to visit any place at which or institution by which or under whose direction<sup>3</sup>: (1) any relevant course of education or training<sup>4</sup> is, or is proposed to be, given<sup>5</sup>; (2) any examination or other assessment is, or is proposed to be, held in connection with any such course<sup>6</sup>; (3) any test of competence<sup>7</sup> is, or is proposed to be, conducted in connection with any such course or for any other purposes<sup>8</sup> connected with the professions of nursing and midwifery<sup>9</sup>. A person is not prevented from being a visitor merely because he is a member of the Council or any of its committees<sup>10</sup> or a screener<sup>11</sup>, but no person may be a visitor if he is employed by the Council<sup>12</sup>. No visitor may exercise his functions as visitor in relation to any place at which he regularly gives instruction in any subject<sup>13</sup>, or any institution with which he has a significant connection<sup>14</sup>. Visitors must be selected with due regard to the profession with which the education and training they are to report on is concerned and at least one of the visitors must be registered<sup>15</sup> in that part of the register<sup>16</sup> which relates to that profession<sup>17</sup>.

Where a visitor visits any place or institution in the exercise of his functions as visitor, he must report to the Council on the nature and quality of the instruction given, or to be given, and the facilities provided or to be provided, at that place or by that institution<sup>18</sup>, and on such other matters, if any, as the Council requires<sup>19</sup>. Where a visitor reports to the Council, the Council must on receipt of the report send a copy of it to the institution concerned<sup>20</sup>, and notify that institution of the period within which it may make observations on the report<sup>21</sup>. The Council must not take any steps in the light of any visitor's report before the end of the specified period<sup>22</sup>. The Council must publish such reports together with, on the request of the institution concerned, the response of that institution to the report<sup>23</sup>.

1 As to the Nursing and Midwifery Council see PARA 691 et seq ante.

2 The Council may make such provision in respect of visitors as it may determine: (1) for the payment of fees and allowances, including the payment of allowances to employers of visitors for the purposes of enabling visitors to perform functions as visitors (Nursing and Midwifery Order 2001, SI 2002/253, art 16(13)(a)); (2) for the reimbursement of such expenses as visitors may reasonably have incurred in the course of carrying out their visitor's functions (art 16(13)(b)). 'Visitors' means persons appointed under the Nursing and Midwifery Order 2001, SI 2002/253, art 16: art 2, Sch 4.

3 Ibid art 16(1).

4 'Relevant course of education or training' means any course of education or training which forms, or is intended to form, part of an approved course of education or training or any course which a registrant may be required to undergo after registration in accordance with rules made by the Council: ibid art 16(3). For the meaning of 'approved course of education or training' see PARA 741 note 10 ante. For the meaning of 'registrant' see PARA 717 note 11 ante. As to registration see PARA 721 et seq ante. As to post registration training see PARA 745 post.

5 Ibid art 16(1)(a).

6 Ibid art 16(1)(b).

7 'Any test of competence' includes an assessment to establish the level of a person's knowledge of written or spoken English: ibid art 16(2).

8 Ie under the Nursing and Midwifery Order 2001, SI 2002/253 (as amended).

9 Ibid art 16(1)(c).

- 10 Ibid art 16(5)(a). As to membership of the Council see PARAS 694-695 ante.
- 11 Ibid art 16(5)(b). For the meaning of 'screener' see PARA 750 note 2 post.
- 12 Ibid art 16(5). As to the powers of the Council to appoint staff see PARA 693 ante.
- 13 Ibid art 16(4)(a).
- 14 Ibid art 16(4)(b).
- 15 For the meaning of 'registered' see PARA 717 note 2 ante.
- 16 For the meaning of 'register' see PARA 717 note 2 ante.
- 17 Nursing and Midwifery Order 2001, SI 2002/253, art 16(6).
- 18 Ibid art 16(7)(a).
- 19 Ibid art 16(7)(b). Such requirements may be imposed by the Council generally in relation to all visits made to a specified kind of place or institution or in respect of a specified type of course, or specifically in relation to a particular visit: art 16(8).
- 20 Ibid art 16(9)(a).
- 21 Ibid art 16(9)(b). The period specified by the Council in such a notice must be not less than one month beginning with the date on which a copy of the report is sent to the institution concerned: art 16(10). For the meaning of 'month' see PARA 13 note 14 ante.
- 22 Ibid art 16(11).
- 23 Ibid art 16(12).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/(4) EDUCATION AND TRAINING/743. Information to be given by institutions.

### **743. Information to be given by institutions.**

Any institution in the United Kingdom<sup>1</sup> by which, or under whose direction, whether inside or outside the United Kingdom, any relevant course of education or training<sup>2</sup> is, or is proposed to be, given<sup>3</sup>, or any test of competence<sup>4</sup> is, or is proposed to be, conducted in connection with any such course or for any other purpose<sup>5</sup> connected with the professions of nursing or midwifery<sup>6</sup> must, whenever required to do so by the Nursing and Midwifery Council, give to the Council such information and assistance as the Council may reasonably require in connection with the exercise of its functions<sup>7</sup>. Where an institution refuses any such reasonable request for information made by the Council, the Council may<sup>8</sup> refuse to approve, or withdraw approval from, as the case may be, any education, training, qualification or institution to which the information relates<sup>9</sup>.

1 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

2 For the meaning of 'relevant course of education or training' see PARA 742 note 4 ante; definition applied by the Nursing and Midwifery Order 2001, SI 2002/253, art 17(2). A reference in art 17 to education or training includes any course of education or training or test referred to in art 15(6) (see PARA 741 note 10 ante): art 17(5).

3 Ibid art 17(1)(a).

4 For the meaning of 'any test of competence' see PARA 742 note 7 ante. Although this definition is stated in ibid art 16(2) to apply to arts 16, 18, it is submitted that it is intended that it apply to arts 16, 17 as there is no reference to 'any test of competence' in art 18.

5 Ie under the Nursing and Midwifery Order 2001, SI 2002/253 (as amended).

6 Ibid art 17(1)(b).

7 Ibid art 17(3). As to the Nursing and Midwifery Council and its functions see PARAS 691-692 ante.

8 Ie in accordance with ibid art 18: see PARA 744 post.

9 Ibid art 17(4). As to the approval of standards of education and training by the Council see PARA 741 ante.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/(4) EDUCATION AND TRAINING/744. Refusal or withdrawal of approval of courses, qualifications and institutions.

#### **744. Refusal or withdrawal of approval of courses, qualifications and institutions.**

Where, as a result of any visitor's report<sup>1</sup> or other information acquired by the Nursing and Midwifery Council<sup>2</sup> and taking account of the observations received from the institution<sup>3</sup>, the Council is of the opinion that the standards of education and training established by it<sup>4</sup> are not, or will not be, met by particular education or training or that an institution is not observing the appropriate requirements<sup>5</sup>, it may refuse to approve, or withdraw approval from, as the case may be, any education, training, qualification or institution to which that opinion relates<sup>6</sup>.

In making any decision to refuse or to withdraw approval, the Council must act as follows<sup>7</sup>. The Council must notify the institution concerned, setting out its reasons<sup>8</sup>, and inform the institution of the period within which it may make observations on the matters raised<sup>9</sup>. The Council may take no further steps before such period has expired<sup>10</sup>. If, taking account of the matters which led it to form its initial opinion<sup>11</sup> and any observations submitted by the institution, the Council decides that it is appropriate to refuse or withdraw approval, it must notify the institution accordingly<sup>12</sup>. Such a decision has effect from the date of the decision or from such later date as may be specified in the decision<sup>13</sup>.

Where approval is withdrawn, the Council must use its best endeavours to secure that any person, who is undertaking the education or training concerned or is studying for the qualification concerned or is studying at the institution concerned at the time when recognition is withdrawn, is given the opportunity to follow approved education or training or to study for an approved qualification<sup>14</sup> or to study at an approved institution<sup>15</sup>. The withdrawal of approval from any education or training, qualification or institution does not affect the entitlement of any person to be registered<sup>16</sup> on the basis of an award to him, before the date on which the decision withdrawing approval had effect, of the qualification concerned<sup>17</sup> or any qualification awarded in connection with any education or training<sup>18</sup>, or by an institution<sup>19</sup>, from which approval has been withdrawn<sup>20</sup>.

1 As to visitor's reports and visitors generally see PARA 742 ante. For the meaning of 'visitor' see PARA 742 note 2 ante.

2 As to the Nursing and Midwifery Council see PARA 691 et seq ante.

3 Ie under the Nursing and Midwifery Order 2001, SI 2002/253, art 16(9): see PARA 742 ante.

4 Ie under ibid art 15(1): see PARA 741 ante. For the purposes of art 18, a reference to education or training includes any course of education or training or test referred to in art 15(6) (see PARA 741 note 10 ante): art 18(2).

5 Ie the requirements referred to in ibid art 15(1): see PARA 741 ante.

6 Ibid art 18(1).

7 Ibid art 18(3).

8 Ibid art 18(4)(a).

9 Ibid art 18(4)(b). Such period must be not less than one month beginning with the date on which the reasons are sent to the institution under art 18(4)(a) (see the text to note 8 supra): art 18(4)(b). For the meaning of 'month' see PARA 13 note 14 ante.

10 Ibid art 18(5).

- 11    le under *ibid* art 18(1): see the text to notes 1-6 *supra*.
- 12    *Ibid* art 18(6).
- 13    *Ibid* art 18(7).
- 14    For the meaning of 'approved qualification' see *PARA* 721 note 1 *ante*.
- 15    Nursing and Midwifery Order 2001, SI 2002/253, art 18(8).
- 16    For the meaning of 'registered' see *PARA* 717 note 2 *ante*.
- 17    Nursing and Midwifery Order 2001, SI 2002/253, art 18(9)(a).
- 18    *Ibid* art 18(9)(b)(i).
- 19    *Ibid* art 18(9)(b)(ii).
- 20    *Ibid* art 18(9)(b).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/(4) EDUCATION AND TRAINING/745. Post-registration training.

## **745. Post-registration training.**

The Nursing and Midwifery Council<sup>1</sup> may make rules<sup>2</sup> requiring registrants<sup>3</sup> to undertake such continuing professional development as it may specify in standards<sup>4</sup>. The rules may, in particular, make provision with respect to registrants who fail to comply with any requirements of the rules, including making provision for their registration to cease to have effect<sup>5</sup>. The Council may by rules require persons who have not practised, or who have not practised for or during a prescribed<sup>6</sup> period, to undertake such education or training or to gain such experience as it may specify in standards<sup>7</sup>.

If the Council makes rules under these provisions, it must establish the standards<sup>8</sup> to be met in relation to continuing professional development<sup>9</sup> and the education or training required<sup>10</sup>.

1 As to the Nursing and Midwifery Council see PARA 691 et seq ante.

2 As to the rules that have been made see the Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767; and notes 4, 7 infra. As to the making of rules by the Council see PARA 701 ante.

3 For the meaning of 'registrant' see PARA 717 note 11 ante.

4 Nursing and Midwifery Order 2001, SI 2002/253, art 19(1). A registrant must undertake such continuing professional development as the Council may specify in standards in accordance with art 19(1): Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 3(3). In respect of additional qualifications which may be recorded on the register, the Council may establish standards of education and training, and the provisions of the Nursing and Midwifery Order 2001, SI 2002/253, art 15(3)-(9) (see PARA 741 ante), arts 16-18 (see PARAS 742-744 ante) apply in respect of those standards as if they were standards established under art 15(1)(a) (see PARA 741 ante): art 19(6). For the meaning of 'register' see PARA 717 note 2 ante. As to registration see PARA 722 ante.

5 Ibid art 19(2).

6 For the meaning of 'prescribed' see PARA 695 note 8 ante.

7 Nursing and Midwifery Order 2001, SI 2002/253, art 19(3). A person applying for registration, renewal or readmission:

176 (1) who first applies for registration more than five years after being awarded an approved qualification (Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 3(4)(a));

177 (2) whose registration has lapsed and who applies for readmission to the register, unless in the five years before the date of his application for readmission to the register he has practised for at least 750 hours (r 3(4)(b)); or

178 (3) who has practised for less than 450 hours in the three years preceding the date of an application for renewal of registration (r 3(4)(c)),

must undertake such education and training or gain such experience as the Council specifies in standards in accordance with the Nursing and Midwifery Order 2001, SI 2002/253, art 19(3): Nursing and Midwifery (Education, Registration and Registration Appeals) Rules Order of Council 2004, SI 2004/1767, r 3(4). As to renewal of registration and readmission to the register see PARAS 727, 729 ante.

8 The provisions of the Nursing and Midwifery Order 2001, SI 2002/253, art 15(3)-(9) (see PARA 741 ante), arts 16-18 (see PARAS 742-744 ante) apply in respect of those standards as if they were standards established under art 15(1)(a) (see PARA 741 ante) (art 19(4)); and in those provisions, references to 'education and training' are, for these purposes, treated as being references to education, training or experience (art 19(5)).

9 Ibid art 19(4)(a).

10 Ibid art 19(4)(b).

## **UPDATE**

### **745 Post-registration training**

TEXT AND NOTE 5--SI 2002/253 art 19(2A)-(2D) added: SI 2007/3101.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/(4) EDUCATION AND TRAINING/746. Wales.

**746. Wales.**

The National Assembly for Wales<sup>1</sup> may create or designate a body with which the Nursing and Midwifery Council<sup>2</sup> may enter into any arrangements<sup>3</sup> in order to perform its function<sup>4</sup> of satisfying itself that the standards of education and training established by it are met<sup>5</sup>.

1 As to the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

2 As to the Nursing and Midwifery Council see PARA 691 et seq ante.

3 I.e. such as are referred to in the Nursing and Midwifery Order 2001, SI 2002/253, art 15(6): see PARA 741 note 10 ante.

4 I.e. under ibid art 15(5)(b) (see PARA 741 ante) in respect of the standards established under art 15(1) (see PARA 741 ante), art 19(4), (6) (see PARA 745 ante).

5 Ibid art 20.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/(5) FITNESS TO PRACTISE/(i) In general/747. Standards of conduct, performance and ethics.

## **(5) FITNESS TO PRACTISE**

### **(i) In general**

#### **747. Standards of conduct, performance and ethics.**

The Nursing and Midwifery Council<sup>1</sup> must establish and keep under review: (1) the standards of conduct, performance and ethics expected of registrants<sup>2</sup> and prospective registrants and give them such guidance on these matters as it sees fit<sup>3</sup>; and (2) effective arrangements to protect the public from persons whose fitness to practise is impaired<sup>4</sup>. Before establishing any such standards or arrangements, the Council must consult the conduct and competence committee<sup>5</sup> in addition to the specified persons<sup>6</sup>. The Council may also from time to time give guidance to registrants, employers and such other persons as it thinks appropriate in respect of standards for the education and training, supervision and performance of persons who provide services in connection with those provided by registrants<sup>7</sup>.

The Council may disclose to any person any information relating to a person's fitness to practise which it considers it to be in the public interest to disclose<sup>8</sup>.

1 As to the Nursing and Midwifery Council see PARA 691 et seq ante.

2 For the meaning of 'registrant' see PARA 717 note 11 ante.

3 Nursing and Midwifery Order 2001, SI 2002/253, art 21(1)(a). Rules may provide that where a practice committee finds that a person has failed to comply with such standards, such failure is not to be taken of itself to establish that his fitness to practise is impaired, but may be taken into account in any proceedings under the Nursing and Midwifery Order 2001, SI 2002/253 (as amended): art 22(4). As to the rules that have been made see the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, approved by the Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761; and PARA 758 et seq post. As to the making of rules by the Council see PARA 701 ante. For the meaning of 'practice committee' see PARA 699 note 3 ante.

4 Nursing and Midwifery Order 2001, SI 2002/253, art 21(1)(b). As to the publication by the Council of an annual statistical report indicating the efficiency and effectiveness of the arrangements put in place to protect the public from persons whose fitness to practise is impaired see art 50(1); and PARA 702 ante.

5 As to the conduct and competence committee see PARA 761 post.

6 I.e. the persons mentioned in the Nursing and Midwifery Order 2001, SI 2002/253, art 3(14) (see PARA 692 ante): art 21(3).

7 Ibid art 21(2).

8 Ibid art 22(10).

### **UPDATE**

#### **747 Standards of conduct, performance and ethics**

TEXT AND NOTE 6--The reference to establishing standards of conduct, performance and ethics is omitted and the Council no longer needs to consult the conduct and

competence committee before establishing arrangements to protect the public: SI 2002/253 art 21(3) (amended by SI 2009/1182).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/(5) FITNESS TO PRACTISE/(i) In general/748. Allegations.

## 748. Allegations.

The following provisions apply where any allegation<sup>1</sup> is made against a registrant<sup>2</sup> to the effect that:

- 896 (1) his fitness to practise is impaired by reason of:
- 164
- 227. (a) misconduct<sup>3</sup>;
  - 228. (b) lack of competence<sup>4</sup>;
  - 229. (c) a conviction or caution in the United Kingdom<sup>5</sup> for a criminal offence, or a conviction elsewhere for an offence which, if committed in England and Wales, would constitute a criminal offence<sup>6</sup>;
  - 230. (d) his physical or mental health<sup>7</sup>; or
  - 231. (e) a determination by a body in the United Kingdom responsible under any enactment<sup>8</sup> for the regulation of a health or social care profession to the effect that his fitness to practise is impaired, or a determination by a licensing body elsewhere to the same effect<sup>9</sup>;
- 165
- 897 (2) an entry in the register<sup>10</sup> relating to him has been fraudulently procured or incorrectly made<sup>11</sup>.

When an allegation is made to the Nursing and Midwifery Council or any of its committees<sup>12</sup>, as soon as reasonably practicable after receipt of the allegation in the form required by the Council, the Council must refer it, where it is an allegation relating to a fraudulently procured or incorrectly made entry in the register, to the investigating committee<sup>13</sup>. Any other case must be referred to screeners<sup>14</sup> or to a practice committee<sup>15</sup>. If no allegation is made but it appears to the Council that there should be an investigation into the fitness to practise of a registrant or into his entry in the register, it may refer the matter in the same manner<sup>16</sup>.

1 These provisions are not prevented from applying because the allegation is based on a matter alleged to have occurred outside the United Kingdom or at a time when the person against whom the allegation is made was not registered: Nursing and Midwifery Order 2001, SI 2002/253, art 22(3). For the meaning of 'registered' see PARA 717 note 2 ante.

2 For the meaning of 'registrant' see PARA 717 note 11 ante. While the registration of a registrant is suspended by virtue of a suspension order or an interim suspension order he is treated as not being registered notwithstanding that his name still appears in the register but this does not prevent action being taken in respect of such a person as appropriate under arts 22-32 (see *infra* and PARA 751 et seq post): art 22(8). As to suspension orders and interim suspension orders see PARAS 768, 771 post.

3 Ibid art 22(1)(a)(i). As to the procedure for dealing with allegations of misconduct received by the Nursing and Midwifery Council before 1 August 2004 see the Nursing and Midwifery Order 2001 (Transitional Provisions) Order of Council 2004, SI 2004/1762, arts 2, 4-6. As to what constitutes misconduct see PARAS 143, 456 ante. Misconduct is not confined to matters connected with a person's ability to perform the duties properly as a nurse or midwife and if the committee is satisfied from the facts and circumstances of the case that a person is unfit by his conduct to act as such, it is entitled to remove that person from the register. Each case depends on its own facts, and it is for the committee to judge the fitness of the person concerned: *Stock v Central Midwives Board* [1915] 3 KB 756, DC. See also *Dennis v United Kingdom Central Council for Nursing, Midwifery and Health Visiting* (1993) 13 BMLR 146, [1993] 23 LS Gaz R 43, 137 Sol Jo LB 131 (motoring offences). The question whether the behaviour of a person amounts to conduct unworthy of a nurse or midwife is pre-eminently one for the decision of the committee and notwithstanding that there is no evidence to suggest that a person misconducted himself while at work in the performance of his duties as a nurse especially, the committee is entitled to reach the conclusion that removal from the register is the appropriate penalty: *Jhugroo v United*



*Kingdom Central Council for Nursing, Midwifery and Health Visiting* (1991) 8 BMLR 103, DC. Removal from the register should only be imposed in the most serious cases: *Dennis v United Kingdom Central Council for Nursing, Midwifery and Health Visiting* supra. See also *Singh v United Kingdom Central Council* (26 June 1985, unreported), DC.

4 Nursing and Midwifery Order 2001, SI 2002/253, art 22(1)(a)(ii).

5 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

6 Nursing and Midwifery Order 2001, SI 2002/253, art 22(1)(a)(iii). For these purposes, references to a conviction include a conviction by a court martial: art 22(2). As to courts-martial see ARMED FORCES. The purpose of giving a disciplinary committee powers over a professional person who has been convicted of crime is not to punish him for a second time for the same offence but to protect the public who may come to him as patients and to maintain the high standards and good reputation of an honourable profession: *Ziderman v General Dental Council* [1976] 2 All ER 334, [1976] 1 WLR 330, PC. The maxim that a person ought not to be punished twice for the same offence does not apply to proceedings before a disciplinary committee: *R v Statutory Committee of the Pharmaceutical Society of Great Britain, ex p Pharmaceutical Society of Great Britain* [1981] 2 All ER 805, [1981] 1 WLR 886, DC. If the disciplinary committee is considering striking off, it must satisfy itself that the criminal offence is of so grave a character as to show that the professional person is unfit to continue to practise: *Ziderman v General Dental Council* supra; *Dennis v United Kingdom Central Council for Nursing, Midwifery and Health Visiting* (1993) 13 BMLR 146, [1993] 23 LS Gaz R 43, 137 Sol Jo LB 131.

7 Nursing and Midwifery Order 2001, SI 2002/253, art 22(1)(a)(iv). As to the procedure for dealing with cases relating to impairment by reason of physical or mental condition received by the Nursing and Midwifery Council before 1 August 2004 see the Nursing and Midwifery Order 2001 (Transitional Provisions) Order of Council 2004, SI 2004/1762, arts 3, 4-6.

8 For the meaning of 'enactment' see PARA 4 note 1 ante.

9 Nursing and Midwifery Order 2001, SI 2002/253, art 22(1)(a)(v). 'Licensing body' means a regulatory body which has the function of authorising persons to practise a health or social care profession: art 2, Sch 4.

10 For the meaning of 'register' see PARA 717 note 2 ante.

11 Nursing and Midwifery Order 2001, SI 2002/253, art 22(1)(b).

12 As to the Nursing and Midwifery Council and its committees see PARA 691 ante.

13 Nursing and Midwifery Order 2001, SI 2002/253, art 22(5)(a). As to the functions of the investigating committee see PARA 757 post. As to the investigating committee as a statutory committee see PARA 691 ante. As to the committee as a practice committee, and as to its membership, see PARAS 699-700 ante.

14 Ibid art 22(5)(b)(i). For the meaning of 'screeners' see PARA 750 note 2 post.

15 Ibid art 22(5)(b)(ii). Hearings and preliminary meetings of practice committees at which the person concerned is entitled to be present or to be represented are to be held in the United Kingdom country in which the registered address of the person concerned is situated; or if he is not registered and resides in the United Kingdom, in the country in which he resides; and in any other case, in England: art 22(7). For the meaning of 'practice committee' see PARA 699 note 3 ante. For the meaning of 'United Kingdom country' see PARA 694 note 8 ante.

16 Ibid art 22(6). In such a case, the Nursing and Midwifery Order 2001, SI 2002/253, applies as if an allegation had been made under art 22(1) (see the text to notes 1-11 supra): art 22(6).

## UPDATE

### 748 Allegations

NOTES 3, 7--SI 2004/1762 art 4 amended: SI 2006/1441.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/(5) FITNESS TO PRACTISE/(i) In general/749. Fitness to practise of visiting EEA nurses and midwives.

#### **749. Fitness to practise of visiting EEA nurses and midwives.**

The Nursing and Midwifery Council<sup>1</sup> may refer for determination to whichever practice committee<sup>2</sup> it thinks fit<sup>3</sup> the question whether the provisions relating to visiting EEA nurses or midwives<sup>4</sup> should cease to apply to a particular visiting nurse or midwife because his fitness to practise is impaired by reason of misconduct or some other matter<sup>5</sup> or because authorisation to practise has been fraudulently procured or granted in error<sup>6</sup>. Where it is determined that such provisions should cease to apply to any person, he ceases to be a visiting EEA nurse or, as the case may be, a visiting EEA midwife<sup>7</sup>, ceases to be deemed to be registered<sup>8</sup>, and is not entitled to be treated as a visiting EEA nurse or midwife before the expiry of such period, if any, as may be specified in the determination, or, if no such period is specified, without the written consent of the Council<sup>9</sup>. A person in respect of whom such a determination is made may appeal to the High Court of Justice<sup>10</sup>.

1 As to the Nursing and Midwifery Council see PARA 691 et seq ante.

2 For the meaning of 'practice committee' see PARA 699 note 3 ante.

3 In taking account of the Nursing and Midwifery Order 2001, SI 2002/253, art 22: see PARA 748 ante.

4 In the provisions of the Nursing and Midwifery Order 2001, SI 2002/253 (as amended): see PARA 731 ante. For the meanings of 'visiting EEA nurse' and 'visiting EEA midwife' see PARA 731 note 1 ante.

5 In a matter referred to in ibid art 22(1)(a): see PARA 748 ante.

6 Ibid art 39(6). The provisions of Pt V (arts 21-36) (see PARA 747 et seq ante), and rules made thereunder apply, with any necessary modifications, in relation to any such proceedings as they apply in relation to proceedings in respect of an allegation referred to a screener or practice committee under art 22 (see PARA 748 ante): art 39(7). For the meaning of 'screeners' see PARA 750 note 2 post.

7 Ibid art 39(8)(a).

8 Ibid art 39(8)(b). For the meaning of 'registered' see PARA 717 note 2 ante.

9 Ibid art 39(8)(c). For the meaning of 'written' see PARA 20 note 22 ante.

10 Ibid art 39(9). Article 38 (see PARA 782 post) applies to such appeal: art 39(9). As to the High Court of Justice in England and Wales see COURTS vol 10 (Reissue) PARA 602 et seq.

#### **UPDATE**

#### **749 Fitness to practise of visiting EEA nurses and midwives**

TEXT AND NOTE 18--See SI 2002/253 arts 39, 39A, 40, Schs 2A, 3 (arts 39, 40, Sch 3 substituted, art 39A, Sch 2A added by SI 2007/3101).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/(5) FITNESS TO PRACTISE/(i) In general/750. Screeners.

## **750. Screeners.**

The Nursing and Midwifery Council<sup>1</sup> may by rules provide for the appointment of persons, to be known as 'screeners'<sup>2</sup>, to whom allegations may be referred<sup>3</sup>. Any such rules must provide that<sup>4</sup>:

- 898 (1) any matter referred to the screeners must be considered by a panel of at least two screeners<sup>5</sup>;
- 899 (2) the panel must include at least one lay person<sup>6</sup> and one registrant<sup>7</sup> selected with due regard to the professional field of the person concerned and to the matter under consideration<sup>8</sup>;
- 900 (3) the number of registrants on any panel may not exceed the number of lay persons<sup>9</sup>;
- 901 (4) screeners have the functions of considering the allegation and establishing whether, in their opinion, power is given<sup>10</sup> to deal with it if it proves to be well founded<sup>11</sup>;
- 902 (5) if in their opinion such power is given, they must refer the matter together with a report of the result of their consideration to such practice committee as they see fit<sup>12</sup>;
- 903 (6) if in their opinion such power is not given, they must close the case, provided that if there are two screeners the lay person agrees<sup>13</sup>, or if there are more than two screeners it is the decision of the majority<sup>14</sup>;
- 904 (7) where requested to do so by any practice committee, screeners have the function of mediating in any case with the aim of dealing with the allegation without it being necessary for the case to reach the stage at which the health committee or conduct and competence committee<sup>15</sup>, as the case may be, would arrange a hearing<sup>16</sup>;
- 905 (8) in the event that mediation fails, the screeners must refer the matter back to the practice committee which referred it to them<sup>17</sup>.

The Council may make such provision in respect of screeners as it may determine: (a) for the payment of fees and allowances, including the payment of allowances to their employers, for the purpose of enabling screeners to perform their functions as screeners<sup>18</sup>; and (b) for the reimbursement of such expenses as the screeners may reasonably have incurred in the course of carrying out those functions<sup>19</sup>.

A person is not prevented from being a screener merely because he is a member of the Council or any of its committees, other than a practice committee<sup>20</sup>, or a visitor<sup>21</sup>. However, a person may not be a screener if he is a member of a practice committee<sup>22</sup>, or a legal, medical or registrant assessor<sup>23</sup>, or employed by the Council<sup>24</sup>; and no person may act as a screener in respect of a particular case if he has been involved in that case in any other capacity<sup>25</sup>.

1 As to the Nursing and Midwifery Council see PARA 691 et seq ante.

2 'Screeners' means persons appointed under the Nursing and Midwifery Order 2001, SI 2002/253, art 23: art 2, Sch 4.

3 Ie in accordance with the Nursing and Midwifery Order 2001, SI 2002/253, or rules made under it: art 23(1). As to allegations see PARA 748 ante. As to the making of rules by the Council see PARA 701 ante. At the date at which this volume states the law no such rules had been made.

- 4 Ibid art 24(1).
- 5 Ibid art 24(2)(a).
- 6 'Lay person' means, in relation to screeners, a person who is not and never has been a member of a health or social care profession which is regulated under any enactment: *ibid* Sch 4. For the meaning of 'enactment' see *PARA 4* note 1 *ante*.
- 7 For the meaning of 'registrant' see *PARA 717* note 11 *ante*.
- 8 Nursing and Midwifery Order 2001, SI 2002/253, art 24(2)(b). 'The person concerned' means the person against whom an allegation has been made: art 22(11).
- 9 Ibid art 24(2)(c).
- 10 *Ie* by the Nursing and Midwifery Order 2001, SI 2002/253 (as amended).
- 11 Ibid art 24(3)(a).
- 12 Ibid art 24(3)(b). For the meaning of 'practice committee' see *PARA 699* note 3 *ante*.
- 13 Ibid art 24(3)(c)(i). If this provision is not satisfied, the screeners must refer the matter to such practice committee as they see fit: art 24(3)(c). If the screeners decide that power is not given to deal with the allegation, the registrar must inform the person making the allegation, giving reasons: art 24(5). For the meaning of 'registrar' see *PARA 716* note 2 *ante*.
- 14 Ibid art 24(3)(c)(ii). If this provision is not satisfied, the screeners must refer the matter to such practice committee as they see fit: art 24(3)(c). See also note 13 *supra*.
- 15 As to the health committee and the conduct and competence committee see *PARAS 761-762* *post*.
- 16 *Ie* in accordance with the Nursing and Midwifery Order 2001, SI 2002/253, art 32(2)(f) (see *PARA 752* *post*): art 24(3)(d).
- 17 Ibid art 24(3)(e).
- 18 Ibid art 24(4)(a).
- 19 Ibid art 24(4)(b).
- 20 Ibid art 23(2)(a).
- 21 Ibid art 23(2)(b). For the meaning of 'visitor' see *PARA 742* note 2 *ante*.
- 22 Ibid art 23(3)(a).
- 23 Ibid art 23(3)(b). As to legal, medical and registrant assessors see *PARAS 753-756* *post*.
- 24 Ibid art 23(3)(c). As to the power of the Council to appoint staff see *PARA 693* *ante*.
- 25 Ibid art 23(4).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/(5) FITNESS TO PRACTISE/(i) In general/751. Council's power to require disclosure of information.

### **751. Council's power to require disclosure of information.**

For the purpose of assisting in carrying out functions in respect of fitness to practise, a person authorised by a practice committee<sup>1</sup> may require any person<sup>2</sup>, other than the person concerned<sup>3</sup>, who in his opinion is able to supply information or produce any document which appears relevant to the discharge of any such function, to supply such information or produce such a document<sup>4</sup>. However, this provision does not apply in relation to the supplying of information or the production of any document which a person could not be compelled to supply or produce in civil proceedings in any court to which an appeal would lie from a decision of the practice committee in respect of the allegation with which it is dealing<sup>5</sup>.

As soon as is reasonably practicable after a decision has been made<sup>6</sup> to refer an allegation or other matter to a practice committee, the Nursing and Midwifery Council<sup>7</sup> must require from the person concerned details of: (1) any person by whom he is employed to provide services in, or in relation to, nursing or midwifery<sup>8</sup>, or with whom he has an arrangement to provide such services<sup>9</sup>; and (2) any body by which he is authorised to practise, in the United Kingdom<sup>10</sup> or elsewhere, a health or social care profession which is regulated under any enactment<sup>11</sup>.

1 For the meaning of 'practice committee' see PARA 699 note 3 ante.

2 For the meaning of 'person' see PARA 7 note 5 ante.

3 For the meaning of 'the person concerned' see PARA 750 note 8 ante.

4 Nursing and Midwifery Order 2001, SI 2002/253, art 25(1). Nothing in the Nursing and Midwifery Order 2001, SI 2002/253 (as amended), and particularly nothing in art 25, requires or permits any disclosure of information which is prohibited by or under any other enactment: arts 3(18), 25(3). However, where information is held in a form in which the prohibition operates because the information is capable of identifying an individual, the person authorised by the committee may, in exercising his functions, require that the information be put into a form which is not capable of identifying that individual: art 25(4). For the meaning of 'enactment' see PARA 4 note 1 ante.

A person who, without reasonable excuse, fails to comply with any requirement imposed by the Nursing and Midwifery Council or a practice committee under art 25(1), (2) (see the text to notes 6-11 infra) is guilty of an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale: art 44(4), (5). As to the standard scale see PARA 185 note 11 ante.

5 Ibid art 25(5). For the purposes of art 25(5), 'enactment' includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament: art 25(6). As to the Scottish Parliament see CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to appeals see PARA 782 post. As to the production of documents in civil proceedings see CIVIL PROCEDURE vol 11 (2009) PARA 538-583.

6 I.e. under ibid art 22(5), (6): see PARA 748 ante.

7 As to the Nursing and Midwifery Council see PARA 691 et seq ante.

8 Nursing and Midwifery Order 2001, SI 2002/253, art 25(2)(a)(i). See also note 4 supra.

9 Ibid art 25(2)(a)(ii). See also note 4 supra.

10 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

11 Nursing and Midwifery Order 2001, SI 2002/253, art 25(2)(b). See also note 4 supra.

### **UPDATE**

### **751 Council's power to require disclosure of information**

TEXT AND NOTE 4--The power to require disclosure is now for the purpose of assisting the Nursing and Midwifery Council or any of its practice committees in carrying out functions in respect of fitness to practise, and the person requiring disclosure must now be a person authorised by the Council: SI 2002/253 art 25(1) (amended by SI 2009/1182).

TEXT AND NOTE 5--The exception now relates to disclosure which a person could not be compelled to make in civil proceedings in any court to which an appeal would lie from a decision of a practice committee with regard to the person concerned: SI 2002/253 art 25(5) (amended by SI 2009/1182).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/(5) FITNESS TO PRACTISE/(i) In general/752. Investigation of allegations: procedural rules.

## **752. Investigation of allegations: procedural rules.**

The Nursing and Midwifery Council<sup>1</sup> must make rules<sup>2</sup> as to the procedure to be followed by the health committee and the conduct and competence committee<sup>3</sup> in considering any allegation<sup>4</sup> and before making a striking-off order, a suspension order, a conditions of practice order or a caution order<sup>5</sup>. The rules must, in particular, make provision:

- 906 (1) empowering each committee to refer to the other any allegation which it considers would be better dealt with by that other committee<sup>6</sup>;
- 907 (2) empowering each committee, before it holds any hearing to which head (6) below applies, where it considers that it would assist it in performing its functions, to hold a preliminary meeting in private attended by the parties<sup>7</sup> and their representatives and any other person it thinks appropriate<sup>8</sup>;
- 908 (3) requiring the person concerned to be given notice of the allegation without delay<sup>9</sup>;
- 909 (4) giving the person concerned an opportunity to submit written representations within a prescribed period<sup>10</sup>;
- 910 (5) for the committee, where it sees fit, to notify the person making the allegation of those representations and to invite him to deal within a prescribed period with any points raised by the committee in respect of those representations<sup>11</sup>;
- 911 (6) giving the person concerned an opportunity to put his case at a hearing if before the end of the prescribed period he asks for a hearing<sup>12</sup>, or the committee considers that a hearing is desirable<sup>13</sup>;
- 912 (7) entitling the person concerned to be represented, whether by a legally qualified person or otherwise, at any such hearing<sup>14</sup>;
- 913 (8) where an allegation is referred by the Council, screeners<sup>15</sup> or the investigating committee<sup>16</sup> to the health committee or the conduct and competence committee, for the Council to give notice of that referral to specified persons<sup>17</sup> and, where they are known, to any person by whom the person concerned is employed or with whom he has an arrangement to provide services and any body by which he is authorised to practise<sup>18</sup>;
- 914 (9) giving any person, other than the person concerned, who, in the opinion of the relevant committee, taking account of any criteria included in the rules, has an interest in proceedings before it, the opportunity to submit written representations<sup>19</sup>;
- 915 (10) requiring a hearing before a committee to be held in public except in so far as may be provided by the rules<sup>20</sup>;
- 916 (11) requiring the committee to notify the person concerned of its decision, of its reasons for reaching that decision and of his right of appeal<sup>21</sup>;
- 917 (12) requiring the person by whom the allegation was made to be notified by the committee of its decision and of its reasons for reaching that decision<sup>22</sup>;
- 918 (13) empowering the committee to require persons, other than the person concerned, to attend and give evidence or to produce documents<sup>23</sup>;
- 919 (14) about the admissibility of evidence<sup>24</sup>;
- 920 (15) enabling the committee to administer oaths<sup>25</sup>;
- 921 (16) where the person concerned has been convicted of a criminal offence, for the conviction to be proved by the production of a certified copy of the certificate

of conviction relating to the offence and for the findings of fact upon which the conviction is based to be admissible as proof of those facts<sup>26</sup>.

Each stage in proceedings relating to fitness to practise must be dealt with expeditiously and the committee concerned may give directions as to the conduct of the case and for the consequences of failure to comply with such directions, which may include the making of an order or refusal of an application if the failure to comply was without reasonable excuse<sup>27</sup>.

- 1 As to the Nursing and Midwifery Council see PARA 691 et seq ante.
- 2 As to the making of rules by the Council see PARA 701 ante.
- 3 As to the health committee and the conduct and competence committee see PARAS 761-762 post.
- 4 As to allegations see PARA 748 ante.
- 5 Nursing and Midwifery Order 2001, SI 2002/253, art 32(1). As to the rules that have been made see the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, approved by the Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761; and PARA 761 et seq post. As to striking-off orders, suspension orders, conditions of practice orders and caution orders see PARA 768 post.
- 6 Nursing and Midwifery Order 2001, SI 2002/253, art 32(2)(a).
- 7 'Parties' means the Council and the person concerned: ibid art 32(5). For the meaning of 'the person concerned' see PARA 750 note 8 ante.
- 8 Ibid art 32(2)(b). The Council may provide in the rules for the chairman of the committee to hold the preliminary meeting or to give the directions mentioned in art 32(3) (see the text to note 27 infra) and, subject to the agreement of the parties to him acting on behalf of the committee, to take such action as the committee would be competent to take at such a meeting: art 32(4).
- 9 Ibid art 32(2)(c).
- 10 Ibid art 32(2)(d). For the meaning of 'prescribed' see PARA 695 note 8 ante.
- 11 Ibid art 32(2)(e).
- 12 Ibid art 32(2)(f)(i).
- 13 Ibid art 32(2)(f)(ii).
- 14 Ibid art 32(2)(g).
- 15 For the meaning of 'screeners' see PARA 750 note 2 ante.
- 16 As to the functions of the investigating committee see PARA 757 post. As to the investigating committee as a statutory committee see PARA 691 ante. As to the committee as a practice committee, and as to its membership, see PARAS 699-700 ante.
- 17 The specified persons must include the Secretary of State, the Scottish Ministers, the National Assembly for Wales, and the Department of Health, Social Services and Public Safety in Northern Ireland: Nursing and Midwifery Order 2001, SI 2002/253, art 32(2)(h). As to the Secretary of State see PARA 5 ante. As to the Scottish Ministers and the National Assembly for Wales CONSTITUTIONAL LAW AND HUMAN RIGHTS.
- 18 Ie the persons referred to in ibid art 25(2)(a), (b) (see PARA 751 ante): art 32(2)(h).
- 19 Ibid art 32(2)(i).
- 20 Ibid art 32(2)(j).
- 21 Ibid art 32(2)(k).
- 22 Ibid art 32(2)(l).
- 23 Ibid art 32(2)(m).



- 24 Ibid art 32(2)(n).
- 25 Ibid art 32(2)(o).
- 26 Ibid art 32(2)(p).
- 27 Ibid art 32(3). See also note 8 supra.

## **UPDATE**

### **752 Investigation of allegations: procedural rules**

NOTE 8--SI 2002/253 art 32(4) amended: SI 2008/1485.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/(5) FITNESS TO PRACTISE/(i) In general/753. Appointment and functions of legal assessors.

### **753. Appointment and functions of legal assessors.**

The Nursing and Midwifery Council<sup>1</sup> must appoint legal assessors<sup>2</sup>. Legal assessors have the general function of giving advice to screeners<sup>3</sup>, the practice committees<sup>4</sup>, the registrar<sup>5</sup> or the Council<sup>6</sup>, on questions of law arising in connection with any matter which any of those persons is considering<sup>7</sup>. They have such other functions as may be conferred on them by rules made by the Council<sup>8</sup>. The Privy Council<sup>9</sup> may make provision by order with regard to the functions of legal assessors and, in particular, provision may be made: (1) requiring legal assessors when advising the Council or any of its committees to do so in the presence of the parties or their representatives or, where advice is given in private, requiring the parties to be notified of the advice tendered by the legal assessors<sup>10</sup>; (2) requiring the parties to be notified in any case where the legal assessor's advice is not accepted<sup>11</sup>.

To be qualified for appointment as a legal assessor, a person must: (a) have a ten year general qualification<sup>12</sup>; or (b) be an advocate or solicitor in Scotland of at least ten years' standing<sup>13</sup>; or (c) be a member of the Bar of Northern Ireland of at least ten years' standing<sup>14</sup>. No person may be a legal assessor if he is a member of the Council<sup>15</sup>, a member of a practice committee<sup>16</sup>, a screener, a visitor<sup>17</sup>, a medical or registrant assessor<sup>18</sup>, or employed by the Council<sup>19</sup>. The Council may make such provision in respect of legal assessors as it may determine for the payment of fees and allowances, including the payment of allowances to employers of legal assessors for the purposes of enabling legal assessors to perform their functions as legal assessors<sup>20</sup>, and for the reimbursement of such expenses as the legal assessors may reasonably have incurred in the course of carrying out those functions<sup>21</sup>.

1 As to the Nursing and Midwifery Council see PARA 691 et seq ante.

2 Nursing and Midwifery Order 2001, SI 2002/253, art 34(1).

3 Ibid art 34(2)(a). For the meaning of 'screeners' see PARA 750 note 2 ante.

4 Ibid art 34(2)(b). For the meaning of 'practice committee' see PARA 699 note 3 ante.

5 Ibid art 34(2)(c). For the meaning of 'registrar' see PARA 716 note 2 ante.

6 Ibid art 34(2)(d).

7 *Ie* under ibid arts 9, 10 (see PARAS 722, 727 ante), Pt V (arts 21-36) (see PARA 747 et seq ante), Pt VI (arts 37-38) (see PARAS 732-733 ante, 782 post): art 34(2). Legal assessors may at the request of any such person assist in the drafting of any decision required by the Nursing and Midwifery Order 2001, SI 2002/253 (as amended), under any of those provisions: art 34(3).

8 Ibid art 34(4). At the date at which this volume states the law no such rules had been made. As to the making of rules by the Council see PARA 701 ante.

9 As to the exercise by the Privy Council of its powers see PARA 706 ante. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

10 Nursing and Midwifery Order 2001, SI 2002/253, art 46(1)(a). The provisions of art 46(1)(a), (b) (see the text to note 11 *infra*) do not apply to advice given by a legal assessor in respect of the drafting of a decision mentioned in art 34(3) (see note 7 *supra*): art 46(2). As to the order that has been made see the Nursing and Midwifery Order 2001 (Legal Assessors) Order of Council 2004, SI 2004/1763; and PARA 754 post.

11 Ibid art 46(1)(b). See also note 10 *supra*.

12 le within the meaning of the Courts and Legal Services Act 1990 s 71 (see LEGAL PROFESSIONS vol 65 (2008) PARA 742): Nursing and Midwifery Order 2001, SI 2002/253, art 34(5)(a).

13 Ibid art 34(5)(b).

14 Ibid art 34(5)(c).

15 Ibid art 34(6)(a). As to the membership of the Council see PARAS 694-695 ante.

16 Ibid art 34(6)(b).

17 For the meaning of 'visitor' see PARA 742 note 2 ante.

18 Nursing and Midwifery Order 2001, SI 2002/253, art 34(6)(c). As to medical and registrant assessors see PARAS 755, 756 post.

19 Ibid art 34(6)(d). As to the power of the Council to appoint staff see PARA 693 ante.

20 Ibid art 34(7)(a).

21 Ibid art 34(7)(b).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/(5) FITNESS TO PRACTISE/(i) In general/754. Tendering of advice by legal assessors.

#### **754. Tendering of advice by legal assessors.**

At a hearing<sup>1</sup> before: (1) the investigating committee<sup>2</sup> which relates to an allegation<sup>3</sup> that an entry in the register<sup>4</sup> has been fraudulently procured or incorrectly made or any matter which is treated as such an allegation<sup>5</sup>, or whether to make, revoke, confirm, vary or replace an interim order<sup>6</sup>; (2) the health committee<sup>7</sup>; (3) the conduct and competence committee<sup>8</sup>; or (4) the Nursing and Midwifery Council on an appeal against a decision of the registrar<sup>9</sup>, any advice tendered by a legal assessor<sup>10</sup> to the Council or a committee must be given in the presence of every party, or person representing a party, in attendance at the hearing<sup>11</sup>. However, where the Council or a committee has begun to deliberate on its decision<sup>12</sup> and considers that it would be prejudicial to the discharge of its functions for the advice to be tendered in the presence of the parties or their representatives<sup>13</sup>, the advice may be given in the absence of the parties or their representatives<sup>14</sup>. Where the advice is given in the absence of the parties or their representatives, the legal assessor must, as soon as practicable after completion of the deliberations, inform each of the parties or their representatives in attendance at the hearing of the advice he gave, together with any question which led to that advice<sup>15</sup>, and subsequently record those matters in writing and give a copy to those parties or their representatives<sup>16</sup>. Copies of such written advice must be available, on application, to every party to the proceedings who does not attend, and is not represented at, the hearing before the Council or the committee<sup>17</sup>.

1 'Hearing' does not include any preliminary meeting held by a committee pursuant to the Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 18 (see PARA 774 post) or any private meeting of a committee; and 'committee', except in the title of a committee, means the investigating committee, the health committee or the conduct and competence committee: Nursing and Midwifery Order 2001 (Legal Assessors) Order of Council 2004, SI 2004/1763, art 1(2).

2 As to the functions of the investigating committee see PARA 757 post. As to the investigating committee as a statutory committee see PARA 691 ante. As to the committee as a practice committee, and as to its membership, see PARAS 699-700 ante.

3 Ie under the Nursing and Midwifery Order 2001, SI 2002/253, art 22(1)(b): see PARA 748 ante.

4 As to the register see PARA 718 ante.

5 Ie in accordance with the Nursing and Midwifery Order 2001, SI 2002/253, art 22(6) (see PARA 748 ante): Nursing and Midwifery Order 2001 (Legal Assessors) Order of Council 2004, SI 2004/1763, art 2(a)(i).

6 Ie under the Nursing and Midwifery Order 2001, SI 2002/253, art 31 (see PARAS 771-772 post): Nursing and Midwifery Order 2001 (Legal Assessors) Order of Council 2004, SI 2004/1763, art 2(a)(ii).

7 Ie under the Nursing and Midwifery Order 2001, SI 2002/253, Pt V (arts 21-36) (see PARA 747 et seq ante): Nursing and Midwifery Order 2001 (Legal Assessors) Order of Council 2004, SI 2004/1763, art 2(b). As to the health committee see PARA 762 post.

8 Ie under the Nursing and Midwifery Order 2001, SI 2002/253, Pt V (see PARA 747 et seq ante): Nursing and Midwifery Order 2001 (Legal Assessors) Order of Council 2004, SI 2004/1763, art 2(c). As to the conduct and competence committee see PARA 761 post.

9 Ie under the Nursing and Midwifery Order 2001, SI 2002/253, art 37 (see PARAS 732-733, 740 ante): Nursing and Midwifery Order 2001 (Legal Assessors) Order of Council 2004, SI 2004/1763, art 2(d). As to the Nursing and Midwifery Council see PARA 691 et seq ante. As to the registrar see PARA 716 ante.

10 As to legal assessors see PARA 753 ante.

- 11 Nursing and Midwifery Order 2001 (Legal Assessors) Order of Council 2004, SI 2004/1763, art 2.
- 12 Ibid art 3(a).
- 13 Ibid art 3(b).
- 14 Ibid art 3.
- 15 Ibid art 4(a).
- 16 Ibid art 4(b). For the meaning of 'writing' see PARA 20 note 22 ante.
- 17 Ibid art 5.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/(5) FITNESS TO PRACTISE/(i) In general/755. Medical assessors.

### **755. Medical assessors.**

The Nursing and Midwifery Council<sup>1</sup> may appoint registered medical practitioners<sup>2</sup> to be medical assessors<sup>3</sup>. Medical assessors have the general function of giving advice to screeners<sup>4</sup>, the practice committees<sup>5</sup>, the registrar<sup>6</sup> or the Council<sup>7</sup>, on matters within their professional competence in connection with any matter which any of those persons is considering<sup>8</sup>. Medical assessors also have such other functions as may be conferred on them by rules made by the Council<sup>9</sup>. No person may be a medical assessor if he is a member of the Council<sup>10</sup>, a member of a practice committee<sup>11</sup>, a screener, a visitor<sup>12</sup>, a legal or registrant assessor<sup>13</sup>, or employed by the Council<sup>14</sup>. The Council may make such provision in respect of medical assessors as it may determine for the payment of fees and allowances, including the payment of allowances to employers of medical assessors for the purposes of enabling medical assessors to perform their functions as medical assessors<sup>15</sup>, and for the reimbursement of such expenses as the medical assessors may reasonably have incurred in the course of carrying out those functions<sup>16</sup>.

1 As to the Nursing and Midwifery Council see PARA 691 et seq ante.

2 For the meaning of 'registered medical practitioner' see PARA 4 ante.

3 Nursing and Midwifery Order 2001, SI 2002/253, art 35(1).

4 Ibid art 35(2)(a). For the meaning of 'screeners' see PARA 750 note 2 ante.

5 Ibid art 35(2)(b). For the meaning of 'practice committee' see PARA 699 note 3 ante.

6 Ibid art 35(2)(c). For the meaning of 'registrar' see PARA 716 note 2 ante.

7 Ibid art 35(2)(d).

8 Ibid art 35(2).

9 Ibid art 35(3). At the date at which this volume states the law no such rules had been made. As to the making of rules by the Council see PARA 701 ante.

10 Ibid art 35(4)(a). As to the membership of the Council see PARAS 694-695 ante.

11 Ibid art 35(4)(b).

12 For the meaning of 'visitor' see PARA 742 note 2 ante.

13 Nursing and Midwifery Order 2001, SI 2002/253, art 35(4)(c). As to legal assessors see PARAS 753-754 ante; and as to registrant assessors see PARA 756 post.

14 Ibid art 35(4)(d). As to the power of the Council to appoint staff see PARA 693 ante.

15 Ibid art 35(5)(a).

16 Ibid art 35(5)(b).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/(5) FITNESS TO PRACTISE/(i) In general/756. Registrant assessors.

## **756. Registrant assessors.**

The Nursing and Midwifery Council<sup>1</sup> may appoint registered<sup>2</sup> professionals as registrant<sup>3</sup> assessors<sup>4</sup>. Registrant assessors have the general function of giving advice to the Council<sup>5</sup> and its committees<sup>6</sup>, screeners<sup>7</sup> or the registrar<sup>8</sup>, on matters of professional practice arising in connection with any matter which any of those persons is considering<sup>9</sup>. The assessors also have such other functions as may be conferred on them by rules made by the Council<sup>10</sup>. No person may be a registrant assessor if he is a member of the Council<sup>11</sup>, a member of a practice committee<sup>12</sup>, a screener, a visitor<sup>13</sup>, a legal or medical assessor<sup>14</sup>, or employed by the Council<sup>15</sup>. The Council may make such provision in respect of registrant assessors as it may determine for the payment of fees and allowances, including the payment of allowances to employers of registrant assessors for the purposes of enabling registrant assessors to perform their functions as registrant assessors<sup>16</sup>, and for the reimbursement of such expenses as the registrant assessors may reasonably have incurred in the course of carrying out those functions<sup>17</sup>.

1 As to the Nursing and Midwifery Council see PARA 691 et seq ante.

2 For the meaning of 'registered' see PARA 717 note 2 ante.

3 For the meaning of 'registrant' see PARA 717 note 11 ante.

4 Nursing and Midwifery Order 2001, SI 2002/253, art 36(1).

5 Ibid art 36(2)(a).

6 Ibid art 36(2)(b). As to the Council's committees see PARA 691 ante.

7 Ibid art 36(2)(c). For the meaning of 'screeners' see PARA 750 note 2 ante.

8 Ibid art 36(2)(d). For the meaning of 'registrar' see PARA 716 note 2 ante.

9 Ibid art 36(2).

10 Ibid art 36(3). At the date at which this volume states the law no such rules had been made. As to the making of rules by the Council see PARA 701 ante.

11 Ibid art 36(4)(a). As to the membership of the Council see PARAS 694-695 ante.

12 Ibid art 36(4)(b). For the meaning of 'practice committee' see PARA 699 note 3 ante.

13 For the meaning of 'visitor' see PARA 742 note 2 ante.

14 Nursing and Midwifery Order 2001, SI 2002/253, art 36(4)(c). As to legal assessors see PARAS 753-754 ante; and as to medical assessors see PARA 755 ante.

15 Ibid art 36(4)(d).

16 Ibid art 36(5)(a).

17 Ibid art 36(5)(b).

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## **(ii) The Investigating Committee**

### **757. Functions of the investigating committee.**

The investigating committee<sup>1</sup> must investigate any allegation which is referred to it<sup>2</sup>. The Nursing and Midwifery Council<sup>3</sup> must by rules make provision as to the procedure to be followed by the committee in any such investigation carried out by it<sup>4</sup>.

1 As to the investigating committee as a statutory committee see PARA 691 ante. As to the committee as a practice committee, and as to its membership, see PARAS 699-700 ante.

2 In accordance with the Nursing and Midwifery Order 2001, SI 2002/253, arts 22, 24 (see PARAS 748, 750 ante): art 26(1).

3 As to the Nursing and Midwifery Council see PARA 691 et seq ante.

4 Nursing and Midwifery Order 2001, SI 2002/253, art 26(3). In the case of an allegation that an entry in the register has been fraudulently procured or incorrectly made, the rules must, in particular, make similar provision to that made by virtue of art 32(2)(b), (f)-(j), (m)-(p) (see PARA 752 ante) and may provide for the registrar to be made a party to the proceedings: art 26(4). As to the rules that have been made see the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, approved by the Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761; and PARA 758 et seq post. As to the making of rules by the Council see PARA 701 ante.



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## **758. Consideration of allegations.**

Where an allegation is referred to the investigating committee<sup>1</sup>, it must: (1) notify<sup>2</sup> without delay the person concerned<sup>3</sup> of the allegation and invite him to submit written<sup>4</sup> representations within a prescribed period<sup>5</sup>; (2) where it sees fit, notify the person making the allegation of those representations and invite him to deal within a specified period with any points raised by the committee in respect of those representations<sup>6</sup>; (3) take such other steps as are reasonably practicable to obtain as much information as possible about the case<sup>7</sup>; (4) consider, in the light of the information which it has been able to obtain and any representations or other observations made to it under head (1) or head (2) above, whether in its opinion there is a case to answer<sup>8</sup> or, as appropriate, whether the entry concerned has been fraudulently procured or incorrectly made<sup>9</sup>. When the committee reaches its decision, it must notify in writing both the person concerned and the person making the allegation, if any, of the decision, giving its reasons<sup>10</sup>.

1 In accordance with the Nursing and Midwifery Order 2001, SI 2002/253, arts 22, 24: see PARAS 748, 750 ante. As to the functions of the investigating committee see PARA 757 ante. As to the investigating committee as a statutory committee see PARA 691 ante. As to the committee as a practice committee, and as to its membership, see PARAS 699-700 ante.

2 The committee must notify the registrant of any allegation referred to it, by serving on him a notice of referral: Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 3(1). The notice must: (1) particularise the allegation (r 3(2)(a)); (2) state that any written representations must be submitted by the registrant to the committee no later than 28 days after service of the notice (r 3(2)(b)); (3) inform the registrant that any representations, or extracts of any representations received from him may be shown to the person making the allegation, for comment (r 3(2)(c)); and (4) inform the registrant that the committee may seek such further information as it considers necessary for the purposes of carrying out its functions in investigating the allegation from the registrant's employer (if any), or any other source (other than the registrant) (r 3(2)(d)). 'Allegation' means any allegation of a kind mentioned in the Nursing and Midwifery Order 2001, SI 2002/253, art 22(1)(a), (b) (see PARA 748 ante) or any matter which is treated as an allegation by virtue of art 22(6) (see PARA 748 ante): Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 2. As to the service of notices see PARA 760 note 10 post.

3 For the meaning of 'the person concerned' see PARA 750 note 8 ante.

4 For the meaning of 'written' see PARA 20 note 22 ante.

5 Nursing and Midwifery Order 2001, SI 2002/253, art 26(2)(a). For the meaning of 'prescribed' see PARA 695 note 8 ante. See also note 2 supra.

6 Ibid art 26(2)(b).

7 Ibid art 26(2)(c).

8 In respect of an allegation relating to fitness to practise (see ibid art 22(1)(a); and PARA 748 ante): art 26(2)(d)(i). As to the procedure of the committee in considering such allegations see PARA 759 post.

9 In respect of an allegation of the kind mentioned in ibid art 22(1)(b) (see PARA 748 ante): art 26(2)(d)(ii). As to the procedure of the committee in considering such allegations see PARA 760 post.

10 Ibid art 26(5). The notice of the committee's decision must be sent without delay: Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 6(1). Where the committee has decided that there is no case to answer, the notice of decision may inform the registrant that the allegation may be taken into account in the consideration of any further allegation about him received by the Council within three years from the date of service of the notice: r 6(2).



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### **759. Procedure where the allegation relates to impairment of fitness to practise.**

The investigating committee<sup>1</sup> must meet in private to consider an allegation relating to the fitness of a person to practise<sup>2</sup>. Before deciding whether or not there is a case to answer in respect of such an allegation, the committee: (1) must send<sup>3</sup> any information or documents obtained by it<sup>4</sup> to the registrant for comment, and consider any comments subsequently received from him<sup>5</sup>; (2) may, in the case of an allegation of lack of competence, invite the registrant to submit to an assessment<sup>6</sup>; and (3) may, in the case of an allegation that the registrant's fitness to practise is impaired by reason of his physical or mental health, invite him to submit to medical examination by experts appointed by the Nursing and Midwifery Council<sup>7</sup>. The committee may adjourn its consideration of an allegation until such time as any further information has been obtained or, where the registrant has undertaken an assessment or medical examination, a report on him has been prepared<sup>8</sup>.

Where the committee concludes that there is a case to answer in respect of such an allegation<sup>9</sup>, it must undertake mediation<sup>10</sup> or refer the case to screeners for them to undertake mediation<sup>11</sup>; refer the case to the health committee in the case of an allegation relating to a person's physical or mental health<sup>12</sup>; or refer the case to the conduct and competence committee in the case of any other allegation<sup>13</sup>. The committee may make an interim order<sup>14</sup> at any time before referring a case to the health committee or conduct and competence committee<sup>15</sup>.

Where the committee has considered an allegation that the registrant's fitness to practise is impaired and decided that there is no case to answer in respect of that allegation<sup>16</sup>, and at any time within three years from service of the notice of decision the Council receives a fresh allegation about the registrant<sup>17</sup>, the committee may when considering whether or not there is a case to answer in respect of a fresh allegation, take account of the original allegation<sup>18</sup> and may refer both the original allegation and the new allegation to the conduct and competence committee or health committee<sup>19</sup>.

1 As to the functions of the investigating committee see PARA 757 ante. As to the investigating committee as a statutory committee see PARA 691 ante. As to the committee as a practice committee, and as to its membership, see PARAS 699-700 ante.

2 I.e. an allegation of a kind referred to in the Nursing and Midwifery Order 2001, SI 2002/253, art 22(1)(a) (see PARA 748 ante): Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 4(1).

3 As to the service of documents see PARA 760 note 10 post.

4 I.e. pursuant to the Nursing and Midwifery Order 2001, SI 2002/253, art 26(2)(c): see PARA 758 ante.

5 Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 4(2)(a).

6 Ibid r 4(2)(b).

7 Ibid r 4(2)(c). As to the Nursing and Midwifery Council see PARA 691 et seq ante.

8 Ibid r 4(3).

9 As to notification by the committee of its decision see PARA 758 text to note 10 ante.

10 Nursing and Midwifery Order 2001, SI 2002/253, art 26(6)(a).

- 11 Ibid art 26(6)(b)(i). For the meaning of 'screeners' see PARA 750 note 2 ante.
- 12 Ibid art 26(6)(b)(ii). As to the health committee see PARA 762 post. As to the consideration by the health committee of such an allegation see PARA 763 et seq post.
- 13 Ibid art 26(6)(b)(iii). As to the conduct and competence committee see PARA 761 post. As to the consideration by the conduct and competence committee of such an allegation see PARA 763 et seq post.
- 14 le in accordance with ibid art 31: see PARA 771 post.
- 15 Ibid art 26(11).
- 16 Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 7(1)(a).
- 17 Ibid r 7(1)(b).
- 18 Ibid r 7(2)(a).
- 19 Ibid r 7(2)(b).

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**760. Procedure where the allegation relates to a fraudulent or incorrect entry in the register.**

The investigating committee<sup>1</sup> must meet in private for the initial consideration of an allegation relating to a fraudulent or incorrect entry in the register<sup>2</sup>. Before deciding whether or not there is a case to answer in respect of such an allegation, the committee must send any information or documents obtained by it<sup>3</sup> to the registrant for comment, and must consider any comments subsequently received from him<sup>4</sup>. The committee may adjourn its consideration of such an allegation at any time<sup>5</sup>.

Where the committee considers that there is a case to answer, it must notify the registrant and require him to inform the committee, no later than 28 days after service of the notification, if he wishes the allegation to be considered at a hearing<sup>6</sup>. Where the registrant asks for a hearing within that period<sup>7</sup>, or the committee considers that a hearing is desirable<sup>8</sup>, the committee must refer<sup>9</sup> the allegation to a differently constituted investigating committee for a hearing<sup>10</sup>. The differently constituted committee may hold a preliminary meeting<sup>11</sup> and must determine<sup>12</sup> and dispose of the matter<sup>13</sup>. Where the registrant has not requested a hearing and the committee considers that no hearing is necessary, it must invite any person who in its opinion has an interest in the proceedings to submit written representations within such time as it may direct<sup>14</sup>; and it must meet in private and, notwithstanding the absence of any such representations, dispose of the matter<sup>15</sup>.

If the committee is satisfied that an entry in the register has been fraudulently procured or incorrectly made<sup>16</sup>, it may make an order that the registrar<sup>17</sup> remove or amend the entry and must notify the person concerned<sup>18</sup> of his right of appeal<sup>19</sup>. The committee may review such an order if new evidence relevant to the order becomes available after the order has been made and may revoke that order if it considers that it should not have been made<sup>20</sup>. The committee may make an interim order at the same time as making an order as to the removal or amendment of an entry in the register<sup>21</sup>.

If the committee concludes that there is no case to answer or that the relevant entry was not fraudulently procured or incorrectly made, it must, where requested to do so by the person concerned, make a declaration to that effect giving its reasons<sup>22</sup>; and in any other case, and with the consent of the person concerned, it may make such a declaration<sup>23</sup>.

1 As to the functions of the investigating committee see PARA 757 ante. As to the investigating committee as a statutory committee see PARA 691 ante. As to the committee as a practice committee, and as to its membership, see PARAS 699-700 ante.

2 Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 5(1). As to such allegations see the Nursing and Midwifery Order 2001, SI 2002/253, art 22(1)(b); and PARA 748 ante. The registrar may, and at the direction of the committee must, be a party to any proceedings: Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 5(3).

3 Ie pursuant to the Nursing and Midwifery Order 2001, SI 2002/253, art 26(2)(c): (see PARA 758 ante.

4 Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 5(2).

5 Ibid r 5(4).

6 Ibid r 5(5). As to the service of notices see note 10 infra.

7 Ibid r 5(6)(a).

8 Ibid r 5(6)(b).

9 The Nursing and Midwifery Council must give notice of such referral to the following: (1) where known, the employer of the registrant or any other person with whom he has an arrangement to provide professional services (ibid r 5(7)(a)); (2) where known, any other body by which the registrant is authorised to practise a health or social care profession (r 5(7)(b)); (3) the Secretary of State, the Scottish Ministers, the National Assembly for Wales and the Department of Health, Social Services and Public Safety in Northern Ireland (r 5(7)(c)); and (4) where the registrant is a practising midwife, his local supervising authority (r 5(7)(d)). As to the Nursing and Midwifery Council see PARA 691 et seq ante. As to the Secretary of State see PARA 5 ante. As to the Scottish Ministers and the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to local supervising authorities see PARA 710 ante.

10 Ibid r 5(6). Where such a hearing is to be held, the committee must send a notice of hearing to the registrant no later than 28 days before the date fixed for the hearing: r 5(8). The notice of hearing must: (1) inform the registrant of the date, time and venue of the hearing (r 5(9)(a)); (2) contain a charge particularising the allegation, and the alleged facts upon which the allegation is based (r 5(9)(b)); (3) inform the registrant of his right to attend, and to be represented at, the hearing in accordance with r 20 (see PARA 775 post) (r 5(9)(c)); (4) inform the registrant of the committee's power to proceed with the hearing in his absence (r 5(9)(d)); (5) inform the registrant of his right to adduce evidence in accordance with r 31 (see PARA 776 post) (r 5(9)(e)); (6) inform the registrant of his right to call witnesses, and to cross examine any witnesses called by the Council or by the committee (r 5(9)(f)); (7) require the registrant to inform the Council, within 14 days receipt of the notice, whether he intends to attend the hearing and be represented at the hearing (r 5(9)(g)); (8) be accompanied by a copy of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 where they have not previously been sent to the registrant (r 5(9)(h)); (9) inform the registrant of the committee's power to impose an interim order under the Nursing and Midwifery Order 2001, SI 2002/253, art 26(11) (see the text to note 21 infra) (Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 5(9)(i)); and (10) inform the registrant of the action the committee may take under the Nursing and Midwifery Order 2001, SI 2002/253, art 26(2)(d)(ii) (see PARA 758 ante), and art 26(7), (8) (see the text to notes 16-19, 22-23 infra) (Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 5(9)(j)).

Any notice of hearing required to be served upon the registrant must be delivered by sending it by a postal service or other delivery service in which delivery or receipt is recorded to, or by leaving it: (a) where the practitioner is represented by a solicitor, at the solicitor's practising address (r 34(1)(a)); (b) where the practitioner is represented by a professional body or trade union, at the business address of that professional body or trade union (r 34(1)(b)); or (c) in any other case, at his address in the register, or where this differs and it appears more likely to reach him at his last known address, at the registrant's last known address (r 34(1)(c)). Any other notice or document to be served on a person may be sent by ordinary post: r 34(2). The service of any notice may be proved by: (i) a confirmation of posting issued by or on behalf of the Post Office, or other postal operator or delivery service (r 34(3)(a)); or (ii) a signed statement from the person leaving the notice in accordance with heads (a)-(c) supra (r 34(3)(b)). Where any notice is sent, it is treated as having been served on the day after it was sent by delivery service or, where the notice has been left at an address, on the day on which it was left at that address: r 34(4).

11 Ie in accordance with ibid r 18 (see PARA 774 post): r 5(10)(a).

12 Ie in accordance with the procedure set out in ibid Pt 5 (rr 16-27): see PARA 768 post.

13 Ibid r 5(10)(b). As to disposal of the matter see the Nursing and Midwifery Order 2001, SI 2002/253, art 26(7), (8), (11); and the text to notes 16-19, 21-23 infra.

14 Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 5(11)(a). For the meaning of 'written' see PARA 20 note 22 ante.

15 Ibid r 5(11)(b). As to disposal of the matter see the Nursing and Midwifery Order 2001, SI 2002/253, art 26(7), (8), (11); and the text to notes 16-19, 21-23 infra.

16 An entry which has been restored to the register on an application for readmission or restoration being granted may be treated for these purposes as having been fraudulently procured or incorrectly made if any previous entry from which the restored entry is derived was fraudulently procured or incorrectly made: ibid art 26(16). As to applications for readmission and restoration to the register see PARAS 729 ante, 770 post. For the meaning of 'register' see PARA 717 note 2 ante.

17 For the meaning of 'registrar' see PARA 716 note 2 ante.

18 For the meaning of 'the person concerned' see PARA 750 note 8 ante.

19     le under the Nursing and Midwifery Order 2001, SI 2002/253, art 38 (see PARA 782 post): art 26(7). Where the committee makes an order or decides not to review such an order under art 26(12) (see the text to note 20 infra), the person concerned may appeal to the appropriate court and the provisions of art 38 apply to the appeal: art 26(13). Any such appeal must be brought before the end of the period of 28 days beginning with the date on which notice of the order or decision appealed against is served on the person concerned: art 26(14). On an appeal, the Council is the respondent: art 26(15). No order has effect before the expiry of the period within which an appeal against the order may be made or, where an appeal against the order has been made, before the appeal is withdrawn or otherwise finally disposed of: art 26(10). The court has no power to extend the time for appeal: *R (on the application of Blackett) v Nursing and Midwifery Council* [2004] EWHC 1494 (Admin), [2004] All ER (D) 78 (Jun). Cf *Bainton v General Dental Council* [2000] All ER (D) 1217, PC, in which it was held that the court has an inherent jurisdiction in the interests of justice to allow an appeal to be brought out of time if it appears that the appeal has substantial merits.

20     Nursing and Midwifery Order 2001, SI 2002/253, art 26(12). See also note 19 supra.

21     Ibid art 26(11). As to interim orders see art 31; and PARA 771 post.

22     Ibid art 26(8)(a). For these purposes, the publication of its decision together with the reasons for it (see art 26(5); and PARA 758 ante) may constitute such a declaration: art 26(9).

23     Ibid art 26(8)(b). See also note 22 supra.

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### **(iii) The Conduct and Competence Committee and the Health Committee**

#### **761. Functions of the conduct and competence committee.**

The conduct and competence committee<sup>1</sup> must: (1) having consulted the other practice committees<sup>2</sup> as it thinks appropriate, advise the Nursing and Midwifery Council<sup>3</sup>, whether on the Council's request or otherwise, on the performance of the Council's functions in relation to standards of conduct, performance and ethics expected of registrants<sup>4</sup> and prospective registrants<sup>5</sup>; requirements as to good character and good health to be met by registrants and prospective registrants<sup>6</sup>; and the protection of the public from people whose fitness to practise is impaired<sup>7</sup>; and (2) consider any allegation<sup>8</sup> referred to it by the Council, screeners<sup>9</sup>, the investigating committee<sup>10</sup> or the health committee<sup>11</sup>, and any application for restoration referred to it by the registrar<sup>12</sup>.

1 As to the conduct and competence committee as a statutory committee see PARA 691 ante. As to the committee as a practice committee, and as to its membership, see PARAS 699-700 ante.

2 For the meaning of 'practice committee' see PARA 699 note 3 ante.

3 As to the Nursing and Midwifery Council see PARA 691 et seq ante.

4 For the meaning of 'registrant' see PARA 717 note 11 ante.

5 Nursing and Midwifery Order 2001, SI 2002/253, art 27(a)(i). As to such functions of the Council see PARA 747 supra. As to the functions of the Council generally see PARA 692 ante.

6 Ibid art 27(a)(ii). As to such requirements see PARAS 723-725 ante.

7 Ibid art 27(a)(iii).

8 As to allegations see PARA 748 ante.

9 For the meaning of 'screeners' see PARA 750 note 2 ante.

10 As to the functions of the investigating committee see PARA 757 ante.

11 Nursing and Midwifery Order 2001, SI 2002/253, art 27(b)(i). As to the health committee see PARA 762 post.

12 Ibid art 27(b)(ii). As to such applications see PARA 770 post. For the meaning of 'registrar' see PARA 716 note 2 ante.

#### **UPDATE**

#### **761 Functions of the conduct and competence committee**

TEXT AND NOTES 1-7--SI 2002/253 art 27(a) revoked: SI 2009/1182.



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## **762. Functions of the health committee.**

The health committee<sup>1</sup> must consider any allegation<sup>2</sup> referred to it by the Nursing and Midwifery Council<sup>3</sup>, screeners<sup>4</sup>, the investigating committee<sup>5</sup> or the conduct and competence committee<sup>6</sup>, and any application for restoration referred to it by the registrar<sup>7</sup>.

1 As to the health committee as a statutory committee see PARA 691 ante. As to the committee as a practice committee, and as to its membership, see PARAS 699-700 ante.

2 As to allegations see PARA 748 ante.

3 As to the Nursing and Midwifery Council see PARA 691 et seq ante.

4 For the meaning of 'screeners' see PARA 750 note 2 ante.

5 As to the functions of the investigating committee see PARA 757 ante.

6 Nursing and Midwifery Order 2001, SI 2002/253, art 28(a). As to the functions of the conduct and competence committee see PARA 761 ante.

7 Ibid art 28(b). As to such applications see PARA 770 post. For the meaning of 'registrar' see PARA 716 note 2 ante.

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### **763. Action upon referral of an allegation.**

Upon referral of an allegation<sup>1</sup> to the conduct and competence committee or to the health committee<sup>2</sup>, that committee must send a notice of referral to the registrant<sup>3</sup>. In the case of an allegation of lack of competence, the conduct and competence committee may invite the registrant to submit to assessment<sup>4</sup>, and in the case of an allegation that the practitioner's fitness to practise is impaired by reason of physical or mental health, the health committee may invite the registrant to submit to medical examination by a registered medical practitioner<sup>5</sup> nominated by the Nursing and Midwifery Council<sup>6</sup>. Where any written representations are made to the committee concerned by the registrant in response to the notice of referral<sup>7</sup>, that committee may, if it sees fit, send a notice to the maker of the allegation notifying him of such representations<sup>8</sup>, inviting him to deal with any points raised by the committee in respect of those representations<sup>9</sup>, and requiring him to send any response to the committee no later than 28 days after service of the notice upon him<sup>10</sup>; and the committee must take into account all representations received before making its decision in respect of the allegation<sup>11</sup>.

1 The Nursing and Midwifery Council must give notice of the referral: (1) where known, to the employer of the registrant or any other person with whom he has an arrangement to provide professional services (Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 9(3)(a)); (2) where known, to any other body by which the registrant is authorised to practise a health or social care profession (r 9(3)(b)); (3) to the Secretary of State, the Scottish Ministers, the National Assembly for Wales, and the Department of Health, Social Services and Public Safety in Northern Ireland (r 9(3)(c)); and (4) where the registrant is a practising midwife, to his local supervising authority (r 9(3)(d)). As to the Secretary of State see PARA 5 ante. As to the Scottish Ministers and the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to local supervising authorities see PARA 710 ante. For the meaning of 'allegation' see PARA 758 note 2 ante.

2 As to the functions of the conduct and competence committee and the health committee see PARAS 761-762 ante. As to the committees as statutory committees see PARA 691 ante. As to the committees as practice committees, and as to their membership, see PARAS 699-700 ante.

3 Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 9(1). As to the service of notices and documents see PARA 760 note 10 ante. The notice of referral must: (1) particularise the allegation, and where it is alleged that the registrant has committed misconduct or received a criminal conviction, particularise the alleged facts upon which the allegation is based (r 9(2)(a)(i)), or in any other case, set out the grounds or alleged facts in support of the allegation (r 9(2)(a)(ii)); (2) invite the registrant to submit written representations to the conduct and competence committee or the health committee and inform him that any such representations must be sent to the committee no later than 28 days after service of the notice (r 9(2)(b)); (3) inform the registrant that any representations received from him may be shown to the maker of the allegation, for comment (r 9(2)(c)); and (4) require the registrant to inform the committee no later than 28 days after service of the notice, if he would like the allegation to be considered at a hearing (r 9(2)(d)). As to the procedure for dealing with allegations of misconduct and cases relating to impairment by reason of physical or mental condition received by the Nursing and Midwifery Council before 1 August 2004 see the Nursing and Midwifery Order 2001 (Transitional Provisions) Order of Council 2004, SI 2004/1762, arts 2-6. As to the procedure for dealing with cases in which immediately before 1 August 2004 a judgment of the committee dealing with the case stands postponed, or further postponed, see art 7.

4 Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 9(4)(a).

5 For the meaning of 'registered medical practitioner' see PARA 4 ante.

6 Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 9(4)(b). As to the Nursing and Midwifery Council see PARA 691 et seq ante.

7 le under ibid r 9(2)(b): see note 3 supra.

8 Ibid r 9(5)(a)(i).

9 Ibid r 9(5)(a)(ii).

10 Ibid r 9(5)(a)(iii).

11 Ibid r 9(5)(b).

## **UPDATE**

### **763 Action upon referral of an allegation**

NOTE 3--SI 2004/1762 art 4 amended: SI 2006/1441.

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## **764. Meetings and hearings.**

Where the conduct and competence committee or health committee<sup>1</sup> is to consider an allegation<sup>2</sup> that a registrant's fitness to practise is impaired<sup>3</sup>, review any order previously made by it<sup>4</sup> or consider an application for restoration to the register<sup>5</sup>, it must decide whether to hold a hearing<sup>6</sup>. The committee concerned must hold a hearing where the registrant asks for one within the specified period<sup>7</sup> or where that committee considers that a hearing would be desirable<sup>8</sup>. Where no hearing is to be held, the committee concerned must consider the allegation<sup>9</sup>, review the order previously made<sup>10</sup>, or consider the application for restoration<sup>11</sup> at a meeting<sup>12</sup>. Where a hearing is to be held the committee concerned must send<sup>13</sup> a notice of hearing to the registrant<sup>14</sup>. The notice of hearing must be sent to the registrant, where a preliminary meeting has been held<sup>15</sup>, as soon as practicable after that meeting and in every case, no later than 28 days before the date fixed for the hearing<sup>16</sup>. When considering any allegation referred to it at a hearing, reviewing an order made by it at a previous hearing or considering an application for restoration to the register, the committee concerned must act in accordance with the specified procedure<sup>17</sup> and dispose of the allegation or matter in accordance with the appropriate provisions<sup>18</sup>.

1 As to the functions of the conduct and competence committee and the health committee see PARAS 761-762 ante. As to the committees as statutory committees see PARA 691 ante. As to the committees as practice committees, and as to their membership, see PARAS 699-700 ante.

2 For the meaning of 'allegation' see PARA 758 note 2 ante.

3 Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 10(1)(a).

4 Ibid r 10(1)(b). As to such reviews see PARA 769 post.

5 Ibid r 10(1)(c). As to such applications see PARA 770 post.

6 Ibid r 10(1).

7 I.e. the period specified in ibid r 9(2)(d) (see PARA 763 note 3 ante): r 10(2)(a).

8 Ibid r 10(2)(b).

9 Ibid r 10(3)(a).

10 Ibid r 10(3)(b).

11 Ibid r 10(3)(c).

12 Ibid r 10(3). The committee decides the procedure to be employed at that meeting: r 10(3).

13 As to the service of notices and documents see PARA 760 note 10 ante.

14 Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 11(1).

15 I.e. in accordance with ibid r 18: see PARA 774 post.

16 Ibid r 11(2). The notice of hearing must: (1) inform the registrant of the date, time and venue of the hearing (r 11(3)(a)); (2) where the committee is to consider the allegation at an initial hearing, contain a charge particularising the allegation, and where it is alleged that the registrant has committed misconduct or received a criminal conviction, particularising the alleged facts upon which the allegation is based, or in any other case, setting out the grounds or alleged facts in support of the allegation (r 11(3)(b)); (3) where the committee is to

review an order previously made or consider an application for restoration to the register, contain a copy of the order or striking-off order previously made, and the committee's reasons for making that order (r 11(3)(c)); (4) inform the registrant of his right to attend, and to be represented at, the hearing in accordance with r 20 (see PARA 775 post) (r 11(3)(d)); (5) inform the registrant of the committee's power to proceed with the hearing in his absence (r 11(3)(e)); (6) inform the registrant of his right to adduce evidence in accordance with r 31 (see PARA 776 post) (r 11(3)(f)); (7) inform the registrant of his right to call witnesses, and to cross examine any witnesses called by the Nursing and Midwifery Council or by the committee (r 11(3)(g)); (8) require the registrant to inform the Council, within 14 days of receipt of the notice, whether he intends to attend the hearing, and be represented at the hearing (r 11(3)(h)); (9) be accompanied by a copy of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 where they have not previously been sent to the registrant (r 11(3)(i)); (10) inform the registrant of the committee's power to make an interim order under the Nursing and Midwifery Order 2001, SI 2002/253, art 31(2) (see PARA 771 post) (Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 11(3)(j)); (11) where the committee is to consider an allegation at an initial hearing, inform the registrant of the action the committee may take under the Nursing and Midwifery Order 2001, SI 2002/253, art 29 (see PARA 768 post) (Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 11(3)(k)); (12) where the committee is to consider an allegation at an initial hearing, invite the registrant to indicate whether any admissions are made in respect of the allegation, and inform him that any admissions made will be taken into account by the committee (r 11(3)(l)); and (13) where the allegation, previous order or application for restoration is to be considered by the health committee, invite the registrant to inform the committee if he wishes the hearing to be conducted in public (r 11(3)(m)). As to the Nursing and Midwifery Council see PARA 691 et seq ante.

17     Ie that set out in *ibid* Pt 5 (rr 16-27): see PARA 773 et seq post.

18     *Ibid* r 12(1), (2). The appropriate provisions in respect of the consideration of an allegation are the Nursing and Midwifery Order 2001, SI 2002/253, arts 22(4), 29(4)-(8) (see PARAS 747 note 3 ante, 768 post), and in respect of the review of an order made by it at a previous hearing or consideration of an application for restoration to the register the appropriate provisions are arts 30, 33(5)-(7) (see PARAS 769, 770 post): Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 12(1), (2).

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## **765. Joint hearings.**

Unless of the view that there is a risk of prejudice to the fairness of the proceedings, and upon taking the advice of the legal assessor<sup>1</sup>, the conduct and competence committee<sup>2</sup> may consider an allegation<sup>3</sup> against two or more registrants at the same hearing where the allegation against each registrant arises out of the same circumstances<sup>4</sup>, or in the view of the committee a joint hearing is necessary<sup>5</sup>.

The conduct and competence committee may consider one or more categories of allegation against a registrant provided always that an allegation relating to a conviction or caution is heard after any allegation of misconduct has been heard and determined<sup>6</sup>. Where an allegation has been referred to the conduct and competence committee<sup>7</sup>, that allegation has not yet been heard<sup>8</sup>, and a new allegation which is of a similar kind or is founded on the same facts is received by the Nursing and Midwifery Council<sup>9</sup>, that committee may consider the new allegation at the same time as the original allegation, notwithstanding that such new allegation has not been included in the notice of hearing<sup>10</sup>.

1 As to legal assessors see PARAS 753-754 ante.

2 As to the functions of the conduct and competence committee see PARA 761 ante. As to the conduct and competence committee as a statutory committee see PARA 691 ante. As to the committee as a practice committee, and as to its membership, see PARAS 699-700 ante.

3 For the meaning of 'allegation' see PARA 758 note 2 ante.

4 Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 29(1)(a).

5 Ibid r 29(1)(b).

6 Ibid r 29(2).

7 Ibid r 29(3)(a).

8 Ibid r 29(3)(b).

9 Ibid r 29(3)(c). As to the Nursing and Midwifery Council see PARA 691 et seq ante.

10 Ibid r 29(3). As to notices of hearing see PARA 764 ante. Where it is proposed that a new allegation should be heard by the committee, it must: (1) inform the registrant of the new allegation, and the alleged facts on which is based (r 29(4)(a)); and (2) afford him the opportunity to make written representations on the new allegation and require any such representations to be received within 28 days of notification of the new allegations or within such period of time as is otherwise agreed by the parties (r 29(4)(b)). For the meaning of 'written' see PARA 20 note 22 ante. As to the service of notices and documents see PARA 760 note 10 ante.

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#### **766. Referral of allegation by conduct and competence committee to health committee.**

Where an allegation<sup>1</sup> is being considered by the conduct and competence committee<sup>2</sup>, and at a preliminary meeting<sup>3</sup>, at the commencement of the hearing of the allegation by the committee<sup>4</sup>, or during the course of that hearing<sup>5</sup>, it appears that the allegation would be better dealt with by the health committee<sup>6</sup>, then the conduct and competence committee may refer the allegation to the health committee and must suspend its consideration of the allegation<sup>7</sup>. The conduct and competence committee must not transfer an allegation to the health committee unless it is satisfied that if the registrant's fitness to practise were found to be impaired it would not make a striking-off order<sup>8</sup>.

Where an allegation has been referred to the health committee<sup>9</sup> and that committee certifies to the conduct and competence committee that the registrant's fitness to practise is not impaired by reason of his physical or mental health<sup>10</sup>, the conduct and competence committee must resume its consideration of the allegation<sup>11</sup>. However, where an allegation has been referred to the health committee<sup>12</sup> and that committee certifies that the registrant's fitness to practise is impaired by reason of his physical or mental health<sup>13</sup>, the conduct and competence committee has no further function in relation to the allegation<sup>14</sup>.

1 For the meaning of 'allegation' see PARA 758 note 2 ante.

2 As to the functions of the conduct and competence committee see PARA 761 ante. As to the conduct and competence committee as a statutory committee see PARA 691 ante. As to the committee as a practice committee, and as to its membership, see PARAS 699-700 ante.

3 Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 14(1)(a). As to preliminary hearings see r 18; and PARA 774 post.

4 Ibid r 14(1)(b). As to hearings see PARA 764 ante.

5 Ibid r 14(1)(c).

6 As to the functions of the health committee see PARA 762 ante. As to the health committee as a statutory committee see PARA 691 ante. As to the committee as a practice committee, and as to its membership, see PARAS 699-700 ante.

7 Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 14(1). The question whether to refer a case to the health committee is a matter for the discretion of the conduct committee: *Jhugroo v United Kingdom Central Council for Nursing, Midwifery and Health Visiting* (1991) 8 BMLR 103, DC.

8 Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 14(2). As to striking-off orders see PARA 768 post.

9 Ibid r 14(3)(a).

10 Ibid r 14(3)(b).

11 Ibid r 14(3).

12 Ibid r 14(4)(a).

13 Ibid r 14(4)(b).

14 Ibid r 14(4).



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### **767. Referral of allegation from health committee to conduct and competence committee.**

Where an allegation<sup>1</sup> is being considered by the health committee<sup>2</sup> and at a preliminary meeting<sup>3</sup>, at the commencement of the hearing of the allegation by the committee<sup>4</sup>, or during the course of the hearing<sup>5</sup>, it appears that the allegation would be better dealt with by the conduct and competence committee<sup>6</sup>, then the health committee may refer the allegation to the conduct and competence committee, and must suspend its consideration of the allegation<sup>7</sup>. Where an allegation is referred to the conduct and competence committee<sup>8</sup> and that committee determines, after the close of the Nursing and Midwifery Council's<sup>9</sup> case, that the allegation is not well founded or that the allegation has not been proved to the requisite standard<sup>10</sup>, the health committee may resume its consideration of the allegation<sup>11</sup>. Subject to this, where an allegation is referred to the conduct and competence committee<sup>12</sup> and that committee makes an order<sup>13</sup> or determines that the registrant's fitness to practise is not impaired<sup>14</sup>, the health committee has no further function in relation to the allegation<sup>15</sup>.

1 For the meaning of 'allegation' see PARA 758 note 2 ante.

2 As to the functions of the health committee see PARA 762 ante. As to the health committee as a statutory committee see PARA 691 ante. As to the committee as a practice committee, and as to its membership, see PARAS 699-700 ante.

3 Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 15(1)(a). As to preliminary hearings see r 18; and PARA 774 post.

4 Ibid r 15(1)(b).

5 Ibid r 15(1)(c).

6 As to the functions of the conduct and competence committee see PARA 761 ante. As to the conduct and competence committee as a statutory committee see PARA 691 ante. As to the committee as a practice committee, and as to its membership, see PARAS 699-700 ante.

7 Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 15(1).

8 Ibid r 15(2)(a).

9 As to the Nursing and Midwifery Council see PARA 691 et seq ante. As to the procedure for the hearing of allegations see PARA 773 et seq post.

10 Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 15(2)(b).

11 Ibid r 15(2).

12 Ibid r 15(3)(a).

13 In accordance with the Nursing and Midwifery Order 2001, SI 2002/253, art 29(5) (see PARA 768 post): Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 15(3)(b)(i).

14 Ibid r 15(3)(b)(ii).

15 Ibid r 15(3).

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## **768. Orders.**

If, having considered an allegation<sup>1</sup>, the health committee or the conduct and competence committee<sup>2</sup>, as the case may be, concludes that it is not well founded, the committee must, where requested to do so by the person concerned<sup>3</sup>, make a declaration to that effect giving its reasons<sup>4</sup>; and, in any other case and with the consent of the person concerned, may make such a declaration<sup>5</sup>.

If, having considered an allegation, the committee concerned concludes that it is well founded, it must proceed as follows<sup>6</sup>. The committee may refer the matter to screeners<sup>7</sup> for mediation or itself undertake mediation<sup>8</sup>, or decide that it is not appropriate to take any further action<sup>9</sup>.

Where the committee does not take such action it must: (1) make an order directing the registrar<sup>10</sup> to strike the person concerned off the register, known as a 'striking-off order'<sup>11</sup>; (2) make an order directing the registrar to suspend the registration of the person concerned for a specified period which must not exceed one year, known as a 'suspension order'<sup>12</sup>; (3) make an order imposing conditions with which the person concerned must comply for a specified period which must not exceed three years, known as a 'conditions of practice order'<sup>13</sup>; or (4) caution the person concerned and make an order directing the registrar to annotate the register accordingly for a specified period which must be not less than one year and not more than five years, known as a 'caution order'<sup>14</sup>. The committee may specify in any such order a period within which an application to vary, replace or revoke the order may not be made<sup>15</sup>. The committee must, when it makes, varies, replaces or revokes an order<sup>16</sup> or when an order it has made ceases to have effect, give the registrar such directions as are appropriate as to annotation of the register to record the decision made or, as the case may be, the expiry of the order<sup>17</sup>.

As soon as practicable after the conclusion of the hearing, the committee concerned must give notice of its decision to the person concerned<sup>18</sup> and the maker of the allegation, if any<sup>19</sup>. The notice of decision must set out the decision of the committee<sup>20</sup> and the reasons for it<sup>21</sup>, and inform the person concerned of his rights of appeal<sup>22</sup>. The person concerned may appeal to the appropriate court against an order<sup>23</sup>. Any such appeal must be brought before the end of the period of 28 days beginning with the date on which notice of the order or decision appealed against is served on the person concerned<sup>24</sup>. No such order has effect before the expiry of the period within which an appeal against the order may be made<sup>25</sup> or, where an appeal against the order has been made, before the appeal is withdrawn or otherwise finally disposed of<sup>26</sup>.

1 As to allegations see PARA 748 ante.

2 As to the functions of the health committee and the conduct and competence committee see PARAS 761-762 ante. As to the committees as statutory committees see PARA 691 ante. As to the committees as practice committees, and as to their membership, see PARAS 699-700 ante. As to the power of the Council for the Regulation of Health Care Professionals to refer to the court decisions of the conduct and competence committee see PARA 306 ante.

3 For the meaning of 'the person concerned' see PARA 750 note 8 ante.

4 Nursing and Midwifery Order 2001, SI 2002/253, art 29(1)(a). For these purposes, the publication of the decision mentioned in art 32(2)(k) (see PARA 752 ante) and the reasons for it may constitute such a declaration: art 29(2).

5 Ibid art 29(1)(b). See also note 4 supra.

6 Ibid art 29(3). The committee should be directed that allegations are not substantiated unless the committee, by evidence before it, is sure of the facts asserted against the person accused: *Hefferon v Committee of United Kingdom Central Council for Nursing, Midwifery and Health Visiting* (1988) Independent, 11 March, DC. The committee is concerned primarily, when it comes to questions of penalty, with the protection of the public and the safeguarding of the reputation of the profession, rather than with the punishment of the individual practitioner concerned: *Adesina v Nursing and Midwifery Council* [2004] EWHC 2410 (Admin), [2004] All ER (D) 222 (Nov), following *Gupta v General Medical Council* [2001] UKPC 61, [2002] 1 WLR 1691 (see PARA 144 note 5 ante). The committee did not adopt an incorrect approach in its assessment of penalty when taking into account what it found to be the appellant's lack of insight, lack of remorse, failure to recognise the seriousness of what she had done, and continued denial of her behaviour: *Adesina v Nursing and Midwifery Council* supra; and see also *R (on the application of Clarke) v United Kingdom Central Council for Nursing, Midwifery and Health Visiting* [2004] EWHC 1350 (Admin), [2004] All ER (D) 418 (May) .

7 For the meaning of 'screeners' see PARA 750 note 2 ante.

8 Nursing and Midwifery Order 2001, SI 2002/253, art 29(4)(a).

9 Ibid art 29(4)(b).

10 For the meaning of 'registrar' see PARA 716 note 2 ante.

11 Nursing and Midwifery Order 2001, SI 2002/253, art 29(5)(a). For the meaning of 'register' see PARA 717 note 2 ante. A striking-off order may not be made in respect of an allegation relating to impairment of fitness to practise through lack of competence or by reason of a person's physical or mental health unless the person concerned has been continuously suspended, or subject to a conditions of practice order, for a period of no less than two years immediately preceding the date of the decision of the committee to make such an order: art 29(6). In *Jhugroo v United Kingdom Central Council for Nursing, Midwifery and Health Visiting* (1991) 8 BMLR 103, DC (decided under the previous statutory provisions), the court held that the committee should consider whether removal should be for a specified period of time or not.

12 Nursing and Midwifery Order 2001, SI 2002/253, art 29(5)(b).

13 Ibid art 29(5)(c).

14 Ibid art 29(5)(d).

15 Ibid art 29(7). Such period: (1) in the case of a striking-off order, except where new evidence relevant to the order becomes available, must be expressed in terms of art 33(2) (see PARA 770 note 5 post) (art 29(7)(a)); (2) in the case of a suspension order must not exceed 10 months (art 29(7)(b)); and (3) in the case of a conditions of practice order must not exceed two years (art 29(7)(c)). As to applications to vary, replace or revoke an order see PARA 769 post.

16 Ie under ibid art 29 or art 30 (see PARA 769 post).

17 Ibid art 29(8).

18 Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 13(1)(a).

19 Ibid r 13(1)(b).

20 Ibid r 13(2)(a).

21 Ibid r 13(2)(b).

22 Ie under the Nursing and Midwifery Order 2001, SI 2002/253, art 38 (see PARA 782 post): Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 13(2)(c).

23 Ie an order under the Nursing and Midwifery Order 2001, SI 2002/253, art 29 or art 30 (see PARA 769 post): art 29(9). Article 38 (see PARA 782) applies to the appeal: art 29(9). For the meaning of 'appropriate court' see PARA 782 note 4 post.

24 Ibid art 29(10). The court has no power to extend the time for appeal: *R (on the application of Blackett) v Nursing and Midwifery Council* [2004] EWHC 1494 (Admin), [2004] All ER (D) 78 (Jun). Cf *Bainton v General Dental Council* [2000] All ER (D) 1217, PC, in which it was held that the court has an inherent jurisdiction in the interests of justice to allow an appeal to be brought out of time if it appears that the appeal has substantial merits.

- 25 Nursing and Midwifery Order 2001, SI 2002/253, art 29(11)(a).
- 26 Ibid art 29(11)(b).

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## **769. Review of orders.**

Before the expiry of a suspension order or a conditions of practice order<sup>1</sup> made by the conduct and competence committee or the health committee<sup>2</sup>, the committee which made the order or, if the matter has been referred to the other committee, that committee<sup>3</sup>, must review the order and may: (1) with effect from the date on which the order would, but for this provision, have expired, extend or further extend the period for which the order has effect<sup>4</sup>; (2) with effect from the expiry of the order, make an order which it could have made at the time it made the order being reviewed<sup>5</sup>; (3) with effect from the expiry of a suspension order, make a conditions of practice order with which the practitioner must comply if he resumes the practice of his registered profession after the end of his period of suspension<sup>6</sup>. However, the committee may not extend a conditions of practice order by more than three years at a time or a suspension order by more than one year at a time<sup>7</sup>.

Subject to such review, on the application of the person concerned<sup>8</sup> or otherwise, at any time a suspension order, a conditions of practice order or a caution order<sup>9</sup> made by the conduct and competence committee or the health committee is in force, the committee which made the order or, if the matter has been referred to the other committee, that committee, may review the order<sup>10</sup>. On such a review, the Committee may: (a) confirm the order<sup>11</sup>; (b) extend, or further extend, the period for which the order has effect<sup>12</sup>; (c) reduce the period for which the order has effect<sup>13</sup>; (d) replace the order with any order which it could have made at the time it made the order being reviewed<sup>14</sup>; (e) revoke the order or revoke any condition imposed by the order<sup>15</sup>; (f) vary any condition imposed by the order<sup>16</sup>.

Where new evidence relevant to a striking-off order<sup>17</sup> becomes available after the making of the order, the committee which made the order or, where appropriate, the relevant committee<sup>18</sup>, may review it<sup>19</sup>. A striking-off order, conditions of practice order, suspension order or caution order which is in force by virtue of a decision made on appeal to the appropriate court<sup>20</sup> may be reviewed in accordance with the provisions described above by the committee which made the order appealed from, and any of the steps mentioned in heads (a) to (f) above may be taken<sup>21</sup>.

Before exercising its powers of review, a practice committee<sup>22</sup> must give the person concerned the opportunity to appear before it and to argue his case in accordance with rules made by the Nursing and Midwifery Council<sup>23</sup>. The person concerned may appeal to the appropriate court against an order or decision made on review<sup>24</sup> and any such appeal must be brought before the end of the period of 28 days beginning with the date on which notice of the order or decision appealed against is served on him<sup>25</sup>.

1 As to suspension orders and conditions of practice orders see PARA 768 ante.

2 As to the functions of the conduct and competence committee and the health committee see PARAS 761-762 ante. As to the committees as statutory committees see PARA 691 ante. As to the committees as practice committees, and as to their membership, see PARAS 699-700 ante.

3 As to the referral of matters between committees see PARAS 766-767 ante.

4 Nursing and Midwifery Order 2001, SI 2002/253, art 30(1)(a). The provisions of art 30(1), (2) (see the text to notes 8-10 infra) apply to an order made on a review under art 30(1) or art 30(2) as they do to an order made under art 29(5)(b)-(d) (see PARA 768 ante): art 30(3).

5 Ibid art 30(1)(b). See also note 4 supra. As to the orders which the committees could have originally made see PARA 768 ante.

6 Ibid art 30(1)(c). See also note 4 supra.

7 Ibid art 30(5).

8 For the meaning of 'the person concerned' see PARA 750 note 8 ante.

9 As to caution orders see PARA 768 ante.

10 Nursing and Midwifery Order 2001, SI 2002/253, art 30(2). See also note 4 supra. As to the procedure for dealing with cases relating to health where a person whose registration had been suspended under the statutory provisions immediately preceding the current provisions applied on or after 1 August 2004 for that suspension to be terminated, or applied before 1 August 2004 for that suspension to be terminated but as at that date no decision had been made on the application, see the Nursing and Midwifery Order 2001 (Transitional Provisions) Order of Council 2004, SI 2004/1762, arts 10, 11.

11 Nursing and Midwifery Order 2001, SI 2002/253, art 30(4)(a).

12 Ibid art 30(4)(b).

13 Ibid art 30(4)(c). However, in the case of a caution order the period may not be reduced so that it has effect for less than one year beginning with the date on which the order was made: art 30(4)(c).

14 Ibid art 30(4)(d). The replacement order has effect for the remainder of the term of the order it replaces: art 30(4)(d).

15 Ibid art 30(4)(e). The committee may make the revocation of a suspension order subject to the applicant's satisfying such requirements as to additional education or training and experience as the Nursing and Midwifery Council has specified under art 19(3) (see PARA 745 ante) and which apply to him: art 30(6). As to the Nursing and Midwifery Council see PARA 691 et seq ante.

16 Ibid art 30(4)(f).

17 As to striking-off orders see PARA 768 ante.

18 I.e. the committee mentioned in the Nursing and Midwifery Order 2001, SI 2002/253, art 33(3)(b): see PARA 770 post.

19 Ibid art 30(7). In such a case, art 33(4)-(8) applies as if it were an application for restoration made under art 33: art 30(7).

20 For the meaning of 'appropriate court' see PARA 782 note 4 post. As to appeals see PARA 782 post.

21 Nursing and Midwifery Order 2001, SI 2002/253, art 30(8).

22 For the meaning of 'practice committee' see PARA 699 note 3 ante.

23 Nursing and Midwifery Order 2001, SI 2002/253, art 30(9). The rules must include the matters referred to in art 32(2)(b), (g), (i)-(k), (m)-(o) (see PARA 752 ante): art 30(9). As to the making of rules by the Council see PARA 701 ante. As to the rules that have been made see the Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761; and PARA 773 et seq post.

24 Nursing and Midwifery Order 2001, SI 2002/253, art 30(10). On such an appeal, the Nursing and Midwifery Council is the respondent: art 30(12). As to such appeals see PARA 782 post.

25 Ibid art 30(11). The court has no power to extend the time for appeal: *R (on the application of Blackett) v Nursing and Midwifery Council* [2004] EWHC 1494 (Admin), [2004] All ER (D) 78 (Jun). Cf *Bainton v General Dental Council* [2000] All ER (D) 1217, PC, in which it was held that the court has an inherent jurisdiction in the interests of justice to allow an appeal to be brought out of time if it appears that the appeal has substantial merits.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/(5) FITNESS TO PRACTISE/(iii) The Conduct and Competence Committee and the Health Committee/770. Applications for restoration to the register.

### **770. Applications for restoration to the register.**

Where a person who has been struck off the register<sup>1</sup> by virtue of an order made by a practice committee<sup>2</sup> or the court<sup>3</sup> wishes to be restored to the register, he must make an application for restoration<sup>4</sup> to the registrar<sup>5</sup>. Any application for restoration must be referred by the registrar for determination to the committee which made the striking-off order<sup>6</sup> or, where any previous applications have been made in connection with the same striking-off order, the committee which last gave a decision on such an application<sup>7</sup>. Before making any decision on the application, the committee must give the applicant an opportunity to appear before it and to argue his case in accordance with rules made by the Nursing and Midwifery Council<sup>8</sup>. The committee must not grant an application for restoration unless it is satisfied, on such evidence as it may require, that the applicant not only satisfies the requirements as to qualification and capability<sup>9</sup> but, having regard in particular to the circumstances which led to the making of the order, is also a fit and proper person to practise the relevant profession<sup>10</sup>. The committee may make the granting of an application subject to the applicant satisfying such requirements as to additional education or training and experience as the Council has established<sup>11</sup> and which apply to him<sup>12</sup>. On granting an application for restoration, the committee must direct the registrar to register the applicant in the relevant part of the register<sup>13</sup> on his satisfying any requirements imposed as to additional education or training and experience and on payment of the prescribed fee<sup>14</sup>, and may make a conditions of practice order with respect to him<sup>15</sup>.

If, while a striking-off order is in force, a second or subsequent application for restoration to the register made by the person who has been struck off is unsuccessful, the committee which determined that application may direct that that person's right to make any further such applications be suspended indefinitely<sup>16</sup>. A person in respect of whom such a direction is made may, after the expiration of three years from the date on which the direction was made, apply to the registrar for that direction to be reviewed and, thereafter, may make further applications for review, but no such application may be made before the expiration of three years from the date of the most recent review decision<sup>17</sup>.

A person whose application for the review of a direction or whose application for restoration is refused or made subject to his satisfying requirements<sup>18</sup> may appeal to the appropriate court<sup>19</sup>. The appeal must be brought before the end of the period of 28 days beginning with the date on which notice of the decision rejecting the application, or granting it but imposing conditions, is served on the applicant<sup>20</sup>.

1 For the meaning of 'register' see PARA 717 note 2 ante.

2 For the meaning of 'practice committee' see PARA 699 note 3 ante. As to such orders see PARAS 768-769 ante.

3 As to such orders see PARA 782 post.

4 'Application for restoration' has the meaning given to it in the Nursing and Midwifery Order 2001, SI 2002/253, art 33 (see the text and notes 5-20 infra): art 2, Sch 4.

5 Ibid art 33(1). Subject to art 30(7) (see PARA 769 ante), no such application may be made: (1) before the end of the period of five years beginning with the date on which the striking-off order took effect (art 33(2)(a)); or (2) in any period of 12 months in which an application for restoration to the register has already been made by the person who has been struck off (art 33(2)(b)). For the meaning of 'registrar' see PARA 716 note 2 ante. As

to the procedure for dealing with applications made on or after 1 August 2004 for restoration to the register following removal under the statutory provisions preceding the current provisions, and unresolved applications made before 1 August 2004, see the Nursing and Midwifery Order 2001 (Transitional Provisions) Order of Council 2004, SI 2004/1762, arts 8,9.

6 Nursing and Midwifery Order 2001, SI 2002/253, art 33(3)(a).

7 Ibid art 33(3)(b).

8 Ibid art 33(4). Such rules must include the matters referred to in art 32(2)(b), (g), (i)-(k), (m)-(o) (see PARA 752 ante): art 33(4). As to the rules that have been made see the Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761; and PARAS 773-781 post. As to the Nursing and Midwifery Council see PARA 691 et seq ante. As to the making of rules by the Council see PARA 701 ante.

9 Ie the requirements of the Nursing and Midwifery Order 2001, SI 2002/253, art 9(2)(a), (b): see PARA 722 ante.

10 Ibid art 33(5). As to the power of the Council for the Regulation of Health Care Professionals to refer to the court a decision to restore a person to the register see PARA 306 ante.

11 Ie under ibid art 19(3): see PARA 745 ante.

12 Ibid art 33(6).

13 As to parts of the register see PARA 719 ante.

14 Nursing and Midwifery Order 2001, SI 2002/253, art 33(7)(a). As to the appropriate fee see the Nursing and Midwifery Council (Fees) Rules 2004, SI 2004/1654.

15 Nursing and Midwifery Order 2001, SI 2002/253, art 33(7)(b). The provisions of art 29 (see PARA 768 ante) have effect in relation to such a conditions of practice order as they have effect in relation to a conditions of practice order made under art 29, and art 30 (see PARA 769 ante) applies as if the order were an order made under art 29: art 33(8). As to conditions of practice orders see PARA 768 ante.

16 Ibid art 33(9).

17 Ibid art 33(10). The registrar must refer such an application to the committee which made the direction: art 33(11).

18 Ie under ibid art 33(6): see the text to notes 11-12 supra.

19 Ibid art 33(12). Article 38 (see PARA 782 post) applies to that appeal: art 33(12).

20 Ibid art 33(13). The court has no power to extend the time for appeal: *R (on the application of Blackett) v Nursing and Midwifery Council* [2004] EWHC 1494 (Admin), [2004] All ER (D) 78 (Jun). Cf *Bainton v General Dental Council* [2000] All ER (D) 1217, PC, in which it was held that the court has an inherent jurisdiction in the interests of justice to allow an appeal to be brought out of time if it appears that the appeal has substantial merits.

## UPDATE

### 770 Applications for restoration to the register

NOTE 14--SI 2004/1654 amended: SI 2005/3353, SI 2007/1885, SI 2007/3101.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/(5) FITNESS TO PRACTISE/(iv) Interim Orders/771. Interim Orders.

## **(iv) Interim Orders**

### **771. Interim Orders.**

The following provisions apply where: (1) an allegation<sup>1</sup> against a registered professional has been referred to the investigating committee, to the conduct and competence committee or to the health committee<sup>2</sup> but that committee has not reached a decision on the matter<sup>3</sup>; (2) the investigating committee refers the matter to another practice committee<sup>4</sup>; (3) the investigating committee makes an order where an entry in the register has been fraudulently procured or incorrectly made<sup>5</sup>; or (4) the conduct and competence committee or the health committee makes a striking-off order, a conditions of practice order or a suspension order<sup>6</sup>.

If the committee is satisfied that it is necessary for the protection of members of the public or is otherwise in the public interest, or is in the interests of the person concerned<sup>7</sup>, for the registration of that person to be suspended or to be made subject to conditions, it may make an order directing the registrar<sup>8</sup> to suspend the person's registration<sup>9</sup>, or make an order imposing conditions with which the person must comply<sup>10</sup>, during such period not exceeding 18 months as may be specified in the order<sup>11</sup>. However, the investigating committee must not make an order in any case after it has referred the allegation in question to another practice committee<sup>12</sup>. Such an order ceases to have effect<sup>13</sup>: (a) in a case falling within head (1) or head (2) above, when the committee reaches a decision in respect of the allegation in question<sup>14</sup>; and (b) in a case falling within head (3) or head (4) above, if there is no appeal against the order, when the period for appealing expires<sup>15</sup>, or if there is an appeal against the order, when the appeal is withdrawn or otherwise finally disposed of<sup>16</sup>.

The Nursing and Midwifery Council<sup>17</sup> may apply to the court for an order made by a practice committee<sup>18</sup> to be extended, and may apply again for further extensions<sup>19</sup>. On such an application the court may extend, or further extend, for up to 12 months the period for which the order has effect<sup>20</sup>.

The committee must notify the person concerned giving its reasons where it makes an order<sup>21</sup> or any decision<sup>22</sup>, and must notify him of his right to apply to the court<sup>23</sup>. Where an order has effect<sup>24</sup>, the court may, on an application being made by the person concerned: (i) in the case of an interim suspension order, terminate the suspension<sup>25</sup>; (ii) in the case of an interim conditions of practice order, revoke or vary any condition imposed by the order<sup>26</sup>; (iii) in either case, substitute for the period specified in the order, or in the order extending it, some other period which could have been specified in the order when it was made or in the order extending it<sup>27</sup>. The decision of the court under any such application is final<sup>28</sup>.

The committee must when it makes, varies, replaces or revokes an order under these provisions or when an order it has made ceases to have effect, give the registrar such directions as are appropriate as to annotation of the register to record the decision made or, as the case may be, the expiry of the order<sup>29</sup>.

1 As to allegations see PARA 748 ante.

2 As to the functions of the investigating committee, the conduct and competence committee and the health committee see PARAS 757, 761-762 ante. As to the committees as statutory committees see PARA 691 ante. As to the committees as practice committees, and as to their membership, see PARAS 699-700 ante.

- 3 Nursing and Midwifery Order 2001, SI 2002/253, art 31(1)(a)(i).
- 4 Ie in a case to which *ibid* art 26(6) (see PARA 759 ante) applies: art 31(1)(a)(ii). For the meaning of 'practice committee' see PARA 699 note 3 ante.
- 5 Ie an order under *ibid* art 26(7) (see PARA 760 ante): art 31(1)(b). For the meaning of 'register' see PARA 717 note 2 ante.
- 6 *Ibid* art 31(1)(c). As to striking-off orders, conditions of practice orders and suspension orders see PARA 768 ante.
- 7 For the meaning of 'the person concerned' see PARA 750 note 8 ante.
- 8 For the meaning of 'registrar' see PARA 716 note 2 ante.
- 9 Nursing and Midwifery Order 2001, SI 2002/253, art 31(2)(a). Such an order is known as an 'interim suspension order': art 31(2)(a).
- 10 *Ibid* art 31(2)(b). Such an order is known as an 'interim conditions of practice order': art 31(2)(b). In a case coming within art 31(1)(b), (c) (see the text to notes 5, 6 supra), such an order may be made at the same time as an order made under art 26(7) (see PARA 760 ante), a striking-off order, a conditions of practice order or a suspension order: art 31(3).
- 11 *Ibid* art 31(2).
- 12 *Ibid* art 31(4).
- 13 Ie subject to *ibid* art 31(6) (see note 14 infra), art 31(7) (see note 15 infra), art 31(9) (see the text to note 20 infra), art 31(12) (see the text to notes 24-28 infra).
- 14 *Ibid* art 31(5)(a). The committee which made the order or, if the matter has been referred to another practice committee, that committee, must, in a case falling within head (1) or head (2) in the text, review the order made: (1) within the period of six months beginning on the date on which the order was made, and must thereafter, for so long as the order continues in force, further review it before the end of the period of three months beginning on the date of the decision of the immediately preceding review (art 31(6)(a)); (2) where new evidence relevant to the order has become available after the making of the order (art 31(6)(b)). The first review after the court's extension of an order made by a practice committee (see the text to note 20 infra) or after a replacement order made by a practice committee under art 31(7)(d), (e) (see note 15 infra) must take place: (a) if the order (or the order which has been replaced) had not been reviewed at all under art 31(6), within the period of six months beginning on the date on which the court ordered the extension or on which a replacement order was made (art 31(11)(a)); and (b) if it had been reviewed under art 31(6), within the period of three months beginning on that date (art 31(11)(b)).
- 15 *Ibid* art 31(5)(b)(i). Where an interim suspension order or an interim conditions of practice order has been made under *ibid* art 31 (including art 31(7)) the practice committee which made the order or, where the case has been referred to another practice committee, that committee, may: (1) revoke the order or revoke any condition imposed by the order (art 31(7)(a)); (2) confirm the order (art 31(7)(b)); (3) vary any condition imposed by the order (art 31(7)(c)); (4) if satisfied that to do so is necessary for the protection of members of the public or is otherwise in the public interest, or is in the interests of the person concerned, replace an interim conditions of practice order with an interim suspension order having effect for the remainder of the term of the former (art 31(7)(d)); (5) if satisfied that the public interest, including the protection of members of the public, or the interests of the person concerned would be adequately served by an interim conditions of practice order, replace an interim suspension order with an interim conditions of practice order having effect for the remainder of the term of the former (art 31(7)(e)). Article 31(7) is expressed to be subject to art 31(15): see PARA 772 post.
- 16 *Ibid* art 31(5)(b)(ii).
- 17 As to the Nursing and Midwifery Council see PARA 691 et seq ante.
- 18 Ie under the Nursing and Midwifery Order 2001, SI 2002/253, art 31(2) (see the text to notes 7-11 supra), art 31(7) (see note 15 supra).
- 19 *Ibid* art 31(8). For the purposes of art 31, 'the court' has the same meaning as 'the appropriate court' in art 38 (see PARA 782 post): art 31(13).
- 20 *Ibid* art 31(9). References to an interim suspension order or interim conditions of practice order include such an order as so extended: art 31(10).

- 21    le under ibid art 31(2): see the text to notes 7-11 supra.
- 22    le under ibid art 31(7): see note 15 supra.
- 23    Ibid art 31(14); and see note 20 supra.
- 24    le under ibid art 31(2) (see the text to notes 7-11 supra), art 31(7) (see note 15 supra), art 31(9) (see the text to note 20 supra).
- 25    Ibid art 31(12(a).
- 26    Ibid art 31(12)(b).
- 27    Ibid art 31(12)(c).
- 28    Ibid art 31(12). As to judicial review of final decisions of the court see JUDICIAL REVIEW vol 61 (2010) PARA 655.
- 29    Ibid art 31(17).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/(5) FITNESS TO PRACTISE/(iv) Interim Orders/772. Interim orders: hearings.

## **772. Interim orders: hearings.**

No interim order<sup>1</sup> may be made by any practice committee<sup>2</sup> in respect of any person unless he has been afforded an opportunity of appearing before the committee and being heard on the question whether such an order should be made in his case<sup>3</sup>. At any such hearing, the person concerned<sup>4</sup> is entitled to be represented, whether by a legally qualified person or otherwise<sup>5</sup>.

Where a practice committee proposes to consider whether to make, revoke, confirm, vary or replace an interim order<sup>6</sup>, it must serve the person concerned with an interim order notice<sup>7</sup>. The interim order notice must: (1) invite the person concerned to attend a hearing before the committee<sup>8</sup>; (2) invite him, in the event that he does not wish to attend the hearing, to submit written representations to the committee before the date of the hearing<sup>9</sup>; (3) contain other specified matters<sup>10</sup>; and (4) state the reasons why an interim order may be necessary for the protection of members of the public, or is otherwise in the public interest, or is in the interest of the person concerned<sup>11</sup>. The interim order notice must be served on the person concerned in such time in advance of the hearing as may be reasonable in all the circumstances of the case<sup>12</sup>.

In considering whether to make, revoke, confirm, vary or replace an interim order, a practice committee must follow the specified procedures<sup>13</sup>. Where the committee is satisfied that all reasonable efforts have been made to serve the registrant with the interim order notice or, in a case where an interim order notice is not required, the notice of hearing<sup>14</sup>, or the person concerned has informed the Nursing and Midwifery Council<sup>15</sup> that he does not wish to attend the hearing<sup>16</sup>, it may make an interim order, notwithstanding his absence at the hearing or the absence of any written representations from him on whether or not an interim order should be made<sup>17</sup>.

1    Ie under the Nursing and Midwifery Order 2001, SI 2002/253, art 31(2), (7)(c)-(e) or, in a case where art 31(5)(b) applies, under art 31(7)(b): see PARA 771 ante.

2    For the meaning of 'practice committee' see PARA 699 note 3 ante.

3    Nursing and Midwifery Order 2001, SI 2002/253, art 31(15).

4    For the meaning of 'the person concerned' see PARA 750 note 8 ante.

5    Nursing and Midwifery Order 2001, SI 2002/253, art 31(16).

6    Ie under *ibid* art 31: see PARA 771 ante.

7    Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 8(1). However, a practice committee is not required to serve an interim order notice where it has made an order under the Nursing and Midwifery Order 2001, SI 2002/253, art 26(7) (see PARA 760 ante), a striking-off order, a conditions of practice order or a suspension order, and at the same hearing subsequently proposes to consider whether to make an interim order: Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 8(2). As to the service of notices and documents see PARA 760 note 10 ante. As to striking-off orders, conditions of practice orders and suspension orders see PARA 768 ante.

8    *Ibid* r 8(3)(a).

9    *Ibid* r 8(3)(b). For the meaning of 'written' see PARA 20 note 22 ante.

10   *Ibid* r 8(3)(c). The specified matters are those set out in r 5(9)(a), (c)-(f), (h): see PARA 760 note 10 ante.

- 11 Ibid r 8(3)(d).
- 12 Ibid r 8(4).
- 13 Ie those set out in ibid Pt 5 (rr 16-27) (see PARA 773 et seq post): r 8(5).
- 14 Ibid r 8(6)(a).
- 15 As to the Nursing and Midwifery Council see PARA 691 et seq ante.
- 16 Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 8(6)(b).
- 17 Ibid r 8(6).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/(5) FITNESS TO PRACTISE/(v) Practice Committee Hearings/773. In general.

## **(v) Practice Committee Hearings**

### **773. In general.**

Where: (1) the investigating committee<sup>1</sup> is considering: (a) an allegation<sup>2</sup> which relates to a fraudulent or incorrect entry in the register at a hearing<sup>3</sup>; or (b) whether to make, revoke, confirm, vary or replace an interim order<sup>4</sup>; or (2) the conduct and competence committee or the health committee<sup>5</sup> is considering: (a) an allegation that the registrant's fitness to practise is impaired at a hearing<sup>6</sup>; (b) whether to make, revoke, confirm, vary or replace an interim order<sup>7</sup>; (c) an order previously made by it, at a review hearing<sup>8</sup>; or (d) an application for restoration to the register<sup>9</sup>, the committee concerned must follow the prescribed procedure<sup>10</sup>.

Hearings must be conducted in public<sup>11</sup>. However, hearings, other than those before the health committee, may be held wholly or partly in private<sup>12</sup> if the committee<sup>13</sup> is satisfied, having given the parties and any third party from whom the committee considers it appropriate to hear an opportunity to make representations<sup>14</sup>, and having obtained the advice of the legal assessor<sup>15</sup>, that this is justified (and outweighs any prejudice) by the interests of any party or of any third party (including a complainant, witness or patient), or by the public interest<sup>16</sup>. A hearing before the health committee must be conducted in private unless the committee is satisfied, having given the parties and any third party from whom the committee considers it appropriate to hear an opportunity to make representations<sup>17</sup>, and having obtained the advice of the legal assessor<sup>18</sup>, that the public interest or the interests of any third party outweigh the need to protect the privacy or confidentiality of the registrant, and require all or part of the hearing to be held in public<sup>19</sup>.

The Nursing and Midwifery Council<sup>20</sup> must arrange for all hearings and preliminary meetings<sup>21</sup> held by a practice committee<sup>22</sup> to be recorded in writing or electronic form<sup>23</sup>. Any party to the proceedings must, on application to the Council, be furnished with a transcript of the record of any part of the hearing or preliminary meeting at which he was entitled to be present<sup>24</sup>.

1 As to the functions of the investigating committee see PARA 757 ante. As to the investigating committee as a statutory committee see PARA 691 ante. As to the committee as a practice committee, and as to its membership, see PARAS 699-700 ante.

2 For the meaning of 'allegation' see PARA 758 note 2 ante.

3 Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 16(a)(i). As to the register see PARA 718 ante.

4 Ibid r 16(a)(ii). As to interim orders see PARAS 771-772 ante.

5 As to the functions of the conduct and competence committee and the health committee see PARAS 761-762 ante. As to the committees as statutory committees see PARA 691 ante. As to the committees as practice committees, and as to their membership, see PARAS 699-700 ante.

6 Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 16(b)(i).

7 Ibid r 16(b)(ii).

8 Ibid r 16(b)(iii). 'Review hearing' means a hearing for the purpose of reviewing orders made by the conduct and competence committee or the health committee: r 2.

9 Ibid r 16(b)(iv). As to such applications see PARA 770 ante.

10 See *ibid* r 16. The prescribed procedure is that set out in Pt 5 (rr 16-27): see the text and notes 11-24 *infra*; and PARAS 774-780 *post*.

11 *Ibid* r 19(1).

12 'In private' means conducted in the presence of every party and any person representing a party, but otherwise excluding the public: *ibid* r 19(4).

13 'Committee' means: (1) the investigating committee considering an allegation which relates to a fraudulent or incorrect entry in the register, or considering whether to make, revoke, confirm, vary or replace an interim order; (2) the conduct and competence committee; or (3) the health committee: *ibid* r 17(a)-(c).

14 *Ibid* r 19(3)(a).

15 *Ibid* r 19(3)(b). As to legal assessors see PARAS 753-754 *ante*.

16 *Ibid* r 19(3).

17 *Ibid* r 19(2)(a).

18 *Ibid* r 19(2)(b).

19 *Ibid* r 19(2).

20 As to the Nursing and Midwifery Council see PARA 691 *et seq ante*.

21 As to preliminary meetings see PARA 774 *post*.

22 As to practice committees see PARA 699 *ante*.

23 Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 27(1). The provisions of r 27(1), (2) (see the text to note 24 *infra*) do not apply to the private deliberations of any practice committee: r 27(3). For the meaning of 'writing' see PARA 20 note 22 *ante*.

24 *Ibid* r 27(2). See also note 23 *supra*.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/(5) FITNESS TO PRACTISE/(v) Practice Committee Hearings/774. Preliminary meetings.

#### **774. Preliminary meetings.**

Before any allegation<sup>1</sup> is considered by a committee<sup>2</sup> at a hearing<sup>3</sup>, that committee or the chair<sup>4</sup> of the committee may hold a preliminary meeting if such a meeting would, in its or his opinion, assist the committee to perform its functions<sup>5</sup>. A preliminary meeting must be chaired by the chair of the committee considering the allegation<sup>6</sup>, held with a legal assessor in attendance<sup>7</sup>, and held in private with the parties, their representatives and any person the chair or committee considers appropriate<sup>8</sup>.

The chair of the preliminary meeting may give directions as to the conduct of the case and for the consequences of failure to comply with such directions<sup>9</sup>. Directions given by the chair of the preliminary meeting may include, but are not limited to: (1) time limits for the service of evidence and disclosure of expert evidence, if any<sup>10</sup>; (2) a requirement that each party provide an estimate as to the length of the hearing and any dates on which he or any witnesses would not be able to attend the hearing<sup>11</sup>; (3) where facts are not in dispute, or the issue of misconduct is admitted, a requirement that the parties produce a statement of agreed facts<sup>12</sup>; (4) save in the case of an allegation that the registrant's fitness to practise is impaired by reason of his physical or mental health, a requirement that the parties state whether or not the health of the practitioner will be raised as an issue in the proceedings, and if so, whether, in their view, medical reports should be obtained and the case considered by the health committee<sup>13</sup>; (5) a requirement that a party call the author of any expert report<sup>14</sup>; (6) where agreed between the parties, a direction that the witness statement of a witness stand as the evidence in chief of that witness<sup>15</sup>; (7) where the committee is considering an allegation that the registrant's fitness to practise is impaired by reason of his physical or mental health<sup>16</sup>, or whether to make, revoke, confirm, vary or replace an interim order<sup>17</sup>, whether the proceedings should be held in public or private<sup>18</sup>; (8) special measures to be put in place at the hearing for vulnerable witnesses<sup>19</sup>; and (9) a direction for an adjournment of the preliminary meeting or that a further preliminary meeting should be held<sup>20</sup>. The chair of the preliminary meeting must keep a record of the directions given and send written<sup>21</sup> confirmation of such directions to the parties promptly<sup>22</sup>.

1 For the meaning of 'allegation' see PARA 758 note 2 ante.

2 For the meaning of 'committee' see PARA 773 note 13 ante.

3 As to hearings see PARA 773 ante.

4 'Chair' means the chair of a practice committee considering an allegation, or, in relation to any proceedings conducted by a panel appointed by the practice committee in accordance with the Nursing and Midwifery Order 2001, SI 2002/253, art 3, Sch 1 para 18(6) (see PARA 699 ante), the chair of that panel: Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 2. As to practice committees see PARA 699 ante.

5 Ibid r 18(1).

6 Ibid r 18(2)(a).

7 Ibid r 18(2)(b). At the preliminary meeting, the legal assessor may give a preliminary opinion for the purpose of resolving questions of law or admissibility of evidence: r 18(6). Notwithstanding this, decisions as to whether or not any evidence is to be admitted at the hearing must be taken by the committee considering the allegation: r 18(7). As to legal assessors see PARAS 753-754 ante.



- 8 Ibid r 18(2)(c). The chair of the preliminary meeting must give the parties not less than 14 days notice of any preliminary meeting: r 18(4). As to the service of notices and documents see PARA 760 note 10 ante.
- 9 See ibid r 18(3). Such directions may include the making of an order or refusal of an application if the failure to comply with it was without reasonable excuse: see r 18(3).
- 10 Ibid r 18(5)(a).
- 11 Ibid r 18(5)(b).
- 12 Ibid r 18(5)(c).
- 13 Ibid r 18(5)(d). As to the functions of the health committee see PARA 762 ante. As to the health committee as a statutory committee see PARA 691 ante. As to the committee as a practice committee, and as to its membership, see PARAS 699-700 ante.
- 14 Ibid r 18(5)(e).
- 15 Ibid r 18(5)(f).
- 16 Ibid r 18(5)(g)(i).
- 17 Ibid r 18(5)(g)(ii). As to interim orders see PARAS 771-772 ante.
- 18 Ibid r 18(5)(g).
- 19 Ibid r 18(5)(h). As to vulnerable witnesses see PARA 777 post.
- 20 Ibid r 18(5)(i).
- 21 For the meaning of 'written' see PARA 20 note 22 ante.
- 22 Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 18(8).

## **UPDATE**

### **774 Preliminary meetings**

NOTE 4--Definition of 'chair' omitted: SI 2004/1761.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/(5) FITNESS TO PRACTISE/(v) Practice Committee Hearings/775. Representation and entitlement to be heard.

### **775. Representation and entitlement to be heard.**

The presenter<sup>1</sup> and the registrant are entitled to be heard by the committee<sup>2</sup>. The registrant may be represented by solicitor or counsel<sup>3</sup>, a representative from his professional body or trade union<sup>4</sup>, or any other person<sup>5</sup>. Where the registrant is not represented, he may be accompanied and advised by any person, provided that such person is not entitled to address the committee without its permission<sup>6</sup>. A person who represents or accompanies the registrant may not be called as a witness at the hearing<sup>7</sup>. The committee may exclude from the whole or part of the hearing any person whose conduct, in its opinion, has disrupted or is likely to disrupt the proceedings<sup>8</sup>.

Where the registrant fails to attend and is not represented at the hearing<sup>9</sup>, the committee: (1) must require the presenter to adduce evidence that all reasonable efforts have been made to serve the notice of hearing on the registrant<sup>10</sup>; (2) may, where it is satisfied that the notice of hearing has been duly served, direct that the allegation<sup>11</sup> should be heard and determined notwithstanding the absence of the registrant<sup>12</sup>; or (3) may adjourn the hearing and issue directions<sup>13</sup>.

1 'The presenter' means the representative of the Nursing and Midwifery Council presenting the case on its behalf, who may be a solicitor or counsel: Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 2. As to the Nursing and Midwifery Council see PARA 691 et seq ante.

2 Ibid r 20(1). For the meaning of 'committee' see PARA 773 note 13 ante. As to hearings see PARA 773 ante.

3 Ibid r 20(2)(a).

4 Ibid r 20(2)(b).

5 Ibid r 20(2)(c). This provision is expressed to be subject to r 20(4): see the text to note 7 infra.

6 Ibid r 20(3).

7 Ibid r 20(4). As to witnesses see PARA 777 post.

8 Ibid r 20(5).

9 This provision does not apply to hearings at which the committee is considering whether to make, revoke, confirm, vary or replace an interim order: ibid r 21(1). As to interim orders see PARAS 771-772 ante.

10 Ibid r 21(2)(a). As to the service of notices and documents see PARA 760 note 10 ante.

11 For the meaning of 'allegation' see PARA 758 note 2 ante.

12 Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 21(2)(b).

13 Ibid r 21(2)(c).

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## **776. Evidence.**

Upon receiving the advice of the legal assessor<sup>1</sup>, and subject only to the requirements of relevance and fairness, a practice committee<sup>2</sup> considering an allegation<sup>3</sup> may admit oral, documentary or other evidence, whether or not such evidence would be admissible in civil proceedings in the appropriate court in that part of the United Kingdom<sup>4</sup> in which the hearing takes place<sup>5</sup>. Where facts relating to an allegation are in dispute, the burden of proving such facts rests on the Nursing and Midwifery Council<sup>6</sup>.

In determining whether a registrant's fitness to practise is impaired by reason of physical or mental health, the health committee<sup>7</sup> may take into account, amongst other matters, a refusal by the registrant to submit to medical examination<sup>8</sup>, the registrant's current physical or mental condition<sup>9</sup>, any continuing or episodic condition suffered by the registrant<sup>10</sup>, and a condition suffered by the registrant which, although currently in remission, may be expected to cause a recurrence of the impairment of his fitness to practise<sup>11</sup>.

In determining whether a registrant's fitness to practise is impaired by reason of lack of competence, the conduct and competence committee<sup>12</sup> may take into account any refusal by the registrant to submit to an assessment<sup>13</sup>. Where the conduct and competence committee finds that a registrant has failed to comply with the standards of conduct, performance and ethics established by the Council<sup>14</sup>, such failure may be taken into account by the committee in determining whether or not that registrant's fitness to practise is impaired<sup>15</sup>, but must not, of itself, be taken to establish that his fitness to practise is impaired<sup>16</sup>.

Where a party has failed to comply with any directions for service of evidence given at a preliminary meeting<sup>17</sup> including service of expert reports<sup>18</sup>, has shown no good cause for failure to comply with the directions given<sup>19</sup>, and seeks to adduce such evidence at the hearing<sup>20</sup>, a practice committee may refuse to admit the evidence in question<sup>21</sup>.

1 As to legal assessors see PARAS 753-754 ante.

2 As to practice committees see PARA 699 ante.

3 For the meaning of 'allegation' see PARA 758 note 2 ante.

4 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

5 Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 31(1). As to evidence in civil proceedings see CIVIL PROCEDURE vol 11 (2009) PARA 749 et seq.

6 Ibid r 30. Where a registrant has been convicted of a criminal offence, a copy of the certificate of conviction certified by a competent officer of a court in the United Kingdom (or, in Scotland, an extract conviction), is conclusive proof of the conviction, and the findings of fact upon which the conviction is based are admissible as proof of those facts: r 31(2). The only evidence which may be adduced by the registrant in rebuttal of a conviction certified or extracted in such a way is evidence for the purpose of proving that he is not the person referred to in the certificate or extract: r 31(3). A certificate as to a determination about a registrant's fitness to practise made by a body in the United Kingdom responsible under any enactment for the regulation of a health or social care profession, or a licensing body elsewhere, signed by an officer authorised by the body to sign such certificates, is admissible as prima facie evidence of the facts referred to in the determination: r 31(4). As to the Nursing and Midwifery Council see PARA 691 et seq ante. As to certificates of conviction see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1500. For the meaning of 'enactment' see PARA 4 note 1 ante.

7 As to the functions of the health committee see PARA 762 ante. As to the health committee as a statutory committee see PARA 691 ante. As to the committee as a practice committee, and as to its membership, see PARAS 699-700 ante.

8 Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 31(5)(a). As to the power of the committee to invite a person to submit to a medical examination see PARA 763 ante.

9 Ibid r 31(5)(b).

10 Ibid r 31(5)(c).

11 Ibid r 31(5)(d).

12 As to the functions of the conduct and competence committee see PARA 761 ante. As to the conduct and competence committee as a statutory committee see PARA 691 ante. As to the committee as a practice committee, and as to its membership, see PARAS 699-700 ante.

13 Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 31(6). As to the power of the committee to invite a person to submit to an assessment see PARA 763 ante.

14 Ie the standards established under the Nursing and Midwifery Order 2001, SI 2002/253, art 21(1)(a) and set out in the code of professional conduct established under that provision: see PARA 747 ante.

15 Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 31(7)(a).

16 Ibid r 31(7)(b).

17 As to preliminary meetings see PARA 774 ante.

18 Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 31(8)(a).

19 Ibid r 31(8)(b).

20 Ibid r 31(8)(c).

21 Ibid r 31(8).

## **UPDATE**

### **776 Evidence**

NOTE 6--Where it is alleged that a registrant has been included in a barred list (within the meaning of Safeguarding Vulnerable Groups Act 2006) by the Independent Barring Board (1) information provided by the Secretary of State under the 2006 Act that attests to the inclusion is conclusive evidence of it, unless the registrant can prove that he is not the person referred to in the information; and (2) a document from the Board, authenticated in whatever way the Council may approve, that provides a statement of the findings of fact made by the Board that led to the inclusion is conclusive evidence of the facts found proved by the Board: SI 2004/1761 r 31(3A) (added by SI 2009/1182) (in force on the coming into force of the Safeguarding Vulnerable Groups Act 2006 s 44(1) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 704)). As to the system under the 2006 Act see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 675 et seq.

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## **777. Witnesses.**

Witnesses must be required to take an oath<sup>1</sup>, or to affirm, before giving evidence at any hearing<sup>2</sup>. Witnesses<sup>3</sup> must first be examined by the party calling them<sup>4</sup>; may then be cross examined by the opposing party<sup>5</sup>; may then be re-examined by the party calling them<sup>6</sup>; and may then be questioned by the committee<sup>7</sup>. Any further questioning of the witnesses is at the discretion of the committee<sup>8</sup>. The committee may of its own motion require a person to attend the hearing to give evidence, or to produce relevant documents<sup>9</sup>. No witness as to fact may observe the proceedings until he has given evidence or been formally released by the committee<sup>10</sup>.

In proceedings before the conduct and competence committee or the health committee<sup>11</sup>, the following may be treated as vulnerable witnesses: (1) any witness under the age of 18<sup>12</sup>; (2) any witness with a mental disorder<sup>13</sup>; (3) any witness who is significantly impaired in relation to intelligence or social functioning<sup>14</sup>; (4) any witness with physical disabilities who requires assistance to give evidence<sup>15</sup>; (5) any witness where the allegation<sup>16</sup> against the registrant is of a sexual nature and the witness was the alleged victim<sup>17</sup>; or (6) any witness who complains of intimidation<sup>18</sup>. After seeking the advice of the legal assessor<sup>19</sup>, and upon hearing representations from the parties, the committee may adopt such measures as it considers necessary to enable it to receive evidence from a vulnerable witness<sup>20</sup>. Measures adopted by the committee may include, but are not limited to use of video links<sup>21</sup>; use of pre-recorded evidence as the evidence in chief of a witness, provided always that such witness is available at the hearing for cross-examination and questioning<sup>22</sup>; use of interpreters, including signers and translators<sup>23</sup>; and the hearing of evidence by the committee in private<sup>24</sup>. Where the allegation against a registrant is sexual in nature<sup>25</sup>, a witness is the alleged victim<sup>26</sup> and the registrant is not represented<sup>27</sup>, he must not be allowed to cross-examine the witness directly in person<sup>28</sup>. In such circumstances, any questioning of the witness must be undertaken by such person as the committee considers appropriate<sup>29</sup>.

1 For the meaning of 'oath' see PARA 153 note 4 ante. As to oaths and affirmations see CIVIL PROCEDURE vol 11 (2009) PARA 1021 et seq.

2 Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 22(1). As to hearings see PARA 773 ante.

3 The committee may, upon the application of the party calling the witness, direct that any details which may identify that witness should not be revealed in public: *ibid* r 22(2).

4 *Ibid* r 22(3)(a).

5 *Ibid* r 22(3)(b). This provision is expressed to be subject to r 23(4), (5): see the text to notes 25-29 *infra*.

6 *Ibid* r 22(3)(c).

7 *Ibid* r 22(3)(d). For the meaning of 'committee' see PARA 773 note 13 ante.

8 *Ibid* r 22(4).

9 *Ibid* r 22(5).

10 *Ibid* r 22(6).

11 As to the functions of the conduct and competence committee and the health committee see PARAS 761-762 ante. As to the committees as statutory committees see PARA 691 ante. As to the committees as practice committees, and as to their membership, see PARAS 699-700 ante.

12 Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 23(1)(a).

13 Ibid r 23(1)(b). 'Mental disorder' means mental illness, arrested or incomplete development of mind, psychopathic disorder and any other disorder or disability of mind: r 2.

14 Ibid r 23(1)(c).

15 Ibid r 23(1)(d).

16 For the meaning of 'allegation' see PARA 758 note 2 ante.

17 Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 23(1)(e).

18 Ibid r 23(1)(f).

19 As to legal assessors see PARAS 753-754 ante.

20 Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 23(2).

21 Ibid r 23(3)(a).

22 Ibid r 23(3)(b). This provision is expressed to be subject to r 23(4): see the text to notes 25-28 infra.

23 Ibid r 23(3)(c).

24 Ibid r 23(3)(d). 'In private' means conducted in the presence of every party and any person representing a party, but otherwise excluding the public: r 23(6).

25 Ibid r 23(4)(a).

26 Ibid r 23(4)(b).

27 Ibid r 23(4)(c).

28 Ibid r 23(4).

29 Ibid r 23(5).

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### **778. Order of proceedings at initial hearings.**

Unless the committee<sup>1</sup> determines otherwise, the order of proceedings at the initial hearing<sup>2</sup> of an allegation is as follows:

- 922 (1) the chair<sup>3</sup> requires the registrant to confirm his name and personal identification number<sup>4</sup>;
- 923 (2) the chair causes the charge to be read out<sup>5</sup>;
- 924 (3) the chair inquires whether the registrant wishes to make any objections to the charge on a point of law<sup>6</sup>, and whether he wishes to make any admissions<sup>7</sup>;
- 925 (4) where facts have been admitted by the registrant, the chair announces that such facts have been found proved<sup>8</sup>;
- 926 (5) where in respect of an allegation relating to impairment of fitness to practise<sup>9</sup> the registrant admits that his fitness to practise is impaired, the chair announces that the registrant's fitness to practise is impaired<sup>10</sup>;
- 927 (6) where facts remain in dispute, the presenter<sup>11</sup> adduces evidence in support of the Nursing and Midwifery Council's case<sup>12</sup>;
- 928 (7) except on the hearing of an allegation by the health committee<sup>13</sup> or the hearing of an allegation of lack of competence, upon the close of the Council's case and upon the application of the registrant<sup>14</sup>, or of its own volition<sup>15</sup>, the committee may determine that the allegation is not well founded<sup>16</sup>;
- 929 (8) except where the committee has determined that the allegation is not well founded under head (7) above, the registrant may adduce evidence in support of his case<sup>17</sup>;
- 930 (9) the committee deliberates in private in order to make its findings on the facts and then announces the findings it has made<sup>18</sup>;
- 931 (10) save in exceptional circumstances, the committee is not required to give reasons for its findings of fact<sup>19</sup>;
- 932 (11) where the allegation relates to impairment of fitness to practise, the committee invites representations from the parties as to whether, on the basis of any facts found proved, the registrant's fitness to practise is impaired<sup>20</sup>;
- 933 (12) in such a case, the committee deliberates in private, and then in the presence of the parties, if present, announces its decision as to whether the registrant's fitness to practise is impaired<sup>21</sup>, giving reasons for its decision<sup>22</sup>;
- 934 (13) in all cases the committee:  
166  
232. (a) may invite any person who, in its opinion, has an interest in the proceedings to submit written<sup>23</sup> representations within such time as the committee may direct<sup>24</sup>; and  
233. (b) must invite representations from the registrant as to any mitigating circumstances which may affect the committee's decision on the sanction, if any, to be imposed<sup>25</sup>;
- 167  
935 and takes any representations received into account before making its decision on sanction<sup>26</sup>;
- 936 (14) the committee deliberates in private, and then in the presence of the parties, where present, announces its decision on sanction<sup>27</sup> and gives reasons for its decision<sup>28</sup>; and

937 (15) where, after announcing its decision on sanction, the committee considers that it may be appropriate to make an interim order<sup>29</sup> pending the outcome of any appeal<sup>30</sup>, it: (a) invites representations from the parties, where present, on whether or not an interim order should be made<sup>31</sup>; (b) takes any representations received into account before deciding whether or not to make an interim order<sup>32</sup>; (c) deliberates in private<sup>33</sup>; and (d) announces its decision in the presence of the parties, where present, giving reasons for its decision<sup>34</sup>.

Notwithstanding the order of proceedings described above, the committee may allow the parties to make additional submissions<sup>35</sup>.

1 For the meaning of 'committee' see PARA 773 note 13 ante.

2 'Initial hearing' means the first substantive hearing of an allegation: Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 2. For the meaning of 'allegation' see PARA 758 note 2 ante. As to hearings generally see PARA 773 ante.

3 For the meaning of 'chair' see PARA 774 note 4 ante.

4 Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 24(1)(a).

5 Ibid r 24(1)(b).

6 Ibid r 24(1)(c)(i).

7 Ibid r 24(1)(c)(ii).

8 Ibid r 24(1)(d). At any stage before making its findings of fact, in accordance with r 24(1)(d) or r 24(1)(i) (see the text to note 18 infra), the investigating committee (where the allegation relates to a fraudulent or incorrect entry in the register) or the conduct and competence committee may amend the charge set out in the notice of hearing, or the facts set out in the charge on which the allegation is based unless, having regard to the merits of the case and the fairness of the proceedings, the required amendment cannot be made without injustice: r 28(1). Before making any such amendment, the committee must consider any representations from the parties on this issue: r 28(2). As to notices of hearing see PARAS 760 note 10, 764 ante.

9 Ie an allegation of a kind referred to in the Nursing and Midwifery Order 2001, SI 2002/253, art 22(1)(a): see PARA 748 ante.

10 Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 24(1)(e)(i). In such a case, the procedure in heads (6)-(12) in the text does not apply (r 24(1)(e)(ii)), and the procedure in heads (13)-(15) in the text does apply (r 24(1)(e)(iii)).

11 For the meaning of 'the presenter' see PARA 775 note 1 ante.

12 Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 24(1)(f). As to evidence see PARA 776 ante; and as to witnesses see PARA 777 ante. As to the Nursing and Midwifery Council see PARA 691 et seq ante.

13 As to the functions of the health committee see PARA 762 ante. As to the health committee as a statutory committee see PARA 691 ante. As to the committee as a practice committee, and as to its membership, see PARAS 699-700 ante.

14 Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 24(1)(g)(i).

15 Ibid r 24(1)(g)(ii).

16 Ibid r 24(1)(g).

17 Ibid r 24(1)(h).

18 Ibid r 24(1)(i). See also note 8 supra.

19 Ibid r 24(1)(j).



- 20 Ibid r 24(1)(k).
- 21 Ibid r 24(1)(l)(i).
- 22 Ibid r 24(1)(l)(ii). For a case concerning adequacy of reasons see *Adesina v Nursing and Midwifery Council* [2004] EWHC 2410 (Admin), [2004] All ER (D) 222 (Nov).
- 23 For the meaning of 'written' see PARA 20 note 22 ante.
- 24 Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 24(1)(m)(i).
- 25 Ibid r 24(1)(m)(ii). The obligation to adduce evidence as to mitigation is on the appellant and his representatives and there is no obligation on the committee to spell out to the appellant's representatives the need, if such material is available, to produce it or the possible implications if it is not produced: *Adesina v Nursing and Midwifery Council* supra (a case decided in respect of the previous version of the rules which were in similar terms to the present rules).
- 26 Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 24(1)(m).
- 27 Ibid r 24(1)(n)(i). As to sanctions see PARA 768 ante.
- 28 Ibid r 24(1)(n)(ii).
- 29 As to interim orders see PARAS 771-772 ante.
- 30 As to appeals see PARA 782 post.
- 31 Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 24(1)(o)(i).
- 32 Ibid r 24(1)(o)(ii).
- 33 Ibid r 24(1)(o)(iii).
- 34 Ibid r 24(1)(o)(iv).
- 35 Ibid r 24(2).

## **UPDATE**

### **778 Order of proceedings at initial hearings**

TEXT AND NOTES--SI 2004/1761 r 24 substituted: SI 2007/893.

NOTE 8--SI 2004/1761 r 28(1) amended: SI 2007/893.

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### **779. Order of proceedings at review or restoration hearings.**

Unless the committee<sup>1</sup> determines otherwise, the order of proceedings at a review hearing<sup>2</sup> or a restoration hearing<sup>3</sup> is as follows: (1) the presenter<sup>4</sup> informs the committee of the background to the case and the sanctions previously imposed on the registrant<sup>5</sup>, and directs the attention of the committee to any relevant evidence including transcripts of previous hearings<sup>6</sup>; (2) the registrant may adduce any relevant evidence on which he intends to rely<sup>7</sup>; (3) the committee deliberates in private and disposes of the case<sup>8</sup>, giving reasons for its decision<sup>9</sup>. These provisions do not apply to an interim orders hearing<sup>10</sup>.

1 For the meaning of 'committee' see PARA 773 note 13 ante.

2 For the meaning of 'review hearing' see PARA 773 note 8 ante.

3 'Restoration hearing' means a hearing to consider an application for restoration to the register: Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 2. As to such applications see PARA 770 ante.

4 For the meaning of 'the presenter' see PARA 775 note 1 ante.

5 Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 25(2)(a)(i).

6 Ibid r 25(2)(a)(ii). As to evidence see PARA 776 ante; and as to witnesses see PARA 777 ante.

7 Ibid r 25(2)(b).

8 In accordance with the Nursing and Midwifery Order 2001, SI 2002/253, art 30 (see PARA 769 ante) or art 33(5)-(7) (see PARA 770 ante): Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 25(2)(c).

9 Ibid r 25(2)(d).

10 Ibid r 25(1). As to such hearings see PARA 780 post.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/(5) FITNESS TO PRACTISE/(v) Practice Committee Hearings/780. Order of proceedings at interim orders hearings.

### **780. Order of proceedings at interim orders hearings.**

Except where the committee<sup>1</sup> is considering making an interim order at an initial hearing<sup>2</sup>, the following provisions apply to any hearing at which the committee is considering whether to make, revoke, confirm, vary or replace an interim order<sup>3</sup>. Unless the committee determines otherwise, the order of proceedings at an interim orders hearing is: (1) the presenter<sup>4</sup> informs the committee of the reasons why it may be necessary to make an interim order, or to revoke, confirm, vary or replace any order previously made, and may adduce any relevant evidence in this regard<sup>5</sup>; (2) the registrant may make representations as to why an interim order should not be made, or should be revoked or not confirmed, varied or replaced, and may adduce any relevant evidence, including oral testimony, in support of his case<sup>6</sup>; and (3) the committee deliberates in private and then announces its decision, together with the reasons for its decision, in the presence of the parties, where present<sup>7</sup>.

1 For the meaning of 'committee' see PARA 773 note 13 ante.

2 Ie where the Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 24(1)(o) applies: see PARA 778 ante.

3 Ibid r 26(1). As to interim orders see PARAS 771-772 ante.

4 For the meaning of 'the presenter' see PARA 775 note 1 ante.

5 Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 26(2)(a). As to evidence see PARA 776 ante; and as to witnesses see PARA 777 ante.

6 Ibid r 26(2)(b).

7 Ibid r 26(2)(c).

### **UPDATE**

### **780 Order of proceedings at interim orders hearings**

TEXT AND NOTES 1-3--SI 2004/1761 r 26(1) amended: SI 2007/893.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/(5) FITNESS TO PRACTISE/(v) Practice Committee Hearings/781. Postponements, adjournments and cancellations.

### **781. Postponements, adjournments and cancellations.**

The chair<sup>1</sup> of the practice committee<sup>2</sup> may, of his own motion, or upon the application of a party, postpone any hearing of which notice has been given before the hearing begins<sup>3</sup>. A practice committee considering an allegation<sup>4</sup> may, of its own motion or upon the application of a party, adjourn the proceedings at any stage, provided that no injustice is caused to the parties<sup>5</sup> and the decision is made after hearing representations from the parties, where present, and taking advice from the legal assessor<sup>6</sup>. In considering whether or not to grant a request for postponement or adjournment, the chair or committee must, amongst other matters, have regard to the public interest in the expeditious disposal of the case<sup>7</sup>, the potential inconvenience caused to a party or any witnesses to be called by that party<sup>8</sup>, and fairness to the registrant<sup>9</sup>. Before adjourning the proceedings, the practice committee must consider whether or not to make an interim order<sup>10</sup> and must: (1) invite representations from the parties, where present, on this issue<sup>11</sup>; (b) deliberate in private<sup>12</sup>; (3) announce its decision in the presence of the parties, where present<sup>13</sup>; (4) give reasons for its decision<sup>14</sup>; and (5) notify the registrant of its decision<sup>15</sup>.

Where an allegation has been referred to a practice committee for consideration at a hearing<sup>16</sup> and the presenter<sup>17</sup> considers that on the evidence available the hearing should not be held<sup>18</sup>, he must inform the committee of his opinion forthwith, and of the reasons for such opinion<sup>19</sup>. Upon receipt of the presenter's reasoned opinion, the committee must convene a preliminary meeting<sup>20</sup> at which the chair of the committee may<sup>21</sup> give a direction that the hearing should not be held and that the matter should be closed<sup>22</sup>. However, the chair of the committee must not give a direction to cancel a hearing without first giving the maker of the allegation, if any, a reasonable opportunity to comment, and taking into account any comments received from him<sup>23</sup>.

1 For the meaning of 'chair' see PARA 774 note 4 ante.

2 As to practice committees see PARA 699 ante.

3 Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 32(1).

4 For the meaning of 'allegation' see PARA 758 note 2 ante.

5 Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 32(2)(a).

6 Ibid r 32(2)(b). As to legal assessors see PARAS 753-754 ante. Where the proceedings have been adjourned, the committee must, as soon as practicable, notify the parties of the date, time and venue of the resumed hearing: r 32(3). As to the service of notices and documents see PARA 760 note 10 ante.

7 Ibid r 32(4)(a).

8 Ibid r 32(4)(b). As to witnesses see PARA 777 ante.

9 Ibid r 32(4)(c).

10 As to interim orders see PARAS 771-772 ante.

11 Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 32(5)(a).

12 Ibid r 32(5)(b).

13 Ibid r 32(5)(c).

14 Ibid r 32(5)(d).

15 le in accordance with the Nursing and Midwifery Order 2001, SI 2002/253, art 31(14) (see PARA 771 ante): Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 32(5)(e).

16 Ibid r 33(1)(a).

17 For the meaning of 'the presenter' see PARA 775 note 1 ante.

18 Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 33(1)(b).

19 Ibid r 33(1).

20 le in accordance with the Nursing and Midwifery Order 2001, SI 2002/253, art 32(2)(b) (see PARA 752 ante): Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 33(2).

21 le in accordance with the Nursing and Midwifery Order 2001, SI 2002/253, art 32(3), (4): see PARA 752 ante.

22 Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 33(3).

23 Ibid r 33(4).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/(5) FITNESS TO PRACTISE/(vi) Appeals/782. Appeals to the court.

## (vi) Appeals

### 782. Appeals to the court.

An appeal<sup>1</sup> from: (1) any order or decision of the health committee or the conduct and competence committee<sup>2</sup>, other than an interim order<sup>3</sup>, lies to the appropriate court<sup>4</sup>; and (2) any decision<sup>5</sup> of the Nursing and Midwifery Council<sup>6</sup> in respect of an appeal against a decision of the registrar<sup>7</sup> or of the investigating committee<sup>8</sup> lies to a county court<sup>9</sup>. In any such appeal, the Council is the respondent<sup>10</sup>.

The court may<sup>11</sup>: (a) dismiss the appeal<sup>12</sup>; (b) allow the appeal and quash the decision appealed against<sup>13</sup>; (c) substitute for the decision appealed against any other decision the practice committee<sup>14</sup> concerned or the Council, as the case may be, could have made<sup>15</sup>; or (d) remit the case to the practice committee concerned or Council, as the case may be, to be disposed of in accordance with the directions of the court<sup>16</sup>. The court may make such order as to costs as it thinks fit<sup>17</sup>.

1 As to appeals generally see CPR Pt 52. As to the procedure in respect of appeals relating to allegations received by the Nursing and Midwifery Council before 1 August 2004 see the Nursing and Midwifery Order 2001 (Transitional Provisions) Order of Council 2004, SI 2004/1762, art 5.

2 As to the committees as statutory committees see PARA 691 ante. As to the committees as practice committees, and as to their membership, see PARAS 699-700 ante. As to the functions of the health committee and the conduct and competence committee see PARAS 761-762 ante.

3 I.e. an order made under the Nursing and Midwifery Order 2001, SI 2002/253, art 31: see PARA 771 ante.

4 Ibid art 38(1)(a). 'The appropriate court' means, in the case of a person whose registered address is (or, if he were registered, would be) in Scotland, the Court of Session; in the case of a person whose registered address is (or, if he were registered, would be) in Northern Ireland, the High Court of Justice in Northern Ireland; and in the case of a visiting EEA nurse or midwife or in any other case, the High Court of Justice in England and Wales: art 38(4). For the meaning of 'registered' see PARA 717 note 2 ante. For the meanings of 'visiting EEA nurse' and 'visiting EEA midwife' see PARA 731 note 1 ante. As to the High Court of Justice in England and Wales see COURTS vol 10 (Reissue) PARA 602 et seq.

5 I.e. under ibid art 37: see PARA 740 ante.

6 As to the Nursing and Midwifery Council see PARA 691 et seq ante.

7 For the meaning of 'registrar' see PARA 716 note 2 ante.

8 I.e. under the Nursing and Midwifery Order 2001, SI 2002/253, art 26(7), (12): see PARA 760 ante. As to the investigating committee as a statutory committee see PARA 691 ante. As to the committee as a practice committee, and as to its membership, see PARAS 699-700 ante. As to the functions of the investigating committee see PARA 757 ante.

9 Ibid art 38(1)(b). As to county courts see COURTS.

10 Ibid art 38(2).

11 An appeal is by way of re-hearing: Practice Direction--Appeals PD52 para 22.3.(1)(cc), (2); and see *R (on the application of Clarke) v United Kingdom Central Council for Nursing, Midwifery and Health Visiting* [2004] EWHC 1350 (Admin), 79 BMLR 20, [2003] All ER(D) 390 (Oct). Where there has been an opinion expressed or an assertion of relevant fact made in the course of the hearing, it is competent for the court on appeal to receive in its discretion fresh evidence going to that expression of opinion or that assertion of fact: *Hefferon v Committee*

of the United Kingdom Central Council for Nursing, Midwifery and Health Visiting (1988) Independent, 11 March, DC, applying *Stock v Central Midwives Board* [1915] 3 KB 756, DC. On appeal, the court must determine whether the committee was justified in reaching the conclusion which it did, having regard to the evidence which was before the committee and any fresh evidence; must review the application by the committee of the relevant law; and must consider whether there was any breach of the rules of natural justice in the way in which the hearing was conducted: *Hefferon v Committee of the United Kingdom Central Council for Nursing, Midwifery and Health Visiting* supra. As to the principles of natural justice see JUDICIAL REVIEW vol 61 (2010) PARA 629 et seq. The court will be reluctant to interfere with findings of fact by the committee: see *R (on the application of Clarke) v United Kingdom Central Council for Nursing, Midwifery and Health Visiting* supra. See also the cases cited in PARAS 188 note 14, 478 notes 5, 6 ante.

12 Nursing and Midwifery Order 2001, SI 2002/253, art 38(3)(a).

13 Ibid art 38(3)(b). As a general rule, the court will be slow to interfere with decisions of the committee on matters relating to penalty, but the committee is not entitled to arrive at a decision which can reasonably be said to be wrong and unjustified; it is proper to have regard to the nature and gravity of criminal offences committed by the appellant when decisions are being taken as to the appropriate penalty and its consequences; in this respect, there is room for a distinction between cases where the penalty is imposed for conduct which the committee has held is serious professional misconduct and cases where the penalty is imposed upon proof of a conviction: *Dad v General Dental Council* [2000] 1 WLR 1538, 56 BMLR 130, PC. See also *Haygarth v Committee of the United Kingdom Central Council for Nursing, Midwifery and Health Visiting* (26 October 1988, unreported), DC.

14 For the meaning of 'practice committee' see PARA 699 note 3 ante.

15 Nursing and Midwifery Order 2001, SI 2002/253, art 38(3)(c).

16 Ibid art 38(3)(d). The power to give such directions as the court thinks proper includes a power to direct that a case be re-heard; and, although the court has always been loath to interfere with findings of fact of professional and other domestic disciplinary tribunals, where the court is troubled that an injustice may have been done because the person's case has not been fully considered by the disciplinary tribunal, there is good reason for sending the case back for re-hearing: *Slater v United Kingdom Central Council for Nursing, Midwifery and Health Visiting* (1987) Times, 10 June, DC. See also *Dennis v United Kingdom Central Council for Nursing Midwifery and Health Visting* 13 BMLR 146, [1993] 23 LS Gaz R 43, 137 Sol Jo LB 131.

17 Nursing and Midwifery Order 2001, SI 2002/253, art 38(3). As to costs generally see CIVIL PROCEDURE vol 12 (2009) PARA 1729 et seq.

## UPDATE

### 782 Appeals to the court

TEXT AND NOTES 1-9--See SI 2002/253 art 38(1A) (added by SI 2007/3101).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/(6) LIABILITY AND OFFENCES/783. Negligence and duties owed to patients.

## **(6) LIABILITY AND OFFENCES**

### **783. Negligence and duties owed to patients.**

The principles governing the liability of nurses and midwives towards their patients are precisely the same as those which govern the liability of medical practitioners towards their patients<sup>1</sup>.

<sup>1</sup> For the principles governing the liability of medical practitioners see PARA 196 et seq ante. For cases in which allegations of negligence were made against nurses or midwives see: *Rehman v University College London Hospitals NHS Trust* [2004] All ER (D) 435 (May); *Smithers v Taunton and Somerset NHS Trust* [2004] EWHC 1179 (QB), [2004] All ER (D) 309 (May); *Starcevic v West Hertfordshire Health Authority* [2001] EWCA Civ 192, 60 BMLR 221; *Selfe v Ilford and District Hospital Management Committee* (1970) 114 Sol Jo 935 (failure to supervise adequately a suicide risk patient); *Powell v Streatham Manor Nursing Home* [1935] AC 243, HL (causing perforation of bladder when passing a rigid catheter vaginally); *Walker v South West Surrey District Health Authority* (17 June 1982, unreported), CA (midwife injecting pethidine to side of plaintiff's right thigh contrary to all good practice); *Lowen v Hopper* (1950) 1 British Medical Journal (failure to conduct a proper examination of wound and to change the dressing); *Strangways-Lesmere v Clayton* [1936] 2 KB 11, [1936] 1 All ER 484 (administration of the wrong dose of a prescribed drug). See generally NEGLIGENCE. As to professional indemnity insurance see INSURANCE vol 25 (2003 Reissue) PARA 363 et seq. As to criminal negligence see PARA 206 ante.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/(6) LIABILITY AND OFFENCES/784. Offences relating to registration, qualifications and titles.

#### **784. Offences relating to registration, qualifications and titles.**

A person commits an offence if:

- 938 (1) with intent to deceive, whether expressly or by implication:  
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234. (a) he falsely represents himself to be registered in the register<sup>1</sup>, or a particular part<sup>2</sup> of it or to be the subject of any entry in the register<sup>3</sup>;
235. (b) he uses a designated title<sup>4</sup> to which he is not entitled<sup>5</sup>;
236. (c) he falsely represents himself to possess qualifications in nursing or midwifery<sup>6</sup>;
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- 939 (2) with intent that any person<sup>7</sup> be deceived, whether expressly or by implication, he causes or permits another person to make any representation about himself which, if made by himself with intent to deceive, would be an offence under head (1) above<sup>8</sup>; or, with intent to deceive, he makes with regard to another person any representation which is false to his own knowledge<sup>9</sup>, and if made by the other person with that intent would be an offence by him under head (1) above<sup>10</sup>;
- 940 (3) he fraudulently procures, or tries to procure, the making, amendment, removal or restoration of an entry in the register<sup>11</sup>;
- 941 (4) without reasonable excuse, he fails to comply with any requirement imposed<sup>12</sup> by the Nursing and Midwifery Council<sup>13</sup>, or a practice committee<sup>14</sup>.

A person guilty of any such offence is liable on summary conviction to a fine<sup>15</sup>.

1 For the meanings of 'registered' and 'register' see PARA 717 note 2 ante.

2 As to parts of the register see PARA 719 ante.

3 Nursing and Midwifery Order 2001, SI 2002/253, art 44(1)(a). As to registration see PARA 721 et seq ante.

4 I.e. a title referred to in *ibid* art 6(2): see PARA 717 ante.

5 *Ibid* art 44(1)(b).

6 *Ibid* art 44(1)(c).

7 For the meaning of 'person' see PARA 7 note 5 ante.

8 Nursing and Midwifery Order 2001, SI 2002/253, art 44(2)(a).

9 *Ibid* art 44(2)(b)(i).

10 *Ibid* art 44(2)(b)(ii).

11 *Ibid* art 44(3).

12 I.e. under *ibid* art 25(1), (2) (see PARA 751 ante) or rules made by virtue of art 32(2)(m) (see PARA 752 ante) or under any corresponding rule made by virtue of arts 26, 33, 37 (see PARAS 757, 770, 733 ante).

13 *Ibid* art 44(4)(a). As to the Nursing and Midwifery Council see PARA 691 et seq ante.

14 Ibid art 44(4)(b). For the meaning of 'practice committee' see PARA 699 note 3 ante.

15 Ibid art 44(5). The penalty is a fine not exceeding level 5 on the standard scale: see art 44(5). As to the standard scale see PARA 185 note 11 ante.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/(6) LIABILITY AND OFFENCES/785. Attendance by unqualified persons at childbirth.

### **785. Attendance by unqualified persons at childbirth.**

A person other than a registered<sup>1</sup> midwife<sup>2</sup> or a registered medical practitioner<sup>3</sup> must not attend a woman in childbirth<sup>4</sup>. This prohibition does not apply where the attention is given in a case of sudden or urgent necessity<sup>5</sup>, or in the case of a person who, while undergoing training with a view to becoming a medical practitioner or to becoming a midwife, attends a woman in childbirth as part of a course of practical instruction in midwifery recognised by the Nursing and Midwifery Council<sup>6</sup> or by the General Medical Council<sup>7</sup>. A person who contravenes the prohibition is liable on summary conviction to a fine<sup>8</sup>.

1 For the meaning of 'registered' see PARA 717 note 2 ante.

2 As to the practice of midwifery see PARA 708 et seq ante. As to registration see PARA 721 et seq ante.

3 For the meaning of 'registered medical practitioner' see PARA 4 ante.

4 Nursing and Midwifery Order 2001, SI 2002/253, art 45(1).

5 Ibid art 45(2)(a).

6 As to the Nursing and Midwifery Council see PARA 691 et seq ante. As to education and training see PARA 741 et seq ante.

7 Nursing and Midwifery Order 2001, SI 2002/253, art 45(2)(b). As to the General Medical Council see PARA 13 et seq ante.

8 Ibid art 45(3). The penalty is a fine not exceeding level 5 on the standard scale: see art 45(3). As to the standard scale see PARA 185 note 11 ante.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/(7) NURSES AGENCIES/(i) In general/786. Registration.

## **(7) NURSES AGENCIES**

### **(i) In general**

#### **786. Registration.**

Any person<sup>1</sup> who carries on or manages a nurses agency<sup>2</sup> without being registered in respect of it (as an agency of that description) is guilty of an offence<sup>3</sup>. Applications for registration must be made to the registration authority<sup>4</sup>. A certificate of registration issued in respect of an agency must be kept affixed in a conspicuous place at the agency<sup>5</sup>. The registration authority may at any time require a person who carries on or manages an agency to provide it with information relating to it<sup>6</sup>; and a person authorised by the registration authority may at any time enter and inspect premises which are used, or which he has reasonable cause to believe to be used, for the purposes of an agency<sup>7</sup>.

1 References to a person who carries on an agency include references to a person who carries it on otherwise than for profit: Care Standards Act 2000 s 121(5). For the meaning of 'person' see PARA 7 note 5 ante.

2 'Nurses agency' means, with the exception of any description of undertaking or organisation excepted from this definition by regulations, an employment agency or employment business, being (in either case) a business which consists of or includes supplying, or providing services for the purpose of supplying, registered nurses or registered midwives: *ibid* s 4(5), (9) (s 4(5) amended by the Health Act 1999 (Consequential Amendments) (Nursing and Midwifery) Order 2004, SI 2004/1771, art 3, Sch para 2(a)). For the meaning of 'registered' see PARA 717 note 2 ante. For the meanings of 'employment agency' and 'employment business' see the Employment Agencies Act 1973; and TRADE AND INDUSTRY vol 97 (2010) PARA 881 (definitions applied by the Care Standards Act 2000 s 121(1)). In England, the following are excepted from being a nurses agency: a special health authority which supplies staff, including nurses, to work for another national health service body; an NHS trust which supplies nurses to work solely for another national health service body; and an NHS foundation trust which supplies nurses to work solely for another national health service body: Nurses Agencies Regulations 2002, SI 2002/3212, reg 3 (substituted by SI 2004/1269). In Wales, an NHS trust which supplies nurses to work solely for other NHS trusts is excepted from being a nurses agency: Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 3. 'NHS trust' has the same meaning as in the National Health Service and Community Care Act 1990 (see HEALTH SERVICES vol 54 (2008) PARA 155 et seq): Nurses Agencies Regulations 2002, SI 2002/3212, reg 2(1); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 2(1). 'National health service body' means an NHS trust, an NHS foundation trust, a strategic health authority, a health authority, a special health authority, a primary care trust or a local health board: Care Standards Act 2000 s 121(1) (definition amended by the National Health Service Reform and Health Care Professions Act 2002 s 6(2), Sch 5 para 46; the National Health Service Reform and Health Care Professions Act 2002 (Supplementary, Consequential etc Provisions) Regulations 2002, SI 2002/2469, reg 4, Sch 1 para 27; and the Health and Social Care (Community Health and Standards) Act 2003 s 34, Sch 4 paras 110, 112). As to all such bodies see HEALTH SERVICES vol 54 (2008) PARA 75 et seq.

3 Care Standards Act 2000 s 11(1). Where the activities of an agency are carried on from two or more branches, each of those branches is treated as a separate agency for these purposes: s 11(2). As to the penalty for such an offence see s 11(5), (6); and SOCIAL SERVICES AND COMMUNITY CARE. Where any offence under the Care Standards Act 2000 Pt II (ss 11-42) or regulations made under it is committed by a body corporate, if the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager, or secretary of the body corporate, or any person who was purporting to act in any such capacity, he (as well as the body corporate) is guilty of the offence and liable to be proceeded against and punished accordingly: s 30(1), (2). The reference to a director, manager or secretary of a body corporate includes a reference to any other similar officer of the body and, where the body is a local authority, to any officer or member of the authority: s 30(3). As to bodies corporate see COMPANIES; CORPORATIONS.

4 See *ibid* s 12(1). The registration authority in relation to England is the Commission for Social Care Inspection (s 5(1)(a)(ii) (s 5(1) renumbered by virtue of the Adoption and Children Act 2002 s 139(1), Sch 3 paras 103, 105; and the Care Standards Act 2000 s 5(1)(a)(ii) substituted by the Health and Social Care

(Community Health and Standards) Act 2003 s 147, Sch 9 paras 16, 17)); and in relation to Wales is the National Assembly for Wales (Care Standards Act 2000 s 5(1)(b) (as so renumbered)). As to the Commission for Social Care Inspection see SOCIAL SERVICES AND COMMUNITY CARE. As to the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to registration generally see ss 12-21; and SOCIAL SERVICES AND COMMUNITY CARE. As to offences relating to registration see ss 24-30; and SOCIAL SERVICES AND COMMUNITY CARE.

5 Ibid s 28(1). Failure to display a certificate is an offence: see s 28(2); and SOCIAL SERVICES AND COMMUNITY CARE.

6 See ibid s 31(1). As to such requests for information see further SOCIAL SERVICES AND COMMUNITY CARE.

7 Ibid s 31(2). As to inspections see s 31(3)-(9); and SOCIAL SERVICES AND COMMUNITY CARE.

## **UPDATE**

### **786 Registration**

NOTE 2--A local health board which supplies nurses to work solely for other local health boards is also excepted from being a nurses agency: SI 2003/2527 reg 3 (amended by SI 2009/182). 'Local health board' has the meaning assigned to it by the National Health Service (Wales) Act 2006 s 11 (see HEALTH SERVICES vol 54 (2008) PARA 74): SI 2003/2527 reg 2 (definition amended by SI 2009/1824).

NOTE 7--2000 Act s 31(7) further amended: Education and Inspections Act 2006 Sch 14 para 48.

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## **787. Regulations.**

Regulations may impose in relation to nurses agencies<sup>1</sup> any requirements which the appropriate minister<sup>2</sup> thinks fit for their regulation<sup>3</sup>. Regulations may also: (1) require the person carrying on a nurses agency to make an annual return to the registration authority<sup>4</sup>; (2) make provision where a receiver or manager of the property of a company registered in respect of a nurses agency, or a liquidator or provisional liquidator of such a company, or a trustee in bankruptcy of a registered individual, is appointed<sup>5</sup>; and (3) make provision where a person who was the only person registered in respect of an agency has died<sup>6</sup>. Regulations may also provide that a contravention of or failure to comply with any specified provision of any such regulations is an offence<sup>7</sup>.

1 For the meaning of 'nurses agency' see PARA 786 note 2 ante.

2 'Appropriate minister' means in relation to England, Scotland or Northern Ireland, the Secretary of State; in relation to Wales, the National Assembly for Wales; and in relation to England and Wales means the Secretary of State and the Assembly acting jointly: Care Standards Act 2000 s 121(1). 'Regulations' (except where provision is made for them to be made by the Secretary of State or the National Assembly for Wales) means regulations made by the appropriate minister: s 121(1). As to the Secretary of State see PARA 5 ante. As to the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

3 Ibid s 22(1). As to the matters for which the regulations may make provision see s 22(2)-(11); and SOCIAL SERVICES AND COMMUNITY CARE. As to the regulations that have been made see the Nurses Agencies Regulations 2002, SI 2002/3212; the Nurses Agencies (Wales) Regulations 2003, SI 2003/2527; and PARA 789 et seq post.

4 Care Standards Act 2000 s 33(1). For the meaning of 'registration authority' see PARA 786 note 4 ante.

5 See ibid s 34; and SOCIAL SERVICES AND COMMUNITY CARE.

6 See ibid s 35; and SOCIAL SERVICES AND COMMUNITY CARE.

7 Ibid s 25(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: s 25(2). As to the standard scale see PARA 185 note 11 ante. As to the commission of offences by corporate bodies see PARA 786 note 3 ante.

## **UPDATE**

### **787 Regulations**

NOTE 3--2000 Act s 22(7) further amended: Education and Inspections Act 2006 Sch 14 para 46.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/(7) NURSES AGENCIES/(i) In general/788. National minimum standards.

**788. National minimum standards.**

The appropriate minister<sup>1</sup> may prepare and publish statements of national minimum standards applicable to nurses agencies<sup>2</sup>. The appropriate minister must keep the standards set out in the statements under review and may publish amended statements whenever he considers it appropriate to do so<sup>3</sup>.

1 For the meaning of 'appropriate minister' see PARA 787 note 2 ante.

2 Care Standards Act 2000 s 23(1). For the meaning of 'nurses agency' see PARA 786 note 2 ante.

3 Ibid s 23(2). As to consultation in respect of such standards and the matters in respect of which the standards are to be taken into account see s 23(3), (4); and SOCIAL SERVICES AND COMMUNITY CARE.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/(7) NURSES AGENCIES/(i) In general/789. Statement of purpose and service user's guide.

### **789. Statement of purpose and service user's guide.**

The registered person<sup>1</sup> must compile in relation to the nurses agency<sup>2</sup> a written statement, known as 'the statement of purpose', consisting of a statement as to the following matters<sup>3</sup>: (1) the aims and objectives of the agency<sup>4</sup>; (2) the nature of the services which the agency provides<sup>5</sup>; (3) the name and address of the registered provider and of any registered manager<sup>6</sup>; (4) the relevant qualifications and experience of the registered provider and any registered manager<sup>7</sup>; (5) the range of qualifications of nurses<sup>8</sup> supplied by the agency, and the types of settings in which they are supplied to work<sup>9</sup>; (6) the complaints procedure established by the registered person<sup>10</sup>. The registered person must supply a copy of the statement of purpose to the Commission for Social Care Inspection<sup>11</sup> and make a copy of it available on request for inspection by every service user and any person acting on behalf of a service user<sup>12</sup>.

The registered person must prepare a service user's guide<sup>13</sup> which must include: (a) a summary of the statement of purpose<sup>14</sup>; (b) the terms and conditions in respect of the services to be provided to service users, including as to the amount and method of payment of fees<sup>15</sup>; (c) a summary of the complaints procedure<sup>16</sup>; and (d) the address and telephone number of the Commission for Social Care Inspection<sup>17</sup>. The registered person must make a copy of the service user's guide available on request for inspection at the agency premises by every service user and any person acting on behalf of a service user<sup>18</sup>.

The registered person must keep under review and, where appropriate, revise the statement of purpose and the service user's guide<sup>19</sup>, and notify the Commission for Social Care Inspection of any material revision within 28 days<sup>20</sup>.

1 'Registered person', in relation to a nurses agency, means any person who is the registered provider or the registered manager of that agency; 'registered provider', in relation to an agency, means a person who is registered under the Care Standards Act 2000 Pt II (ss 11-42) as the person carrying on that agency; and 'registered manager', in relation to an agency, means a person who is registered under Pt II as the manager of that agency: Nurses Agencies Regulations 2002, SI 2002/3212, reg 2(1); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 2(1). Where there is more than one registered person in respect of an agency, anything which is required to be done by the registered person is, if done by one of the registered persons, not required to be done by any of the other registered persons: Nurses Agencies Regulations 2002, SI 2002/3212, reg 26; Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 26. As to registration see *PARA 786 ante*.

2 For the meaning of 'nurses agency' see *PARA 786 note 2 ante*.

3 Nurses Agencies Regulations 2002, SI 2002/3212, reg 4(1); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 4(1). 'Statement of purpose' means the written statement compiled in accordance with this provision: Nurses Agencies Regulations 2002, SI 2002/3212, reg 2(1); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 2(1).

4 Nurses Agencies Regulations 2002, SI 2002/3212, reg 4(1), Sch 1 para 1; Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 4(1), Sch 1 para 1. The registered person must not use premises for the purposes of an agency unless the premises are suitable for the purpose of achieving the aims and objectives of the agency set out in the statement of purpose: Nurses Agencies Regulations 2002, SI 2002/3212, reg 20; Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 20. Nothing in this provision requires or authorises the registered person to contravene, or not to comply with any other provision of the regulations, or the conditions for the time being in force in relation to the registration of the registered person under the Care Standards Act 2000 Pt II: Nurses Agencies Regulations 2002, SI 2002/3212, reg 4(3); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 4(3).

5 Nurses Agencies Regulations 2002, SI 2002/3212, Sch 1 para 2; Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, Sch 1 para 2.



6 Nurses Agencies Regulations 2002, SI 2002/3212, Sch 1 para 3; Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, Sch 1 para 3.

7 Nurses Agencies Regulations 2002, SI 2002/3212, Sch 1 para 4; Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, Sch 1 para 4.

8 'Nurse' means a registered nurse or registered midwife: Nurses Agencies Regulations 2002, SI 2002/3212, reg 2(1); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 2(1). For the meaning of 'registered' see PARA 717 note 2 ante. References to the supply of a nurse mean: (1) the supply of a nurse who is employed for the purposes of an agency to act for and under the control of another person; and (2) the introduction of a nurse by an agency to a service user for employment by that service user: Nurses Agencies Regulations 2002, SI 2002/3212, reg 2(2); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 2(1), (2), (3). 'Service user' means a person to whom an agency:

179 (a) supplies a nurse who is employed by the agency; or

180 (b) provides services for the purpose of supplying the service user with a nurse for employment by that service user,

and in this definition the terms 'employed' and 'employment' include employment under a contract for services: Nurses Agencies Regulations 2002, SI 2002/3212, reg 2(1), (3); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 2(1), (3). As to contracts for services see EMPLOYMENT.

9 Nurses Agencies Regulations 2002, SI 2002/3212, Sch 1 para 5; Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, Sch 1 para 5.

10 Nurses Agencies Regulations 2002, SI 2002/3212, Sch 1 para 6; Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, Sch 1 para 6. As to complaints procedures see PARA 795 post.

11 As to the Commission for Social Care Inspection see SOCIAL SERVICES AND COMMUNITY CARE. In Wales, the copy must be supplied to the appropriate office of the National Assembly for Wales: *ibid* reg 4(2). 'Appropriate office' means, in relation to a nurses agency, if an office has been specified for the area in which the nurses agency operates, that office; in any other case, any office of the National Assembly: reg 2(1). The National Assembly may specify an office controlled by it as the appropriate office in relation to a nurses agency situated in a particular part of Wales: reg 2(4). As to the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

12 Nurses Agencies Regulations 2002, SI 2002/3212, reg 4(2); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 4(2).

13 'Service user's guide' means the written guide produced in accordance with these provisions: Nurses Agencies Regulations 2002, SI 2002/3212, reg 2(1); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 2(1).

14 Nurses Agencies Regulations 2002, SI 2002/3212, reg 5(1)(a); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 5(1)(a).

15 Nurses Agencies Regulations 2002, SI 2002/3212, reg 5(1)(b); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 5(1)(b).

16 Nurses Agencies Regulations 2002, SI 2002/3212, reg 5(1)(c); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 5(1)(c).

17 Nurses Agencies Regulations 2002, SI 2002/3212, reg 5(1)(d). In Wales, it must instead include the address and telephone number of any specified appropriate office of the National Assembly: Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 5(1)(d).

18 Nurses Agencies Regulations 2002, SI 2002/3212, reg 5(2); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 5(2).

19 Nurses Agencies Regulations 2002, SI 2002/3212, reg 6(a); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 6(a).

20 Nurses Agencies Regulations 2002, SI 2002/3212, reg 6(b). In Wales, the notification must be given to the appropriate office of the National Assembly for Wales: Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 6(b).

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## (ii) Registered Persons

### 790. Fitness of registered provider.

A person must not carry on a nurses agency<sup>1</sup> unless he is fit to do so<sup>2</sup>. A person is not fit to carry on an agency unless the person:

- 942 (1) is an individual<sup>3</sup>, who carries on the agency:  
170
  - 237. (a) otherwise than in partnership with others, and satisfies the specified requirements<sup>4</sup>;
  - 238. (b) in partnership with others, and he and each of his partners satisfies the specified requirements<sup>5</sup>;
- 171 943 (2) is a partnership, and each of the partners satisfies the specified requirements<sup>6</sup>;
- 944 (3) is an organisation<sup>7</sup> and:  
172
  - 239. (a) the organisation has given notice to the Commission for Social Care Inspection<sup>8</sup> of the name, address and position in the organisation of an individual<sup>9</sup> who is a director, manager, secretary or other officer of the organisation and is responsible for supervising the management of the agency<sup>10</sup>; and
  - 240. (b) that individual satisfies the specified requirements<sup>11</sup>.
- 173

The specified requirements are that he is of integrity and good character<sup>12</sup>; he is physically and mentally fit to carry on the agency<sup>13</sup>; and full and satisfactory information is available in relation to him in respect of identity, qualifications, experience and other specified matters<sup>14</sup>. A person must not carry on an agency if he has been adjudged bankrupt and he has not been discharged and the bankruptcy order has not been annulled or rescinded<sup>15</sup>, or if he has made a composition or arrangement with his creditors and has not been discharged in respect of it<sup>16</sup>.

1 For the meaning of 'nurses agency' see PARA 786 note 2 ante.

2 Nurses Agencies Regulations 2002, SI 2002/3212, reg 7(1); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 7(1).

3 In Wales, he must be an individual who satisfies the specified requirements (see the text to notes 12-14 infra): *ibid* reg 7(2)(a).

4 Nurses Agencies Regulations 2002, SI 2002/3212, reg 7(2)(a)(i).

5 *Ibid* reg 7(2)(a)(ii).

6 *Ibid* reg 7(2)(b). As to partnership see PARTNERSHIP.

7 'Organisation' means a body corporate or any unincorporated association other than a partnership: *ibid* reg 2(1). In Wales, 'organisation' means a body corporate: Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 2(1). As to corporations and unincorporated associations see CORPORATIONS vol 9(2) (2006 Reissue) PARA 1101.

8 As to the Commission for Social Care Inspection see SOCIAL SERVICES AND COMMUNITY CARE. In Wales, the notice must be given to the appropriate office of the National Assembly for Wales: *ibid* reg 7(2)(b)(i). For the meaning of 'appropriate office' see PARA 789 note 11 *ante*.

9 Such person is known as the 'responsible individual': Nurses Agencies Regulations 2002, SI 2002/3212, regs 2(1), 7(2)(c)(i); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, regs 2(1), 7(2)(b)(i).

10 Nurses Agencies Regulations 2002, SI 2002/3212, reg 7(2)(c)(i); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 7(2)(b)(i).

11 Nurses Agencies Regulations 2002, SI 2002/3212, reg 7(2)(c)(ii); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 7(2)(b)(ii).

12 Nurses Agencies Regulations 2002, SI 2002/3212, reg 7(3)(a); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 7(3)(a).

13 Nurses Agencies Regulations 2002, SI 2002/3212, reg 7(3)(b); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 7(3)(b).

14 See the Nurses Agencies Regulations 2002, SI 2002/3212, reg 7(3)(c); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 7(3)(c). As to the specified matters see the Nurses Agencies Regulations 2002, SI 2002/3212, reg 7(3)(c), Sch 2; and the Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 7(3)(c)(i), (ii), (4), Sch 2.

15 Nurses Agencies Regulations 2002, SI 2002/3212, reg 7(4)(a); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 7(5)(a).

16 Nurses Agencies Regulations 2002, SI 2002/3212, reg 7(4)(b); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 7(5)(b). As to bankruptcy, and arrangements and compositions with creditors, see BANKRUPTCY AND INDIVIDUAL INSOLVENCY.

## **UPDATE**

### **790 Fitness of registered provider**

NOTE 14--SI 2003/2527 reg 7(3)(c)(ii), (4) substituted, reg 7(3)(c)(iii) added, Sch 2 amended: SI 2009/2541. SI 2002/3212 Sch 2 amended: SI 2009/1895.

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### **791. Appointment and fitness of manager.**

The registered provider<sup>1</sup> must appoint an individual to manage the nurses agency<sup>2</sup> where there is no registered manager<sup>3</sup> in respect of the agency<sup>4</sup>, and the registered provider is an organisation<sup>5</sup> or a partnership<sup>6</sup>, or is not a fit person to manage an agency<sup>7</sup>, or is not, or does not intend to be, in full-time day to day charge of the agency<sup>8</sup>. Where the registered provider appoints a person to manage the agency, he must forthwith give notice to the Commission for Social Care Inspection<sup>9</sup> of the name of the person so appointed<sup>10</sup> and the date on which the appointment is to take effect<sup>11</sup>.

A person must not manage an agency unless he is fit to do so<sup>12</sup>. A person is not fit to manage an agency unless: (1) he is of integrity and good character<sup>13</sup>; (2) having regard to the size of the agency, its statement of purpose<sup>14</sup> and the number and needs of the service users<sup>15</sup>, he has the qualifications, skills and experience necessary to manage the agency<sup>16</sup> and is physically and mentally fit to do so<sup>17</sup>; and (3) full and satisfactory information is available in relation to him<sup>18</sup>.

1 For the meaning of 'registered provider' see PARA 789 note 1 ante.

2 For the meaning of 'nurses agency' see PARA 786 note 2 ante.

3 For the meaning of 'registered manager' see PARA 789 note 1 ante.

4 Nurses Agencies Regulations 2002, SI 2002/3212, reg 8(1)(a); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 8(1)(a).

5 For the meaning of 'organisation' see PARA 790 note 7 ante.

6 Nurses Agencies Regulations 2002, SI 2002/3212, reg 8(1)(b)(i). As to partnership see PARTNERSHIP. In the case of Wales, the regulations only refer to an organisation: see the Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 8(1)(b)(i).

7 Nurses Agencies Regulations 2002, SI 2002/3212, reg 8(1)(b)(ii); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 8(1)(b)(ii). As to fitness of the manager see the text to notes 12-18 infra.

8 Nurses Agencies Regulations 2002, SI 2002/3212, reg 8(1)(b)(iii); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 8(1)(b)(iii).

9 As to the Commission for Social Care Inspection see SOCIAL SERVICES AND COMMUNITY CARE. In Wales, notice must be given to the appropriate office of the National Assembly for Wales. For the meaning of 'appropriate office' see PARA 789 note 11 ante. As to the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

10 Nurses Agencies Regulations 2002, SI 2002/3212, reg 8(2)(a); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 8(2)(a).

11 Nurses Agencies Regulations 2002, SI 2002/3212, reg 8(2)(b); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 8(2)(b).

12 Nurses Agencies Regulations 2002, SI 2002/3212, reg 9(1); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 9(1).

13 Nurses Agencies Regulations 2002, SI 2002/3212, reg 9(2)(a); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 9(2)(a).

14 For the meaning of 'statement of purpose' see PARA 789 note 3 ante.

15 For the meaning of 'service user' see PARA 789 note 8 ante.

16 Nurses Agencies Regulations 2002, SI 2002/3212, reg 9(2)(b)(i); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 9(2)(b)(i).

17 Nurses Agencies Regulations 2002, SI 2002/3212, reg 9(2)(b)(ii); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 9(2)(b)(ii).

18 Nurses Agencies Regulations 2002, SI 2002/3212, reg 9(2)(c); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 9(2)(c). As to the information required see the Nurses Agencies Regulations 2002, SI 2002/3212, reg 9(2)(c), Sch 2; and the Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 9(2)(c)(i), (ii), (3), Sch 2.

## **UPDATE**

### **791 Appointment and fitness of manager**

NOTE 18--SI 2003/2527 reg 9(2)(c)(ii), (3) substituted, reg 9(2)(c)(iii) added, Sch 2 amended: SI 2009/2541. SI 2002/3212 Sch 2 amended: SI 2009/1895.

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## **792. Registered person; general requirements and training.**

The registered provider<sup>1</sup> and the registered manager<sup>2</sup> must, having regard to the size of the nurses agency<sup>3</sup>, its statement of purpose<sup>4</sup> and the number and needs of the service users<sup>5</sup>, carry on or, as the case may be, manage the agency with sufficient care, competence and skill<sup>6</sup>.

If the registered provider is: (1) an individual, he must undertake from time to time such training as is appropriate to ensure that he has the experience and skills necessary for carrying on the agency<sup>7</sup>; (2) an organisation<sup>8</sup>, it must ensure that the responsible individual undertakes from time to time such training as is appropriate to ensure that he has the experience and skills necessary for carrying on the agency<sup>9</sup>; or (3) a partnership, it must ensure that one of the partners undertakes from time to time such training as is appropriate to ensure that he has the experience and skills necessary for carrying on the agency<sup>10</sup>.

The registered manager must undertake from time to time such training as is appropriate to ensure that he has the experience and skills necessary for managing the agency<sup>11</sup>.

1 For the meaning of 'registered provider' see PARA 789 note 1 ante.

2 For the meaning of 'registered manager' see PARA 789 note 1 ante.

3 For the meaning of 'nurses agency' see PARA 786 note 2 ante.

4 For the meaning of 'statement of purpose' see PARA 789 note 3 ante.

5 For the meaning of 'service user' see PARA 789 note 8 ante.

6 Nurses Agencies Regulations 2002, SI 2002/3212, reg 10(1); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 10(1).

7 Nurses Agencies Regulations 2002, SI 2002/3212, reg 10(2)(a); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 10(2)(a).

8 For the meaning of 'organisation' see PARA 790 note 7 ante.

9 Nurses Agencies Regulations 2002, SI 2002/3212, reg 10(2)(b); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 10(2)(b). For the meaning of 'responsible individual' see PARA 790 note 9 ante.

10 Nurses Agencies Regulations 2002, SI 2002/3212, reg 10(2)(c). As to partnership see PARTNERSHIP.

11 Nurses Agencies Regulations 2002, SI 2002/3212, reg 10(3); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 10(3).

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### **793. Notice of conviction.**

Where the registered person<sup>1</sup> or the responsible individual<sup>2</sup> is convicted of any criminal offence, whether in England and Wales or elsewhere<sup>3</sup>, he must forthwith give notice in writing<sup>4</sup> to the Commission for Social Care Inspection<sup>5</sup> of the date and place of the conviction<sup>6</sup>, the offence of which he was convicted<sup>7</sup>, and the penalty imposed on him in respect of the offence<sup>8</sup>.

1 For the meaning of 'registered person' see PARA 789 note 1 ante.

2 For the meaning of 'responsible individual' see PARA 790 note 9 ante.

3 Or, in the case of Wales, committed in Wales or elsewhere: Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 11.

4 For the meaning of 'writing' see PARA 20 note 22 ante.

5 As to the Commission for Social Care Inspection see SOCIAL SERVICES AND COMMUNITY CARE. In Wales, notice must be given to the appropriate office of the National Assembly for Wales: Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 11. For the meaning of 'appropriate office' see PARA 789 note 11 ante. As to the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

6 Nurses Agencies Regulations 2002, SI 2002/3212, reg 11(i); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 11(i).

7 Nurses Agencies Regulations 2002, SI 2002/3212, reg 11(ii); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 11(ii).

8 Nurses Agencies Regulations 2002, SI 2002/3212, reg 11(iii); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 11(iii).

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### **(iii) Quality of Service Provision**

#### **794. Fitness of nurses supplied by an agency.**

The registered person<sup>1</sup> must ensure that no nurse<sup>2</sup> is supplied by the nurses agency<sup>3</sup> unless: (1) he is of integrity and good character<sup>4</sup>; (2) he has the qualifications, skills and experience which are necessary for the work which he is to perform<sup>5</sup>; (3) he is physically and mentally fit for that work<sup>6</sup>; and (4) full and satisfactory information is available in relation to him<sup>7</sup>. The registered person must ensure that the selection of a nurse for supply is made by or under the supervision of a nurse and that full and satisfactory information is available in relation to the nurse carrying out the selection<sup>8</sup>. The registered person must ensure that every nurse supplied by the agency acting as an employment business<sup>9</sup> is instructed that when working for a service user<sup>10</sup> he must at all times wear identification showing his name, the name of the agency and a recent photograph<sup>11</sup>.

1 For the meaning of 'registered person' see PARA 789 note 1 ante.

2 For the meaning of 'nurse' see PARA 789 note 8 ante.

3 For the meaning of 'nurses agency' see PARA 786 note 2 ante.

4 Nurses Agencies Regulations 2002, SI 2002/3212, reg 12(1)(a); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 12(1)(a).

5 Nurses Agencies Regulations 2002, SI 2002/3212, reg 12(1)(b); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 12(1)(b).

6 Nurses Agencies Regulations 2002, SI 2002/3212, reg 12(1)(c); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 12(1)(c).

7 Nurses Agencies Regulations 2002, SI 2002/3212, reg 12(1)(d); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 12(1)(d). As to the information which must be available see the Nurses Agencies Regulations 2002, SI 2002/3212, reg 12(1)(d), Sch 3; and the Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 12(1)(d)(i), (ii), (3), Sch 3. In England, the Nurses Agencies Regulations 2002, SI 2002/3212, reg 12(1)(d) is subject to the provisions of reg 12(4)-(9) (reg 12(4) added by SI 2003/2323; and the Nurses Agencies Regulations 2002, SI 2002/3212, reg 12(5)-(9) added by SI 2004/1770).

8 Nurses Agencies Regulations 2002, SI 2002/3212, reg 12(2); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 12(2). As to the information required see the Nurses Agencies Regulations 2002, SI 2002/3212, reg 12(2), Sch 2; and the Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 12(2)(i), (ii), (3), Sch 2.

9 For the meaning of 'employment business' see PARA 786 note 2 ante.

10 For the meaning of 'service user' see PARA 789 note 8 ante.

11 Nurses Agencies Regulations 2002, SI 2002/3212, reg 12(3); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 12(4).

### **UPDATE**

#### **794 Fitness of nurses supplied by an agency**



NOTE 7--SI 2003/2527 reg 12(1)(d)(ii) substituted, reg 12(1)(d)(iii) added, Sch 3 amended: SI 2009/2541. SI 2002/3212 reg 12(5), (6) revoked, reg 12(8) substituted, reg 12(9), Sch 3 amended: SI 2009/1895.

NOTE 8--SI 2003/2527 reg 12(2)(ii), (3) substituted, reg 12(2)(iii) added, Sch 2 amended: SI 2009/2541. SI 2002/3212 Sch 2 amended: SI 2009/1895.

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### **795. Policies, procedures and records.**

Where a nurses agency<sup>1</sup> acting as an employment business<sup>2</sup> supplies a nurse<sup>3</sup> to provide nursing care in the private residence of a service user<sup>4</sup> or patient<sup>5</sup>, the registered person<sup>6</sup> must prepare and implement written policies<sup>7</sup>. The registered person must ensure that any personal information about a patient for whom a nurse is supplied by the agency is not disclosed to any member of the agency's staff unless it is necessary to do so in order to provide an effective service to the patient<sup>8</sup>.

The registered person must establish a complaints procedure for considering complaints made to the registered person by a service user or a person acting on behalf of the service user<sup>9</sup>, and must supply a written copy of the complaints procedure to every service user and, upon request, to any person acting on behalf of a service user<sup>10</sup>. The registered person must ensure that every complaint made under the complaints procedure is fully investigated<sup>11</sup>. The registered person must maintain a record of each complaint, including details of the investigation made, the outcome and any action taken in consequence<sup>12</sup>. The registered person must ensure that any evidence of misconduct by a nurse is reported promptly and in writing to the Nursing and Midwifery Council<sup>13</sup>.

The registered person must ensure that the specified records<sup>14</sup> are maintained and that they are kept up to date, in good order and in a secure manner<sup>15</sup>, and that they are retained for a period of not less than three years beginning on the date of the last entry<sup>16</sup>.

1 For the meaning of 'nurses agency' see PARA 786 note 2 ante.

2 For the meaning of 'employment business' see PARA 786 note 2 ante.

3 For the meaning of 'nurse' see PARA 789 note 8 ante.

4 For the meaning of 'service user' see PARA 789 note 8 ante.

5 Nurses Agencies Regulations 2002, SI 2002/3212, reg 13(1); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 13(1). 'Patient' means a person to whom nursing is provided by a nurse supplied by a nurses agency: Nurses Agencies Regulations 2002, SI 2002/3212, reg 2(1); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 2(1).

6 For the meaning of 'registered person' see PARA 789 note 1 ante.

7 Nurses Agencies Regulations 2002, SI 2002/3212, reg 13(2); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 13(2). As to the matters to which the policies must relate see the Nurses Agencies Regulations 2002, SI 2002/3212, reg 13(2)(a)-(i), (3); and the Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 13(2)(a)-(i), (3).

8 Nurses Agencies Regulations 2002, SI 2002/3212, reg 13(4); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 13(4).

9 Nurses Agencies Regulations 2002, SI 2002/3212, reg 18(1); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 18(1). The written copy of the complaints procedure must include: (1) the address and telephone number of the Commission for Social Care Inspection or, in the case of Wales, the address and telephone number of any specified appropriate office of the National Assembly for Wales; and (2) the procedure (if any) for making complaints relating to the agency which has been notified by the Commission, or, as the case may be, by the appropriate office of the National Assembly, to the registered person: see the Nurses Agencies Regulations 2002, SI 2002/3212, reg 18(3); and the Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 18(3). As to the Commission for Social Care Inspection see SOCIAL SERVICES AND COMMUNITY CARE.

For the meaning of 'appropriate office' see PARA 789 note 11 ante. As to the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

10 Nurses Agencies Regulations 2002, SI 2002/3212, reg 18(2); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 18(2).

11 Nurses Agencies Regulations 2002, SI 2002/3212, reg 18(4); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 18(4). The registered person must, within the period of 28 days beginning on the date on which the complaint is made, or such shorter period as may be reasonable in the circumstances, inform the person who made the complaint of the action (if any) that is to be taken in response: Nurses Agencies Regulations 2002, SI 2002/3212, reg 18(5); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 18(5).

12 Nurses Agencies Regulations 2002, SI 2002/3212, reg 18(6); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 18(6). The requirements set out in the text to notes 14-16 infra apply to the record required under these provisions: see the Nurses Agencies Regulations 2002, SI 2002/3212, reg 18(6); and the Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 18(6). The registered person must supply to the Commission for Social Care Inspection, or, in the case of Wales, the appropriate office of the National Assembly for Wales, annually a statement containing a summary of the complaints made during the preceding 12 months and the action taken in response: Nurses Agencies Regulations 2002, SI 2002/3212, reg 18(7); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 18(7).

13 Nurses Agencies Regulations 2002, SI 2002/3212, reg 18(8); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 18(8). As to the Nursing and Midwifery Council see PARA 691 et seq ante.

14 Ie the records specified in the Nurses Agencies Regulations 2002, SI 2002/3212, reg 17, Sch 4; and the Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 17, Sch 4.

15 Nurses Agencies Regulations 2002, SI 2002/3212, reg 17(a); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 17(a).

16 Nurses Agencies Regulations 2002, SI 2002/3212, reg 17(b); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 17(b).

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## **796. Staffing.**

Where a nurses agency<sup>1</sup> is acting as an employment business<sup>2</sup>, the registered person<sup>3</sup> must, having regard to the size of the agency, its statement of purpose<sup>4</sup> and the number and needs of the service users<sup>5</sup>, take all reasonable measures to ensure that there is at all times an appropriate number of suitably qualified, skilled and experienced persons employed for the purposes of the agency<sup>6</sup>. The registered person must ensure that each employee of the agency receives appropriate supervision<sup>7</sup>, and is provided with a job description outlining his responsibilities<sup>8</sup>. The registered person must establish a procedure for collecting information from service users about the performance of nurses employed for the purposes of the agency, and take such steps as may be necessary to address any aspect of a nurse's clinical practice<sup>9</sup>.

Where the agency is acting as an employment business, the registered person must prepare a staff handbook and provide a copy to every member of staff<sup>10</sup>. The handbook must include a statement as to: (1) the conduct expected of staff, and disciplinary action which may be taken against them<sup>11</sup>; (2) the role and responsibilities of nurses and other staff<sup>12</sup>; (3) record keeping requirements<sup>13</sup>; (4) recruitment procedures<sup>14</sup>; and (5) training and development requirements and opportunities<sup>15</sup>.

1 For the meaning of 'nurses agency' see PARA 786 note 2 ante.

2 For the meaning of 'employment business' see PARA 786 note 2 ante.

3 For the meaning of 'registered person' see PARA 789 note 1 ante.

4 For the meaning of 'statement of purpose' see PARA 789 note 3 ante.

5 For the meaning of 'service user' see PARA 789 note 8 ante.

6 Nurses Agencies Regulations 2002, SI 2002/3212, reg 14(1); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 14(1). In the case of England, where the agency is acting as an employment business, the registered person must ensure that a new nurse is provided with appropriately structured induction training: Nurses Agencies Regulations 2002, SI 2002/3212, reg 14(6) (added by SI 2004/1770). For the meaning of 'nurse' see PARA 789 note 8 ante.

7 Nurses Agencies Regulations 2002, SI 2002/3212, reg 14(2)(a); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 14(2)(a).

8 Nurses Agencies Regulations 2002, SI 2002/3212, reg 14(2)(b); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 14(2)(b). The registered person must provide to each nurse who is employed for the purposes of the agency a written statement of the terms and conditions on which he will be supplied to work for, and under the control of, a service user: Nurses Agencies Regulations 2002, SI 2002/3212, reg 14(4); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 14(4). The statement of terms and conditions so provided must, in particular, specify the employment status of the nurse: Nurses Agencies Regulations 2002, SI 2002/3212, reg 14(5); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 14(5).

9 Nurses Agencies Regulations 2002, SI 2002/3212, reg 14(3); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 14(3).

10 Nurses Agencies Regulations 2002, SI 2002/3212, reg 15(1); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 15(1).

11 Nurses Agencies Regulations 2002, SI 2002/3212, reg 15(2)(a); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 15(2)(a).

12 Nurses Agencies Regulations 2002, SI 2002/3212, reg 15(2)(b); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 15(2)(b).

13 Nurses Agencies Regulations 2002, SI 2002/3212, reg 15(2)(c); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 15(2)(c).

14 Nurses Agencies Regulations 2002, SI 2002/3212, reg 15(2)(d); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 15(2)(d).

15 Nurses Agencies Regulations 2002, SI 2002/3212, reg 15(2)(e); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 15(2)(e).

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### **797. Provision of information to service users.**

The registered person<sup>1</sup> must ensure that before a nurse<sup>2</sup> is supplied, the service user<sup>3</sup> is informed of: (1) the name of the nurse who is to be supplied and the means of contacting that nurse<sup>4</sup>; (2) the name of the member of staff of the agency who is responsible for the supply of that nurse<sup>5</sup>; and (3) where the agency is acting as an employment business<sup>6</sup>, details of how the service user may contact the registered person, or a person nominated to act on behalf of the registered person<sup>7</sup>. Where the service user is also the patient<sup>8</sup>, the registered person must ensure that such information is, where appropriate, provided to the person acting on behalf of the patient<sup>9</sup>.

1 For the meaning of 'registered person' see PARA 789 note 1 ante.

2 For the meaning of 'nurse' see PARA 789 note 8 ante.

3 For the meaning of 'service user' see PARA 789 note 8 ante.

4 Nurses Agencies Regulations 2002, SI 2002/3212, reg 16(1)(a); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 16(1)(a). In the case of England, where an agency is acting as an employment agency, and has supplied a nurse in the circumstances where a criminal record certificate is not available (see the Nurses Agencies Regulations 2002, SI 2002/3212, reg 12(7); and PARA 794 note 7 ante), the registered person must inform the service user, or the service user's representative, that there is outstanding information in relation to the criminal record certificate, and must also inform the service user, or the service user's representative, when that information is obtained: reg 16(1A) (added by SI 2004/1770).

5 Nurses Agencies Regulations 2002, SI 2002/3212, reg 16(1)(b); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 16(1)(b).

6 For the meaning of 'employment business' see PARA 786 note 2 ante.

7 Nurses Agencies Regulations 2002, SI 2002/3212, reg 16(1)(c); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 16(1)(c).

8 For the meaning of 'patient' see PARA 795 note 5 ante.

9 Nurses Agencies Regulations 2002, SI 2002/3212, reg 16(2) (amended by SI 2004/1770); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 16(2).

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### **798. Review of quality of service provision.**

The registered person<sup>1</sup> must introduce and maintain a system for reviewing at appropriate intervals the quality of services provided by the nurses agency<sup>2</sup>. The system must provide for consultation with service users<sup>3</sup> and persons acting on behalf of service users<sup>4</sup>. The registered person must supply to the Commission for Social Care Inspection<sup>5</sup> a report in respect of any review of service quality conducted by him and must upon request make a copy of the report available for inspection by service users and persons acting on behalf of service users<sup>6</sup>.

1 For the meaning of 'registered person' see PARA 789 note 1 ante.

2 Nurses Agencies Regulations 2002, SI 2002/3212, reg 19(1); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 19(1). For the meaning of 'nurses agency' see PARA 786 note 2 ante.

3 For the meaning of 'service user' see PARA 789 note 8 ante.

4 Nurses Agencies Regulations 2002, SI 2002/3212, reg 19(3); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 19(3).

5 In Wales, the report must be supplied to the appropriate office of the National Assembly for Wales: *ibid* reg 19(2). As to the Commission for Social Care Inspection see SOCIAL SERVICES AND COMMUNITY CARE. For the meaning of 'appropriate office' see PARA 789 note 11 ante. As to the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

6 Nurses Agencies Regulations 2002, SI 2002/3212, reg 19(2); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 19(2).

### **UPDATE**

### **798 Review of quality of service provision**

TEXT AND NOTES--SI 2002/3212 reg 19 substituted: SI 2006/1493. The registered person must establish and maintain a system, providing for consultation with service users and their representatives, for evaluating the quality of the services provided by the agency: SI 2002/3212 reg 19(1), (5) (reg 19 substituted by SI 2006/1493). At the request of the Commission, the registered person must supply to it a report, based on that system, describing the extent to which, in the reasonable opinion of the registered person, the agency (1) provides good quality services for service users, (2) takes the views of service users and their representatives into account in deciding what services to offer to them, and the manner in which such services are to be provided, and (3) has responded to recommendations made or requirements imposed by the Commission in relation to the agency over the period specified in the request: reg 19(2). The report must be supplied to the Commission within one month of the receipt by the agency of the Commission's request, and in the form and manner required by the Commission: reg 19(3). The report must also contain details of the measures that the registered person considers it necessary to take in order to improve the quality and delivery of the services provided by the agency: reg 19(4).

If requested to do so by the Commission, the registered person must produce an improvement plan setting out the methods by which, and the timetable to which, the registered person intends to improve the services provided by the agency: reg 19A(1)

(reg 19A added by SI 2006/1493). The registered person must provide a written copy of the improvement plan to the Commission within one month of receipt of its request: reg 19A(2). A copy of the plan must be made available to service users and their representatives: reg 19A(3).

NOTES 4, 6--SI 2003/2527 reg 19(2), (3) amended: SI 2009/1824.



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### **799. Financial provisions.**

The registered provider<sup>1</sup> must carry on the nurses agency<sup>2</sup> in such manner as is likely to ensure that the agency will be financially viable for the purpose of achieving the aims and objectives set out in the statement of purpose<sup>3</sup>. The registered person<sup>4</sup> must, if the Commission for Social Care Inspection<sup>5</sup> so requests, provide it with such information and documents as it may require in order to consider the financial viability of the agency<sup>6</sup>.

Any person appointed as:

- 945 (1) the receiver or manager of the property of a company or partnership which is a registered provider in respect of an agency<sup>7</sup>;
- 946 (2) the liquidator or provisional liquidator of a company which is the registered provider in respect of an agency<sup>8</sup>;
- 947 (3) the trustee in bankruptcy of a registered provider in respect of an agency<sup>9</sup>,

must forthwith notify the Commission for Social Care Inspection<sup>10</sup> of his appointment indicating the reasons for it<sup>11</sup>; appoint a manager to take full-time day to day charge of the agency in any case where there is no registered manager<sup>12</sup>; and, not more than 28 days after his appointment, notify the Commission<sup>13</sup> of his intentions regarding the future operation of the agency<sup>14</sup>.

1 For the meaning of 'registered provider' see PARA 789 note 1 ante.

2 For the meaning of 'nurses agency' see PARA 786 note 2 ante.

3 Nurses Agencies Regulations 2002, SI 2002/3212, reg 21(1); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 21(1). For the meaning of 'statement of purpose' see PARA 789 note 3 ante.

4 For the meaning of 'registered person' see PARA 789 note 1 ante.

5 As to the Commission for Social Care Inspection see SOCIAL SERVICES AND COMMUNITY CARE. In Wales, information must be provided to the appropriate office of the National Assembly for Wales: see the Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 21(2). For the meaning of 'appropriate office' see PARA 789 note 11 ante. As to the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

6 Nurses Agencies Regulations 2002, SI 2002/3212, reg 21(2); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 21(2). Such information may include the annual accounts of the agency certified by an accountant, and a certificate of insurance for the registered provider in respect of liability which may be incurred by him in relation to the agency in respect of death, injury, public liability, damage or other loss: Nurses Agencies Regulations 2002, SI 2002/3212, reg 21(2)(a), (b); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 21(2)(a), (b). As to such insurances see INSURANCE.

7 Nurses Agencies Regulations 2002, SI 2002/3212, reg 24(2)(a). In the case of Wales, head (1) in the text must be read as a reference to the receiver or manager of the property of a company which is a registered provider in respect of an agency (Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 24(2)(a)); and the receiver or manager of the property of a partnership whose business includes carrying on an agency (reg 24(2)(c)). As to the appointment of a receiver or manager of company property see COMPANIES vol 15 (2009) PARA 1333 et seq; COMPANY AND PARTNERSHIP INSOLVENCY. As to the appointment of a receiver or manager in the case of partnerships see COMPANY AND PARTNERSHIP INSOLVENCY; PARTNERSHIP vol 79 (2008) PARA 162 et seq.

8 Nurses Agencies Regulations 2002, SI 2002/3212, reg 24(2)(b); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 24(2)(b). As to liquidators see COMPANY AND PARTNERSHIP INSOLVENCY.

9 Nurses Agencies Regulations 2002, SI 2002/3212, reg 24(2)(c); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 24(2)(d). As to bankruptcy see BANKRUPTCY AND INDIVIDUAL INSOLVENCY.

10 In Wales, notification must be given to the appropriate office of the National Assembly for Wales: Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 24(1)(a).

11 Nurses Agencies Regulations 2002, SI 2002/3212, reg 24(1)(a); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 24(1)(a).

12 Nurses Agencies Regulations 2002, SI 2002/3212, reg 24(1)(b); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 24(1)(b). For the meaning of 'registered manager' see PARA 789 note 1 ante.

13 In Wales, notification must be given to the appropriate office of the National Assembly for Wales: Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 24(1)(c).

14 Nurses Agencies Regulations 2002, SI 2002/3212, reg 24(1)(c); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 24(1)(c).

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## **800. Notices.**

Where the registered provider<sup>1</sup>, being an individual in full-time day to day charge of the nurses agency<sup>2</sup> or the registered manager<sup>3</sup>, proposes to be absent from the agency for a continuous period of 28 days or more, the registered person<sup>4</sup> must give notice in writing<sup>5</sup> to the Commission for Social Care Inspection<sup>6</sup> of the proposed absence<sup>7</sup>. Where the registered provider, being an individual in full-time day to day charge of the agency<sup>8</sup> or the registered manager<sup>9</sup>, has been absent from the agency for a continuous period of 28 days or more, and the Commission<sup>10</sup> has not been given notice of the absence, the registered person must, without delay, give notice in writing to it of the absence<sup>11</sup>. The registered person must notify the Commission<sup>12</sup> of the return to duty of the registered provider or, as the case may be, the registered manager not later than seven days after the date of his return<sup>13</sup>.

The registered person must give notice in writing to the Commission for Social Care Inspection<sup>14</sup> as soon as it is practicable to do so if any of the following events takes place or is proposed to take place: (1) a person other than the registered person carries on or manages the agency<sup>15</sup>; (2) a person ceases to carry on or manage the agency<sup>16</sup>; (3) where the registered person is an individual, he changes his name<sup>17</sup>; (4) where the registered provider is a partnership, there is any change in the membership of the partnership<sup>18</sup>; (5) where the registered provider is an organisation<sup>19</sup>, the name or address of the organisation is changed<sup>20</sup>, there is any change of director, manager, secretary or other similar officer of the organisation<sup>21</sup>, or there is any change in the identity of the responsible individual<sup>22</sup>; (6) where the registered provider is an individual, a trustee in bankruptcy is appointed<sup>23</sup>; (7) where the registered provider is a company or partnership, a receiver, manager, liquidator or provisional liquidator is appointed<sup>24</sup>; or (8) where the registered provider acquires additional premises for the purposes of the agency<sup>25</sup>.

1 For the meaning of 'registered provider' see PARA 789 note 1 ante.

2 Nurses Agencies Regulations 2002, SI 2002/3212, reg 22(1)(a); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 22(1)(a). For the meaning of 'nurses agency' see PARA 786 note 2 ante.

3 Nurses Agencies Regulations 2002, SI 2002/3212, reg 22(1)(b); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 22(1)(b). For the meaning of 'registered manager' see PARA 789 note 1 ante.

4 For the meaning of 'registered person' see PARA 789 note 1 ante.

5 For the meaning of 'writing' see PARA 20 note 22 ante.

6 As to the Commission for Social Care Inspection see SOCIAL SERVICES AND COMMUNITY CARE. In Wales, notice must be given to the appropriate office of the National Assembly for Wales: Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 22(1). For the meaning of 'appropriate office' see PARA 789 note 11 ante. As to the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

7 Nurses Agencies Regulations 2002, SI 2002/3212, reg 22(1); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 22(1). Except in the case of an emergency, the notice must be given no later than one month before the proposed absence commences or within such shorter period as may be agreed with the Commission or the appropriate office of the National Assembly, as the case may be; and the notice must specify: (1) the length or expected length of the absence; (2) the reason for the absence; (3) the arrangements which have been made for running the agency during that absence; (4) the name, address and qualifications of the person who will be responsible for the agency during that absence; and (5) in the case of the absence of the registered manager, the arrangements that have been, or are proposed to be, made for appointing another person to manage the agency during that absence including the proposed date by which the appointment is to be made: Nurses Agencies Regulations 2002, SI 2002/3212, reg 22(2)(a)-(e); Nurses Agencies (Wales) Regulations 2003,

SI 2003/2527, reg 22(2)(a)-(e). For the meaning of 'month' see PARA 13 note 14 ante. Where the absence arises as a result of an emergency, the registered person must give notice of the absence within one week of its occurrence, specifying the matters described in heads (1)-(5) supra: Nurses Agencies Regulations 2002, SI 2002/3212, reg 22(3); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 22(3).

8 Nurses Agencies Regulations 2002, SI 2002/3212, reg 22(4)(a); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 22(4)(a).

9 Nurses Agencies Regulations 2002, SI 2002/3212, reg 22(4)(b); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 22(4)(b).

10 In Wales, notice must be given to the appropriate office of the National Assembly for Wales: *ibid* reg 22(4).

11 Nurses Agencies Regulations 2002, SI 2002/3212, reg 22(4); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 22(4). The notice must specify the matters set out in note 7 heads (1)-(5) supra: Nurses Agencies Regulations 2002, SI 2002/3212, reg 22(4); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 22(4).

12 In Wales, notice must be given to the appropriate office of the National Assembly for Wales: *ibid* reg 22(5).

13 Nurses Agencies Regulations 2002, SI 2002/3212, reg 22(5); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 22(5).

14 In Wales, notice must be given to the appropriate office of the National Assembly for Wales: *ibid* reg 23.

15 Nurses Agencies Regulations 2002, SI 2002/3212, reg 23(a); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 23(a).

16 Nurses Agencies Regulations 2002, SI 2002/3212, reg 23(b); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 23(b).

17 Nurses Agencies Regulations 2002, SI 2002/3212, reg 23(c); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 23(c).

18 Nurses Agencies Regulations 2002, SI 2002/3212, reg 23(d). In relation to Wales, the event referred to in head (4) in the text is, where a registered provider is in a partnership whose business includes carrying on a nurses agency, a receiver or manager is, or is likely to be, appointed in respect of the partnership: Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 23(g). As to partnership see *PARTNERSHIP*.

19 For the meaning of 'organisation' see PARA 790 note 7 ante.

20 Nurses Agencies Regulations 2002, SI 2002/3212, reg 23(e)(i); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 23(d)(i).

21 Nurses Agencies Regulations 2002, SI 2002/3212, reg 23(e)(ii); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 23(d)(ii).

22 Nurses Agencies Regulations 2002, SI 2002/3212, reg 23(e)(iii); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 23(d)(iii). For the meaning of 'responsible individual' see PARA 790 note 9 ante.

23 Nurses Agencies Regulations 2002, SI 2002/3212, reg 23(f); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 23(e). As to bankruptcy see *BANKRUPTCY AND INDIVIDUAL INSOLVENCY*.

24 Nurses Agencies Regulations 2002, SI 2002/3212, reg 23(g). In relation to Wales, the event referred to in head (7) in the text is, where the registered provider is a company, a receiver, manager, liquidator or provisional liquidator is appointed: Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 23(f). As to liquidators see *COMPANY AND PARTNERSHIP INSOLVENCY*.

25 Nurses Agencies Regulations 2002, SI 2002/3212, reg 23(h); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 23(h).

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### **801. Death of registered person.**

If more than one person is registered in respect of a nurses agency<sup>1</sup>, and a registered person<sup>2</sup> dies, the surviving registered person must without delay notify the Commission for Social Care Inspection<sup>3</sup> of the death in writing<sup>4</sup>. If only one person is registered in respect of an agency, and he dies, his personal representatives must without delay notify the Commission<sup>5</sup> in writing of the death<sup>6</sup>, and must within 28 days notify it of their intentions regarding the future running of the agency<sup>7</sup>. The personal representatives of the deceased registered provider<sup>8</sup> may carry on the agency without being registered in respect of it for a period not exceeding 28 days<sup>9</sup>, although this period may be extended<sup>10</sup>. The personal representatives must appoint a person to take full-time day to day charge of the agency during any such period in which they carry on the agency without being registered in respect of it<sup>11</sup>.

1 For the meaning of 'nurses agency' see PARA 786 note 2 ante. As to registration see PARA 786 ante.

2 For the meaning of 'registered person' see PARA 789 note 1 ante.

3 As to the Commission for Social Care Inspection see SOCIAL SERVICES AND COMMUNITY CARE. In Wales, notice must be given to the appropriate office of the National Assembly for Wales: Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 25(1). For the meaning of 'appropriate office' see PARA 789 note 11 ante. As to the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

4 Nurses Agencies Regulations 2002, SI 2002/3212, reg 25(1); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 25(1). For the meaning of 'writing' see PARA 20 note 22 ante.

5 In Wales, notice must be given to the appropriate office of the National Assembly for Wales: *ibid* reg 25(2).

6 Nurses Agencies Regulations 2002, SI 2002/3212, reg 25(2)(a); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 25(2)(a).

7 Nurses Agencies Regulations 2002, SI 2002/3212, reg 25(2)(b); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 25(2)(b). As to personal representatives see EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARA 1 et seq.

8 For the meaning of 'registered provider' see PARA 789 note 1 ante.

9 Nurses Agencies Regulations 2002, SI 2002/3212, reg 25(3)(a); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 25(3)(a).

10 Nurses Agencies Regulations 2002, SI 2002/3212, reg 25(3)(b); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 25(3)(b). The Commission or the National Assembly for Wales, as the case may be, may extend the 28 day period by such further period, not exceeding one year, as the Commission or the National Assembly may determine, and must notify any such determination to the personal representatives in writing: Nurses Agencies Regulations 2002, SI 2002/3212, reg 25(4); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 25(4).

11 Nurses Agencies Regulations 2002, SI 2002/3212, reg 25(5); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 25(5).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/6. NURSES, MIDWIVES AND NURSES AGENCIES/(7) NURSES AGENCIES/(iv) Offences/802. Failure to comply with regulations.

#### **(iv) Offences**

##### **802. Failure to comply with regulations.**

A contravention or failure to comply with any of the provisions relating to nurses agencies<sup>1</sup> is an offence<sup>2</sup>. A person guilty of such an offence is liable on summary conviction to a fine<sup>3</sup>.

In England, the Commission for Social Care Inspection<sup>4</sup> may not bring proceedings against a person in respect of any contravention or failure to comply with those provisions unless: (1) he is a registered person<sup>5</sup>; (2) notice has been given to him<sup>6</sup>; (3) the period specified in the notice, within which the registered person may make representations to the Commission, has expired<sup>7</sup>; and (4) in a case where the notice specifies any action that is to be taken within a specified period, the period has expired and the action has not been taken within that period<sup>8</sup>.

1 In the case of England, the provisions of the Nurses Agencies Regulations 2002, SI 2002/3212, regs 4-6 (see PARA 789 ante) and regs 11-23 (see PARAS 793-800 ante) (see reg 27(1)); and in the case of Wales, the provisions of the Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, regs 4-23 (see PARAS 789-800 ante) (see reg 27(1)). For the meaning of 'nurses agency' see PARA 786 note 2 ante.

2 Nurses Agencies Regulations 2002, SI 2002/3212, reg 27(1); Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 27(1). As to failure to comply with the provisions relating to the keeping of records see note 5 infra. As to the commission of offences by bodies corporate see PARA 786 note 3 ante.

3 Care Standards Act 2000 s 25(2). The penalty is a fine not exceeding level 4 on the standard scale: see s 25(2). As to the standard scale see PARA 185 note 11 ante.

4 As to the Commission for Social Care Inspection see SOCIAL SERVICES AND COMMUNITY CARE.

5 Nurses Agencies Regulations 2002, SI 2002/3212, reg 27(2)(a). For the meaning of 'registered person' see PARA 789 note 1 ante. The Commission may, however, bring proceedings against a person who was once, but no longer is, a registered person, in respect of a failure to comply with reg 17 (the keeping of records: see PARA 795 text to notes 14-16 ante); and for this purpose, references in reg 27(2), (3) (see the text and notes 6-8 infra) to a registered person include such a person: reg 27(4).

Similarly, the National Assembly for Wales may bring proceedings against a person who was once, but no longer is, a registered person, in respect of a failure to comply with the Nurses Agencies (Wales) Regulations 2003, SI 2003/2527, reg 17 (keeping of records: see PARA 795 text to notes 14-16 ante): reg 27(2). As to the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

6 Nurses Agencies Regulations 2002, SI 2002/3212, reg 27(2)(b). Where the Commission considers that the registered person has contravened or failed to comply with any of the provisions of the regulations mentioned in reg 27(1) (see note 1 supra), it may serve a notice on the registered person specifying: (1) in what respect in its opinion the registered person has contravened any of the regulations, or has failed, or is failing, to comply with the requirements of any of those regulations (reg 27(3)(a)); (2) where it is practicable for the registered person to take action for the purpose of complying with any of those regulations, the action which, in the opinion of the Commission, the registered person should take for that purpose (reg 27(3)(b)); (3) the period, not exceeding three months, within which the registered person should take any such action (reg 27(3)(c)); (4) the period, not exceeding one month, within which the registered person may make representations to the Commission about the notice (reg 27(3)(d)). See also note 5 supra.

7 Ibid reg 27(2)(c). See also note 5 supra.

8 Ibid reg 27(2)(d).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7. OPTICIANS/(1) REGULATION OF THE PROFESSION/803. Introduction.

## 7. OPTICIANS

### (1) REGULATION OF THE PROFESSION

#### 803. Introduction.

The principal purposes of the Opticians Act 1989<sup>1</sup> are to provide for the registration of opticians<sup>2</sup> and the enrolment of bodies corporate carrying on business as opticians<sup>3</sup>, to regulate the practice of opticians and the conduct by bodies corporate of their business as opticians<sup>4</sup>, and to impose restrictions on the testing of sight<sup>5</sup> and the sale and supply of optical appliances<sup>6</sup>, and on the fitting of contact lenses<sup>7</sup>.

As from a day to be appointed, the provisions of the Opticians Act 1989 are to be amended so as to reform the registration and disciplinary regime<sup>8</sup>.

1 The Opticians Act 1989 came into force on 16 February 1990 and consolidated the provisions of the Opticians Act 1958, incorporating a number of amendments which give effect to recommendations made by the Law Commission's report on the consolidation of legislation relating to opticians (Cm 738; Law Com no 183). The Opticians Act 1989 applies to Northern Ireland: s 39(2).

2 For other statutory provisions relevant to the practice of opticians see PARA 10 ante.

3 See PARA 837 et seq post.

4 See PARAS 809-812, 846 et seq post.

5 See PARA 804 post.

6 See the Opticians Act 1989 s 27; and PARA 807 post.

7 See ibid s 25; and PARA 808 post.

8 See the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848. The functions of the General Optical Council are to include the promotion of high standards of professional education, conduct and performance: see art 3. There are to be powers of delegation for the Council, its committees, and the registrar: see art 6. The disciplinary committee is to be abolished, and new committees are to be established, to be known as the Fitness to Practise Committee, the Registration Committee, the Registration Appeals Committee, and the Standards Committee: see art 4. There is to be a Hearings Panel, from which the members of the Fitness to Practise Committee and the Registration Appeals Committee are to be selected: see art 5. Provision is made as to registration (see arts 8-12), and the registers of ophthalmic opticians are to be replaced with a register of optometrists (see art 7). Provision is also made as to educational standards, and training and development: see arts 14, 15. Part 2A is to be added to the Opticians Act 1989, dealing with fitness to practise: see the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, art 16. The Opticians Act 1989 Pt 3A is added, dealing with proceedings and appeals: see the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, art 17. There are various further amendments to the Opticians Act 1989: see the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, Pt 5 (arts 18-29), Sch 1 Pt 1. Amendments are also made to subordinate legislation by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, Sch 1 Pt 3: see eg the Sale of Optical Appliances Order of Council 1984, SI 1984/1778; the Rules on the Fitting of Contact Lenses 1985, approved by the General Optical Council (Rules on the Fitting of Contact Lenses) Order of Council 1985, SI 1985/856; the Contact Lens (Qualifications etc) Rules 1988, approved by the General Optical Council (Contact Lens (Qualifications etc) Rules) Order of Council 1988, SI 1988/1305; the Contact Lens (Specification) Rules 1988, approved by the General Optical Council Contact Lens (Specification) Rules Order of Council 1989, SI 1989/791; the Sight Testing (Examination and Prescription) (No 2) Regulations 1989, SI 1989/1230; the Testing of Sight by Persons Training as Ophthalmic Opticians Rules 1993, approved by the General Optical Council (Testing of Sight by Persons Training as Ophthalmic Opticians Rules) Order of Council 1994, SI 1994/70; the Rules relating to Injury or Disease of the Eye 1999, approved by the General Optical Council (Rules relating to Injury or Disease of the Eye) Order of Council 1999, SI 1999/3267; and the General Optical Council Election Scheme 2001, approved by the General Optical Council (Membership) Order of Council 2001, SI 2001/3057.

The provisions of the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, art 1 (citation, commencement and extent), art 22 (exercise of rule-making powers), art 25 (subordinate legislation), art 29(2)-(4) (transitional provisions) and any provisions conferring powers to make rules, regulations or orders came into force on 22 March 2005 (ie the date on which the order was made): see art 1(2), (3). In so far as they are not brought into force by art 1(2), (3), the provisions of the order are to come into force on such day as the Secretary of State may specify and notify in the London Gazette; and different days may be specified for different purposes: see art 1(4)-(6). At the date at which this volume states the law, no such day had been specified.

## **UPDATE**

### **803-812 Regulation of the Profession**

Notwithstanding anything in any enactment, proceedings for an offence under the Opticians Act 1989 Pt 4 (ss 24-30A) may be begun at any time within the period of six months beginning with the date on which evidence sufficient in the opinion of the General Optical Council to justify a prosecution for the offence comes to its knowledge, or within a period of two years beginning with the date of the commission of the offence, whichever period first expires: s 30A (added by SI 2005/848).

### **803 Introduction**

NOTE 8--Day now specified: see London Gazette, 3 June 2005. SI 2005/848 amended: SI 2006/635.

As to the Fitness to Practise Committee see further PARA 833; as to the Registration Committee see PARA 833A; as to the Registration Appeals Committee see PARA 833B; as to the Standards Committee see PARA 833C; and as to the Hearings Panel see PARA 833D.

For provision regarding educational standards and training and development, see the General Optical Council (Continuing Education and Training) Rules 2005 (approved by the General Optical Council (Continuing Education and Training Rules) Order of Council 2005, SI 2005/1473(amended by SI 2006/2901, SI 2008/1940).

1993 Rules (approved by SI 1994/70) amended: SI 2007/3101.

See also the General Optical Council (Therapeutics and Contact Lens Specialties) Rules 2008, approved by the General Optical Council (Therapeutics and Contact Lens Specialties) Rules Order of Council 2008, SI 2008/1940.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7.  
OPTICIANS/(1) REGULATION OF THE PROFESSION/804. Restrictions on the testing of sight.

#### **804. Restrictions on the testing of sight.**

Any person who is not a registered medical practitioner<sup>1</sup> or a registered ophthalmic optician<sup>2</sup>, must not test the sight<sup>3</sup> of another person<sup>4</sup>, and if he does so he is liable on summary conviction to a fine<sup>5</sup>. This restriction does not, however, apply to the testing of sight by a person recognised by a medical authority<sup>6</sup> as a medical student, if carried out as part of a course of instruction approved by that authority for medical students or as part of an examination so approved<sup>7</sup>; and the General Optical Council<sup>8</sup> may by rules exempt from the restriction the testing of sight by persons training as ophthalmic opticians, or any prescribed class of them, in such cases and subject to compliance with such conditions as may be prescribed by the rules<sup>9</sup>.

Any testing of sight which is carried out by a person in the course of his training as an ophthalmic optician who falls within any of the prescribed classes<sup>10</sup>, and under the continuous personal supervision of a registered ophthalmic optician or a registered medical practitioner<sup>11</sup>, is exempt from restriction on the testing of sight<sup>12</sup>.

1 For the meaning of 'registered medical practitioner' see PARA 4 ante.

2 'Registered ophthalmic optician' means a person who is registered in either of the registers of ophthalmic opticians: Opticians Act 1989 s 36(1). For the meaning of 'registered' see PARA 838 note 2 post. As to the registers see PARA 838 post. 'Ophthalmic optician' means a person engaged or proposing to engage in the testing of sight (otherwise than as a registered medical practitioner or a person recognised by a medical authority (see note 6 infra) as a medical student), whether or not he is also engaged or proposing to engage in the fitting and supply of optical appliances; and 'optical appliance' means an appliance designed to correct, remedy or relieve a defect of sight: s 36(1).

As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

3 References to testing sight are references to testing sight with the object of determining whether there is any and, if so, what defect of sight and of correcting, remedying or relieving any such defect of an anatomical or physiological nature by means of an optical appliance prescribed on the basis of the determination: Opticians Act 1989 s 36(2).

4 Ibid s 24(1).

5 Ibid s 24(4). The penalty is a fine not exceeding level 4 on the standard scale: see s 24(4). As to the standard scale see PARA 185 note 11 ante. As to the position where an offence is committed after the death or bankruptcy of an optician see s 29(3), (4); and PARA 811 post.

6 'Medical authority' means one of the universities and other bodies which choose appointed members of the General Medical Council: ibid s 36(1). As to these bodies see PARA 15 ante. As to the General Medical Council see PARA 13 et seq ante.

7 Ibid s 24(2).

8 As to the General Optical Council see PARA 813 et seq post.

9 Opticians Act 1989 s 24(3). As to the making of rules see PARA 825 post. As to the rules that have been made see the Testing of Sight by Persons Training as Ophthalmic Opticians Rules 1993, approved by the General Optical Council (Testing of Sight by Persons Training as Ophthalmic Opticians Rules) Order of Council 1994, SI 1994/70; and the text to notes 10-12 infra.

10 General Optical Council (Testing of Sight by Persons Training as Ophthalmic Opticians Rules) Order of Council 1994, SI 1994/70, r 3(a). The prescribed classes are: (1) persons who are receiving instruction at an approved training institution with a view to obtaining an approved qualification (r 4(a)); (2) persons who are undertaking a period of practical experience in the work of an ophthalmic optician with a view to satisfying the

General Optical Council as to the adequacy of their practical experience in such work, for the purposes of the Opticians Act 1989 s 8 (see PARA 840 post) (General Optical Council (Testing of Sight by Persons Training as Ophthalmic Opticians Rules) Order of Council 1994, SI 1994/70, r 4(b)); (3) persons who are completing an adaptation period within the meaning, and for the purposes, of the European Communities (Recognition of Professional Qualifications) Regulations 1991, SI 1991/824 reg 6 or who are receiving instruction at an approved training institution, with a view to taking an aptitude test within the meaning, and for the purposes, of that regulation (General Optical Council (Testing of Sight by Persons Training as Ophthalmic Opticians Rules) Order of Council 1994, SI 1994/70, r 4(c)); (4) persons who are undergoing examination for an approved qualification (r 4(d)); (5) persons who have qualified as ophthalmic opticians outside the United Kingdom and are receiving instruction at an approved training institution (r 4(e)); (6) persons who are in the course of training as an ophthalmic optician outside the United Kingdom and are receiving instruction at an approved training institution (r 4(f) (amended by SI 1999/2897)). 'Approved qualification' means a qualification approved by the General Optical Council under the Opticians Act 1989 s 12 (see PARA 827 post) as suitable to be granted to ophthalmic opticians; and 'approved training institution' means an institution approved by the General Optical Council under s 12 as suitable for the training of ophthalmic opticians: General Optical Council (Testing of Sight by Persons Training as Ophthalmic Opticians Rules) Order of Council 1994, SI 1994/70, r 2. For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

11 Ibid r 3(b).

12 Ibid r 3.

## **UPDATE**

### **803-812 Regulation of the Profession**

Notwithstanding anything in any enactment, proceedings for an offence under the Opticians Act 1989 Pt 4 (ss 24-30A) may be begun at any time within the period of six months beginning with the date on which evidence sufficient in the opinion of the General Optical Council to justify a prosecution for the offence comes to its knowledge, or within a period of two years beginning with the date of the commission of the offence, whichever period first expires: s 30A (added by SI 2005/848).

### **804 Restrictions on the testing of sight**

NOTE 5--Maximum fine now level 5 on the standard scale: 1989 Act s 24(4) (amended by SI 2005/848).

NOTE 6--Definition of 'medical authority' substituted: SI 2008/1774.

NOTE 10--SI 1994/70 r 4(c) amended: SI 2007/3101.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7. OPTICIANS/(1) REGULATION OF THE PROFESSION/805. Duties to be performed on the testing of sight.

### **805. Duties to be performed on the testing of sight.**

The Secretary of State<sup>1</sup> may by regulations<sup>2</sup> provide that, subject to any exceptions specified in the regulations, when a registered medical practitioner<sup>3</sup> or registered ophthalmic optician<sup>4</sup> tests the sight<sup>5</sup> of another person, it is his duty: (1) to perform such examinations of the eye for the purpose of detecting injury, disease or abnormality in the eye or elsewhere as the regulations may require<sup>6</sup>; and (2) immediately following the test to give the person whose sight he has tested a written<sup>7</sup> statement that he has carried out the examinations that the regulations require<sup>8</sup>, and that he is or, as the case may be, is not referring him to a registered medical practitioner<sup>9</sup>. He must also give the person, immediately following the test, either a signed written prescription for an optical appliance<sup>10</sup> or a signed statement that the person does not need to wear or use an optical appliance<sup>11</sup>. If he does issue a prescription, it must include the following particulars: (a) details of the specification of each lens to be included in the optical appliance prescribed<sup>12</sup>; (b) the date of the test<sup>13</sup>; (c) the name and address of the patient, and his date of birth if he is under 16<sup>14</sup>; (d) the name and address of the practitioner or optician who carried out the test<sup>15</sup>; (e) the address at which, or the name of the hospital, clinic, nursing home or other institution at which, the test was carried out<sup>16</sup>; (f) where the patient had previously been prescribed an optical appliance, and the specifications of the lenses are the same or are different but not sufficiently so to necessitate a change in the appliance, a statement that no change to the appliance is necessary<sup>17</sup>.

A person may not be required, as a condition of having his sight tested, to undertake to purchase from any specified person any optical appliance which the test shows him to require<sup>18</sup>, or to pay any fee before the testing is carried out<sup>19</sup>. A fee<sup>20</sup> is payable where a duty arises under the above provisions only if the duty has been fulfilled<sup>21</sup>. Any term of an agreement for the testing of sight which is inconsistent with these provisions is unenforceable, and any sum paid in respect of a fee otherwise than under these provisions is recoverable<sup>22</sup>.

1 As to the Secretary of State see PARA 5 ante.

2 The power of the Secretary of State to make such regulations is exercisable by statutory instrument (Opticians Act 1989 s 34(5)(c)); and a statutory instrument containing those regulations is subject to annulment in pursuance of a resolution of either House of Parliament (s 34(6)(b)). Different provision may be made for different classes of case: s 26(8). The Sight Testing (Examination and Prescription) (No 2) Regulations 1989, SI 1989/1230, have effect under the Opticians Act 1989 s 26(1) by virtue of the Interpretation Act 1978 s 17(2)(b). As to the annulment of statutory instruments see STATUTES vol 44(1) (Reissue) PARA 1516.

As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

3 For the meaning of 'registered medical practitioner' see PARA 4 ante.

4 For the meaning of 'registered ophthalmic optician' see PARA 804 note 2 ante.

5 As to the meaning of 'testing sight' see PARA 804 note 3 ante.

6 Opticians Act 1989 s 26(1)(a). In testing the sight of a person, a practitioner or optician must perform, for the purpose of detecting signs of injury, disease or abnormality in the eye or elsewhere, an examination of the external surface of the eye and its immediate vicinity, an intra-ocular examination, either by means of an ophthalmoscope or by such other means as the optician considers appropriate, and such additional examinations as appear to the optician to be clinically necessary: Sight Testing (Examination and Prescription) (No 2) Regulations 1989, SI 1989/1230, reg 3(1)(a)(i)-(iii). However, these provisions do not apply where the

testing of sight is carried out by a doctor at a hospital or clinic in the course of diagnosing or treating injury or disease of the eye: reg 3(2).

Regulation 3 is not a comprehensive statement of the professional duty of an optician. An optician performing an examination to which reg 3 applies is not required by it to diagnose injury, disease or abnormality of the eye; the purpose of the examination is to detect signs of injury, disease or abnormality. The examinations referred to in reg 3(1)(i)-(iii) must be reasonable examinations, such as would be performed by a reasonably competent optician in the circumstances; furthermore an optician will fail in his duty if he does not perform such additional examinations as would appear to any reasonably competent optician to be clinically necessary: *Threlfall v General Optical Council* [2004] EWHC 2683 (Admin), [2004] All ER (D) 416 (Nov).

7 For the meaning of 'written' see PARA 20 note 22 ante.

8 Opticians Act 1989 s 26(1)(b)(i); Sight Testing (Examination and Prescription) (No 2) Regulations 1989, 1989/1230, reg 3(1)(b)(i).

9 Opticians Act 1989 s 26(1)(b)(ii); Sight Testing (Examination and Prescription) (No 2) Regulations 1989, 1989/1230, reg 3(1)(b)(ii).

10 For the meaning of 'optical appliance' see PARA 804 note 2 ante.

11 Opticians Act 1989 s 26(2). The Secretary of State may by regulations specify particulars to be included in a prescription or statement provided in fulfilment of this duty, and circumstances in which that duty does not arise: s 26(3)(a), (b). The statement must, in addition to stating that the patient does not need to wear or use an optical appliance, include the particulars specified in heads (b)-(e) in the text: Sight Testing (Examination and Prescription) (No 2) Regulations 1989, SI 1989/1230, reg 5(2). There is no duty to issue a prescription or a statement after testing a patient's sight where, following the testing of the person's sight, the patient is referred to his doctor for further investigation or treatment, or the sight test was carried out as part of a general medical examination including an examination for insurance purposes within the meaning of the Access to Medical Reports Act 1988 s 2(1) (see PARA 215 note 4 ante) or for employment purposes within the meaning of that provision (see PARA 215 note 3 ante), or the person was resident in a hospital or a clinic for the purposes of treatment when his sight was tested: Sight Testing (Examination and Prescription) (No 2) Regulations 1989, SI 1989/1230, reg 4(a)-(c).

12 See *ibid* reg 5(1)(a).

13 *Ibid* reg 5(1)(b).

14 *Ibid* reg 5(1)(c).

15 *Ibid* reg 5(1)(d).

16 *Ibid* reg 5(1)(e).

17 *Ibid* reg 5(1)(f).

18 Opticians Act 1989 s 26(4)(a).

19 *Ibid* s 26(4)(b).

20 'Fee' means any payment in connection with testing sight in accordance with the regulations, fulfilling any duty imposed by *ibid* s 26, or the supply of any optical appliances: s 26(7).

21 *Ibid* s 26(5).

22 *Ibid* s 26(6).

## UPDATE

### 803-812 Regulation of the Profession

Notwithstanding anything in any enactment, proceedings for an offence under the Opticians Act 1989 Pt 4 (ss 24-30A) may be begun at any time within the period of six months beginning with the date on which evidence sufficient in the opinion of the General Optical Council to justify a prosecution for the offence comes to its knowledge,

or within a period of two years beginning with the date of the commission of the offence, whichever period first expires: s 30A (added by SI 2005/848).

## **805 Duties to be performed on the testing of sight**

TEXT AND NOTE 4--Reference to ophthalmic optician now to optometrist: Opticians Act 1989 s 26(1) (amended by SI 2005/848).

NOTE 6--Reference to SI 1989/1230 reg 3(1)(i)-(iii) should be to reg 3(1)(a)(i)-(iii).

TEXT AND NOTE 9--If a referral is made, reasons for it must be given: 1989 Act s 26(1)(b) (ii) (amended by SI 2005/848).

NOTE 9--The provisions of SI 1989/1230 reg 3(1)(b)(ii) do not apply where the doctor or optometrist refers the patient to an ophthalmic hospital, in accordance with the General Ophthalmic Services Contracts Regulations 2008, SI 2008/1185, reg 13(3): SI 1989/1230 reg 3(3) (added by SI 2005/480; and amended by SI 2005/848, SI 2008/1700).

NOTE 11--1989 Act s 26(2) amended: SI 2005/848. For 'circumstances ...arise' read 'that that duty does not arise where a person is being fitted with contact lenses as part of the medical or clinical treatment provided for an eye condition': 1989 Act s 26(3)(b) (substituted by SI 2005/848). There is no duty to issue a prescription or a statement after testing a patient's sight where, following the testing of his sight, he is being fitted with contact lenses as part of the medical or clinical treatment provided for an eye condition: SI 1989/1230 reg 4(d) (added by SI 2005/1481).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7. OPTICIANS/(1) REGULATION OF THE PROFESSION/806. Restrictions on the treatment of eye injury or disease.

### **806. Restrictions on the treatment of eye injury or disease.**

The General Optical Council<sup>1</sup> must make and submit to the Privy Council rules<sup>2</sup> providing that where it appears to a registered optician<sup>3</sup> that a person consulting him is suffering from an injury or disease of the eye, the optician must, except in an emergency<sup>4</sup> or where that person is consulting him for the purpose of being given specified treatment<sup>5</sup> or in such other cases as may be prescribed<sup>6</sup>, take the prescribed steps to refer that person to a registered medical practitioner<sup>7</sup> for advice and treatment<sup>8</sup>.

Where it appears to a registered optician that a person consulting him is suffering from an injury or disease of the eye<sup>9</sup>, the registered optician must<sup>10</sup> refer that person to a registered medical practitioner, unless he is acting on the advice or instructions of a registered medical practitioner, other than a medical recommendation for a sight test, in testing the sight of such a person or in fitting and supplying such a person with an optical appliance<sup>11</sup>; but in such case the optician must forthwith report to that practitioner any findings of injury or disease of the eye of which the practitioner may be unaware<sup>12</sup>. If in the professional judgement of a registered optician there is no justification to refer a person consulting him to a registered medical practitioner, or it would be impracticable or inexpedient to do so, the registered optician may at his discretion decide not to refer that person on that occasion<sup>13</sup>. As an exception to the duty of a registered optician to refer a person to a registered medical practitioner, a dispensing optician<sup>14</sup> may refer the person consulting him to an ophthalmic optician<sup>15</sup>. Nothing in these provisions operates to prevent a registered optician from rendering in an emergency whatever services are, having regard to the circumstances, in the best interests of the person consulting him<sup>16</sup>, or giving specified treatment<sup>17</sup>.

1 As to the General Optical Council see PARA 813 et seq post.

2 As to the making of rules see PARA 825 post. As to the exercise of powers of the Privy Council under the Opticians Act 1989 see PARA 835 post. As to the Privy Council generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

3 For the meaning of 'registered optician' see PARA 839 note 4 post.

4 Opticians Act 1989 s 31(5)(a). As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

5 Opticians Act 1989 s 31(5)(b). The specified treatment is that in accordance with rules under s 31(1)(d): see PARA 824 post.

6 Ibid s 31(5)(c). 'Prescribed' means prescribed by rules under the Opticians Act 1989: s 36(1). Rules made by virtue of s 31(5)(c) may impose conditions which must be satisfied if the exception for which those rules provide is to apply: s 31(5A) (s 31(5) amended, and s 31(5A) added, by the National Health Service (Primary Care) Act 1997 s 30(2), (3)).

7 For the meaning of 'registered medical practitioner' see PARA 4 ante.

8 Opticians Act 1989 s 31(5) (as amended: see note 6 supra). Such rules may make different provision for different classes of cases: s 31(6). As to the rules that have been made see the Rules relating to Injury or Disease of the Eye 1999, approved by the General Optical Council (Rules relating to Injury or Disease of the Eye) Order of Council 1999, SI 1999/3267.

9 'Injury or disease' means any abnormality of the eye of an anatomical, pathological or physiological nature; and 'the eye' means the organ of vision and associated structures involved in normal vision: *ibid* r 2.

10 le subject to ibid rr 5-8: see the text and notes 12-17 infra.

11 For the meaning of 'optical appliance' see PARA 804 note 2 ante.

12 General Optical Council (Rules relating to Injury or Disease of the Eye) Order of Council 1999, SI 1999/3267, r 3. In referring a person to a registered medical practitioner, a registered optician must take the following steps: (1) he must advise the person to consult such a practitioner (r 4(a)); (2) he must wherever practicable furnish a registered medical practitioner named by the person with a written report of his findings indicating his grounds for thinking the person may be suffering from injury or disease of the eye (r 4(b)); and (3) where action appears urgent, he must also take such measures as are open to him to inform a registered medical practitioner immediately (r 4(c)). If a person who appears to a registered optician to be suffering from injury or disease of the eye is unwilling, on conscientious or other grounds, to consult a registered medical practitioner, the optician must record that fact and the grounds which the person gives for his unwillingness to consult a registered medical practitioner: r 5.

Rule 3 does not require or envisage that the optician will have identified the injury or disease of the eye from which the patient suffers; it is sufficient that the optician concludes that the patient is suffering from some injury or disease of the eye, the diagnosis of which is for the registered medical practitioner to whom the patient is referred: *Threlfall v General Optical Council* [2004] EWHC 2683 (Admin), [2004] All ER (D) 416 (Nov).

13 General Optical Council (Rules relating to Injury or Disease of the Eye) Order of Council 1999, SI 1999/3267, r 6. In such a case the optician must: (1) record in respect of the person consulting him a sufficient description of the injury or disease from which that person appears to be suffering (r 6(a)(i)), his reason for deciding not to refer on that occasion (r 6(a)(ii)), details of advice tendered to the patient (r 6(a)(iii)), and an account of any action taken under the provisions of r 7 (see the text to notes 14-15 infra) (r 6(a)(iv)); and (2) if appropriate, and with the consent of the person consulting him, inform that person's general medical practitioner of those recorded matters (r 6(b)).

14 For the meaning of 'dispensing optician' see PARA 807 note 8 post.

15 General Optical Council (Rules relating to Injury or Disease of the Eye) Order of Council 1999, SI 1999/3267, r 7. In such a case, the optician must record that he has so referred together with details of the injury or disease from which that person appears to be suffering and any advice tendered to that person: r 7. For the meaning of 'ophthalmic optician' see PARA 804 note 2 ante.

16 Ibid r 8(a).

17 le treatment in accordance with rules made under the Opticians Act 1989 s 31(1)(d) (see PARA 824 post): General Optical Council (Rules relating to Injury or Disease of the Eye) Order of Council 1999, SI 1999/3267, r 8(b).

## UPDATE

### 803-812 Regulation of the Profession

Notwithstanding anything in any enactment, proceedings for an offence under the Opticians Act 1989 Pt 4 (ss 24-30A) may be begun at any time within the period of six months beginning with the date on which evidence sufficient in the opinion of the General Optical Council to justify a prosecution for the offence comes to its knowledge, or within a period of two years beginning with the date of the commission of the offence, whichever period first expires: s 30A (added by SI 2005/848).

### 806 Restrictions on the treatment of eye injury or disease

TEXT AND NOTES 9-12--Reference to registered optician now to registered optometrist or registered dispensing optician: SI 1999/3267 r 3 (amended by SI 2005/1476).

NOTE 12--References to registered optician are now to registered optometrist or registered dispensing optician: SI 1999/3267 rr 4, 5 (r 4 amended by SI 2005/848; SI 1999/3267 r 5 amended by SI 2005/848, SI 2005/1476).

NOTE 13--In head (1) reference to advice is now to advice or medical or clinical treatment: SI 1999/3267 r 6(a)(iii) (amended by SI 2005/1476).

TEXT AND NOTES 14, 15--Replaced. As an exception to the duty to refer to a registered medical practitioner, (1) a registered dispensing optician may refer the person consulting him to a registered optometrist; or (2) a registered optometrist or dispensing optician may refer the person consulting him to (a) a person other than a registered medical practitioner who provides and who has the appropriate qualifications or expertise to provide medical or clinical treatment for the injury or disease of the eye from which the person consulting him appears to be suffering, or (b) a person or body one of whose functions is to refer or to organise the referral of persons who having consulted a registered optometrist or dispensing optician appear to that optometrist or dispensing optician to be suffering from an injury or disease of the eye to a registered medical practitioner or a person falling within head (b): SI 1999/3267 r 7 (substituted by SI 2005/1476).

Where a registered optometrist or dispensing optician makes a referral under SI 1999/3267 r 7, he must (i) record in respect of the person consulting him, (A) that he has made the referral and the date of the referral, (B) a sufficient description of the injury or disease from which that person appears to be suffering, and (C) details of any advice or medical or clinical treatment tendered to the patient; and (ii) provide to the person to whom the referral is made a written report of his findings indicating (A) his grounds for thinking that the person may be suffering from injury or disease of the eye, (B) the urgency of the case, and (C) where the referral is made to a person falling within head (2)(b), instructions as to whether the patient should be referred to a registered medical practitioner, or to a person who is not a registered medical practitioner, in which case the instructions must include what qualifications or expertise that person must have: r 7A (added by SI 2005/1476).

The duty to refer under SI 1999/3267 r 3 does not apply to a registered optometrist who has the supplementary prescriber specialty entered on the register against his name under the General Optical Council (Registration Rules) 2005, SI 2005/1478, r 10, and who is acting under and in accordance with the Prescription Only Medicines (Human Use) Order 1997, SI 1997/1830, art 3B: SI 1999/3267 r 7B (added by SI 2005/1476).



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7. OPTICIANS/(1) REGULATION OF THE PROFESSION/807. Restrictions on the sale and supply of optical appliances.

### **807. Restrictions on the sale and supply of optical appliances.**

A person<sup>1</sup> must not sell<sup>2</sup> any optical appliance<sup>3</sup> unless the sale is effected by or under the supervision of a registered medical practitioner<sup>4</sup> or a registered optician<sup>5</sup>. A person who contravenes this prohibition is liable on summary conviction to a fine<sup>6</sup>. The prohibition applies also to the supply of an optical appliance in the course of the practice or business of an ophthalmic optician<sup>7</sup> or dispensing optician<sup>8</sup>, whether by the person carrying on the practice or business or by a person employed by him, as it applies to the sale of an optical appliance, if the supply was effected in pursuance of arrangements made with a Minister of the Crown or government department<sup>9</sup> or with certain other bodies<sup>10</sup>.

However, the prohibition does not apply to: (1) the sale of an optical appliance to: (a) a registered medical practitioner, registered optician or enrolled<sup>11</sup> body corporate for the purpose of his practice or his or its business<sup>12</sup>; (b) a manufacturer of or dealer in optical appliances for the purposes of his business<sup>13</sup>; (c) any authority or person carrying on a hospital, clinic, nursing home or other institution providing medical or surgical treatment<sup>14</sup>; (d) a Minister of the Crown or government department<sup>15</sup>; or (2) the sale of such an appliance for the purpose of export<sup>16</sup>; or (3) the sale for a person not under the age of 16 years of spectacles which have two single vision lenses of the same positive spherical power not exceeding four dioptries where the sale is wholly for the purpose of correcting, remedying or relieving presbyopia<sup>17</sup>; or (4) to the sale of optical appliances, not including contact lenses or any optical appliance for a person under 16 years of age<sup>18</sup>, which are exempted from the prohibition by order made by the Privy Council<sup>19</sup>.

Exemption is granted in respect of spectacles<sup>20</sup> which are not for persons under 16 or persons who are registered blind or partially sighted, except in the latter case where the seller does not know and has no reason to suspect that it is for such a person, or the spectacles are frames or mounts sold or supplied without lenses<sup>21</sup>. This exemption is subject to the conditions that: (i) optical appliances consisting of or including one or more lenses must be in accordance with a written prescription which has been given by a registered medical practitioner or registered<sup>22</sup> ophthalmic optician following a testing of sight<sup>23</sup> by him and bears a date not earlier than two years before the prescription is presented to the proposed seller of the appliance<sup>24</sup>; (ii) neither cellulose nitrate nor celluloid has been used in the manufacture of the appliance or any of part of it<sup>25</sup>; (iii) statutory provisions as to the quality and fitness of the appliance, and the care and skill exercised in the provision of any connected services, are not varied or negatived, by express agreement or otherwise<sup>26</sup>; (iv) in certain circumstances<sup>27</sup>, where the appliance consists of or includes one or more lenses<sup>28</sup>, the seller has verified by means of a focimeter that the appliance is in accordance with the prescription<sup>29</sup>, and has checked that the distance between the customer's cornea and the back vertex of the lens is in accordance with the prescription, if that distance is indicated in relation to the power of the lens, and has made any necessary adjustment<sup>30</sup>, and the optical centre of the lens is aligned with the centre of the pupil unless the prescription otherwise provides<sup>31</sup>; (v) the appliance is sold on terms which include a condition, binding the seller, that head (i) above and, where appropriate, heads (ii) and (iii) above are fulfilled<sup>32</sup>.

1 For the meaning of 'person' see PARA 7 note 5 ante.

2 Ie subject to the provisions of the Opticians Act 1989 s 27(2)-(9): see the text to notes 6-19 infra.

3 For the meaning of 'optical appliance' see PARA 804 note 2 ante.

4 For the meaning of 'registered medical practitioner' see PARA 4 ante.

5 Opticians Act 1989 s 27(1). For the meaning of 'registered optician' see PARA 839 note 4 post.

As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

6 Opticians Act 1989 s 27(10). The penalty is a fine not exceeding level 4 on the standard scale: see s 27(10). As to the standard scale see PARA 185 note 11 ante. As to offences by bodies corporate see PARA 812 post. As to the position where an offence is committed after the death or bankruptcy of an optician see s 29(3), (4); and PARA 811 post. On a prosecution, it is a defence for the defendant to prove that he sold the appliance as an antique or second-hand article and that he did not know, and had no reason to believe, that the appliance was bought for the purpose of being used for correcting, remedying or relieving a defect of sight: s 27(9).

7 For the meaning of 'ophthalmic optician' see PARA 804 note 2 ante.

8 'Dispensing optician' means a person engaged or proposing to engage in the fitting and supply of optical appliances: Opticians Act 1989 s 36(1).

9 Ibid s 27(4)(a). As to Ministers of the Crown and government departments see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 354 et seq.

10 Ibid s 27(4)(b). The other bodies referred to are those on which functions are conferred by, or by virtue of, the National Health Service Act 1977 or the National Health Service and Community Care Act 1990, or corresponding provisions in Scotland or Northern Ireland: Opticians Act 1989 s 27(4)(b) (amended by the National Health Service and Community Care Act 1990 s 66(1), Sch 9 para 37). For the meaning of 'functions' see PARA 830 note 3 post. See further HEALTH SERVICES vol 54 (2008) PARA 295 et seq.

11 For the meaning of 'enrolled' see PARA 842 note 1 post.

12 Opticians Act 1989 s 27(5)(a).

13 Ibid s 27(5)(b).

14 Ibid s 27(5)(c).

15 Ibid s 27(5)(d).

16 Ibid s 27(5)(e).

17 Ibid s 27(2), (3). Lenses have the same positive spherical power if the difference between them is within the tolerances set out in the British Standard Specification: s 27(3).

18 Ibid s 27(8).

19 Ibid s 27(5)(f), (6). Any such order relating to optical appliances consisting of or including one or more lenses must specify, as a condition subject to which the sale of any such appliance is so exempted, the condition that the appliance must be in accordance with a written prescription which: (1) has been given by a registered medical practitioner or registered ophthalmic optician following a testing of sight by him (s 27(7)(a)); and (2) bears a date not more than such time as is specified in the order before the prescription is presented to the proposed seller of the appliance (s 27(7)(b)). By virtue of the Interpretation Act 1978 s 17(2)(b), the Sale of Optical Appliances Order of Council 1984, SI 1984/1778, has effect as if made under the Opticians Act 1989 s 27(6). As to the making of orders by the Privy Council see PARA 825 post. As to the powers of the Privy Council under the Opticians Act 1989 see PARAS 834-835 post. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

20 'Spectacles' includes all forms of eyeglasses designed to correct, remedy or relieve a defect of sight, except contact lenses or any appliance sold in pursuance of a prescription which identifies the appliance as a 'low vision aid', and includes frames or mounts sold or supplied without lenses, or lenses sold or supplied without frames or mounts, which are intended for use as part of such eyeglasses: Sale of Optical Appliances Order of Council 1984, SI 1984/1778, art 1(2).

21 Ibid art 2.

22 For the meaning of 'registered' see PARA 838 note 2 post.

23 As to the meaning of 'testing sight' see PARA 804 note 3 ante.

24 Sale of Optical Appliances Order of Council 1984, SI 1984/1778, art 3(1)(c), (2)(a). Each lens must conform to specified requirements of the appropriate British Standard: art 3(2)(b), (c). An appliance is taken not to be in accordance with the prescription if it does not conform to the requirements of the British Standard within the specified tolerances: art 3(4).

25 Ibid art 3(1)(a).

26 Ibid art 3(1)(b). The statutory provisions referred to in the text are the Supply of Goods and Services Act 1982 s 13; and the Sale of Goods Act 1979 s 14. See CONTRACT; SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARAS 467, 470.

27 In the case of an appliance other than an appliance which the prescription indicates is for correcting, remedying or relieving a defect in near sight, each lens of which has two spherical surfaces and is of a positive power not exceeding five dioptres, and no lens of which is bifocal or multifocal: Sale of Optical Appliances Order of Council 1984, SI 1984/1778, art 3(1)(d)(i)-(iv).

28 Ibid art 3(1)(d).

29 Ibid art 3(3)(a).

30 See ibid art 3(3)(b). Where the appliance consists of one or more lenses for use with a frame or mount not supplied or sold therewith, the references to 'appliance' in art 3(3)(b), (c) include the lens or lenses and the frame or mount: art 3(5).

31 See ibid art 3(3)(c). See also note 30 supra.

32 Ibid art 3(1)(e).

## **UPDATE**

### **803-812 Regulation of the Profession**

Notwithstanding anything in any enactment, proceedings for an offence under the Opticians Act 1989 Pt 4 (ss 24-30A) may be begun at any time within the period of six months beginning with the date on which evidence sufficient in the opinion of the General Optical Council to justify a prosecution for the offence comes to its knowledge, or within a period of two years beginning with the date of the commission of the offence, whichever period first expires: s 30A (added by SI 2005/848).

### **807 Restrictions on the sale and supply of optical appliances**

TEXT AND NOTES 1-5--Opticians Act 1989 s 27(1)-(3) replaced by s 27(1)-(3C) (substituted by SI 2005/848). Reference to registered optician is now to registered optometrist or registered dispensing optician: 1989 Act s 25(1) (as so substituted).

NOTE 6--Maximum fine now level 5 on the standard scale: 1989 Act s 27(10) (amended by SI 2005/848). Reference to appliance is now to appliance or lens: 1989 Act s 27(9) (amended by SI 2005/848).

TEXT AND NOTES 7-10--References to optical appliance are now to optical appliance or zero powered contact lens: 1989 Act s 27(5) (amended by SI 2005/848).

TEXT AND NOTE 7--Reference to ophthalmic optician is now to optometrist: 1989 Act s 27(4) (amended by SI 2005/848).

NOTE 10--1989 Act s 27(4)(b) further amended: National Health Service (Consequential Provisions) Act 2006 Sch 1 para 127.

TEXT AND NOTES 11, 12--Reference to registered optician or enrolled body corporate is now to registered optometrist, registered dispensing optician or business registrant: 1989 Act s 27(5) (amended by SI 2005/848).

NOTE 19--In head (1) reference to ophthalmic optician is now to optometrist: 1989 Act s 27(7)(a) (amended by SI 2005/848).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7.  
OPTICIANS/(1) REGULATION OF THE PROFESSION/808. Fitting of contact lenses.

### **808. Fitting of contact lenses.**

Subject to the exceptions described below, a person may not fit contact lenses unless he is a registered medical practitioner<sup>1</sup> or registered optician<sup>2</sup>, and if he does so he is liable on summary conviction to a fine<sup>3</sup>. The prohibition does not apply to the fitting of contact lenses by a person recognised by a medical authority<sup>4</sup> as a medical student if carried out as part of either a course of instruction or an examination approved by that authority for medical students<sup>5</sup>. The General Optical Council<sup>6</sup> may by rules exempt from the prohibition the fitting of contact lenses by persons training as opticians, or any prescribed class of them, in such cases and subject to compliance with such conditions as may be prescribed by the rules<sup>7</sup>. The Council may also make rules: (1) prohibiting or regulating the prescription, supply and fitting by registered opticians, enrolled<sup>8</sup> bodies corporate and their employees of contact lenses<sup>9</sup>; and (2) specifying requirements which they must meet if they are to prescribe, fit or supply contact lenses<sup>10</sup>.

A registered optician must not fit<sup>11</sup> a contact lens unless he holds an approved qualification<sup>12</sup>, or certification<sup>13</sup>, or unless the lens is fitted by him under the supervision of a registered optician holding an approved qualification or certification<sup>14</sup>. A registered optician may take or use a name, title, addition or description indicating that he is qualified to fit such lenses only if he is in fact so qualified<sup>15</sup>. A registered optician whose business is concerned with the fitting of contact lenses may employ for the purpose of fitting such lenses only registered medical practitioners or persons otherwise entitled<sup>16</sup> to fit such lenses<sup>17</sup>. An enrolled body corporate with such a business must ensure that the arrangements for carrying on the business are such as to secure that lenses are fitted only by such persons<sup>18</sup>. Unless he prescribes them personally, an optician must not begin to fit contact lenses without specific instructions to supply them, including a recent spectacle prescription and other relevant details, from a registered medical practitioner or registered ophthalmic optician<sup>19</sup>. An optician who fits a person with a contact lens, on completing the fitting, must give to him a written statement of the particulars necessary to enable the lens to be replicated<sup>20</sup>.

1 For the meaning of 'registered medical practitioner' see PARA 4 ante.

2 Opticians Act 1989 s 25(1). For the meaning of 'registered optician' see PARA 839 note 4 post.

As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

3 Opticians Act 1989 s 25(4). The penalty is a fine not exceeding level 4 on the standard scale: see s 25(4). As to the standard scale see PARA 185 note 11 ante. As to the position where an offence is committed after the death or bankruptcy of an optician see s 29(3), (4); and PARA 811 post.

4 For the meaning of 'medical authority' see PARA 804 note 6 ante.

5 Opticians Act 1989 s 25(2).

6 As to the General Optical Council see PARA 813 et seq post.

7 Opticians Act 1989 s 25(3). As to the making of rules see PARA 825 post. For the meaning of 'prescribed' see PARA 806 note 6 ante. By virtue of the Interpretation Act 1978 s 17(2)(b), the Rules on the Fitting of Contact Lenses 1985, approved by the General Optical Council (Rules on the Fitting of Contact Lenses) Order of Council 1985, SI 1985/856, have effect as if made under the Opticians Act 1989 s 25(3).

A person who is training as a dispensing optician or an ophthalmic optician and who falls within one of the prescribed classes may fit a contact lens provided he does so in the course of obtaining practical experience and under the continuous personal supervision of a qualified registered optician or registered medical

practitioner: General Optical Council (Rules on the Fitting of Contact Lenses) Order of Council 1985, SI 1985/856, r 3. For the meaning of 'ophthalmic optician' see PARA 804 note 2 ante; and for the meaning of 'dispensing optician' see PARA 807 note 8 ante. 'Qualified registered optician' means a registered optician who holds an approved qualification, as defined in the General Optical Council (Contact Lens (Qualifications etc) Rules) Order of Council 1988, SI 1988/1305, (see note 12 infra) or who has been granted certification as a person qualified to fit contact lenses in accordance with the provisions of that order (see note 13 infra): General Optical Council (Rules on the Fitting of Contact Lenses) Order of Council 1985, SI 1985/856, r 2(a). The prescribed classes of persons are: (1) persons engaged in an appropriate course of instruction (r 4(1)); (2) persons who either have completed an appropriate course of instruction or are holders of a qualification for the time being recognised under the Opticians Act 1989 s 12(2) (see PARA 827 post), and who are undertaking a period of pre-registration training as a dispensing optician or an ophthalmic optician under the supervision of an examining body (General Optical Council (Rules on the Fitting of Contact Lenses) Order of Council 1985, SI 1985/856, r 4(2)); (3) persons who have been accepted by an examining body to sit, without further part-time or full-time study, the examinations for an approved qualification by virtue of having completed an appropriate course of instruction (r 4(3)); (4) persons engaged in a course of instruction provided by an approved training institution leading to a qualification approved by the General Optical Council for inclusion in the register (r 4(4)). 'Appropriate course of instruction' means a course of instruction as a dispensing optician or an ophthalmic optician provided by an approved training institution; and 'examining body' means a body granting, for the time being, an approved qualification: r 2(a). For the meaning of 'approved training institution' see PARA 827 note 2 post; and for the meaning of 'approved qualification' see PARA 827 note 4 post.

8 For the meaning of 'enrolled' see PARA 842 note 1 post. As to enrolled bodies corporate see PARAS 842-843 post.

9 Opticians Act 1989 s 31(1)(e). Such rules may make different provision for different classes of cases: s 31(6). By virtue of the Interpretation Act 1978 s 17(2)(b), the Contact Lens (Qualifications etc) Rules 1988, approved by the General Optical Council (Contact Lens (Qualifications etc) Rules) Order of Council 1988, SI 1988/1305 (see the text to notes 11-19 infra), and the Contact Lens (Specification) Rules 1988, approved by the General Optical Council Contact Lens (Specification) Rules Order of Council 1989, SI 1989/791 (see the text to note 20 infra), have effect as if made under the Opticians Act 1989 s 31(1)(e).

10 Ibid s 31(3). This power is a power: (1) in relation to registered opticians or employees of registered opticians or of enrolled bodies corporate, to specify qualifications which they must have (s 31(4)(a)); and (2) in relation to enrolled bodies corporate, to specify conditions which they must satisfy (s 31(4)(b)). Such rules may make different provision for different classes of cases: s 31(6). By virtue of the Interpretation Act 1978 s 17(2)(b), the Contact Lens (Qualifications etc) Rules 1988, approved by the General Optical Council (Contact Lens (Qualifications etc) Rules) Order of Council 1988, SI 1988/1305 (see the text to notes 11-19 infra), have effect as if made under the Opticians Act 1989 s 31(3), (4).

11 'Fitting' means the supply and fitting of contact lenses and also the subsequent provision of clinical management and adjustment of the fitting of such lenses for a period of six months from their initial supply to the person fitted; and 'fit' and 'fitted' must be construed accordingly: General Optical Council (Contact Lens (Qualifications etc) Rules) Order of Council 1988, SI 1988/1305, r 2(2).

12 Ibid r 3(a). 'Approved qualification' means a qualification listed in the General Optical Council (Contact Lens (Qualifications etc) Rules) Order of Council 1988, SI 1988/1305, Appendix A (amended by SI 1989/375): General Optical Council (Contact Lens (Qualifications etc) Rules) Order of Council 1988, SI 1988/1305, r 2(2).

13 Ibid r 3(b). As regards opticians who did not before 30 September 1989 hold approved qualifications, provision was made for opticians to obtain certification or provisional registration in order to be entitled to fit contact lenses: see r 5, 6. Applications had to be made before that date: see r 8. Provisional registrations expired no later than 31 December 1990 (see r 7), but no time limit was set in respect of certification which continues to be valid so long as the optician remains a registered optician: see r 9. A registered optician who did not hold an approved qualification might apply for certification if: (1) in the three years immediately prior to the date of his application he had fitted contact lenses to not fewer than 150 persons; or (2) his name was annotated in the register as an optician having experience as a contact lens practitioner or fitter under arrangements operated by the Council prior to 1 January 1972; or (3) he was engaged and had been continuously so engaged for at least three years in teaching contact lens practice to persons training as opticians in an approved training institution; or (4) if head (1) supra did not apply, provided that he had acquired sufficient practical experience and competence to enable him to fit contact lenses: see r 5(2), (3). Certification may be cancelled if the application is subsequently shown to contain false or misleading statements, if an erasure order is made with respect to the optician, or if a suspension order is made with respect to him: see r 10. As to such orders see PARA 846 et seq post.

14 Ibid r 4.

15 Ibid r 14. The Trade Descriptions Act 1968 s 14(1), which prohibits the making of false or misleading statements as to services, may apply to professional men: see *R v Breeze* [1973] 2 All ER 1141, [1973] 1 WLR 994, CA; and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 495.

16 le by virtue of the General Optical Council (Contact Lens (Qualifications etc) Rules) Order of Council 1988, SI 1988/1305, or the General Optical Council (Rules on the Fitting of Contact Lenses) Order of Council 1985, SI 1985/856 (see note 7 *supra*).

17 General Optical Council (Contact Lens (Qualifications etc) Rules) Order of Council 1988, SI 1988/1305, r 12(1).

18 Ibid r 12(2).

19 Ibid r 13. For the meaning of 'registered ophthalmic optician' see PARA 804 note 2 *ante*. The fitting of contact lenses must be accompanied by the necessary instruction and information on the care, wearing, treatment, cleaning and maintenance of the lenses, and the person fitting them is obliged to provide for clinical management and adjustment for six months from the first fitting: r 15. See also note 11 *supra*.

20 General Optical Council Contact Lens (Specification) Rules Order of Council 1989, SI 1989/791, r 2.

## UPDATE

### 803-812 Regulation of the Profession

Notwithstanding anything in any enactment, proceedings for an offence under the Opticians Act 1989 Pt 4 (ss 24-30A) may be begun at any time within the period of six months beginning with the date on which evidence sufficient in the opinion of the General Optical Council to justify a prosecution for the offence comes to its knowledge, or within a period of two years beginning with the date of the commission of the offence, whichever period first expires: s 30A (added by SI 2005/848).

### 808 Fitting of contact lenses

TEXT AND NOTE 2--Reference to registered optician now to registered optometrist or registered dispensing optician: Opticians Act 1989 s 25(1) (amended by SI 2005/848). See further 1989 Act s 25(5)-(10) (added by SI 2005/848). As to the particulars that must be given by a registered medical practitioner when issuing a specification to a patient to whom he has fitted a contact lens, see the Contact Lens (Specification) and Miscellaneous Amendments Regulations 2005, SI 2005/1481, reg 2.

NOTE 3--Maximum fine now level 5 on the standard scale: 1989 Act s 25(4) (amended by SI 2005/848).

TEXT AND NOTES 4, 5--A registered medical practitioner, a registered optometrist, a registered dispensing optician or a person to whom, by virtue of the 1989 Act s 25(2) or (3), s 25(1) does not apply, must not fit a contact lens for an individual unless where the duty to give an individual a signed written prescription under s 26(2) arises, he has the particulars of such a prescription given to the individual within the period of two years ending on the date the fitting begins, and the fitting begins before any re-examination date specified in that prescription: s 25(1A) (added by SI 2005/848).

TEXT AND NOTE 7--Reference to opticians now to optometrists or dispensing opticians: 1989 Act s 25(3) (amended by SI 2005/848).

TEXT AND NOTES 12, 13--SI 1988/1305 r 3 amended: SI 2008/1940.

NOTE 19--A person is exempted from the duty to provide aftercare under the 1989 Act s 27 if he is not a person to whom SI 1988/1305 r 15(2) refers: r 15(1) (r 15 substituted by SI 2005/1476). The person to whom SI 1988/1305 r 15(2) refers is if only one person supplied a contact lens to the person, that person; or if more than one person supplied

a contact lens to the person, the last person to fit a lens: r 15(2) (r 15 as so substituted).



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7.  
OPTICIANS/(1) REGULATION OF THE PROFESSION/809. Restrictions on the false use of titles.

### **809. Restrictions on the false use of titles.**

It is an offence for any individual to take or use, either alone or in combination with any other words<sup>1</sup>, the title 'ophthalmic optician' or the title 'optometrist' when he is not registered in either of the registers of ophthalmic opticians<sup>2</sup>; or the title 'dispensing optician' when he is not registered in the register of dispensing opticians<sup>3</sup>; or the title 'registered optician'<sup>4</sup> or 'enrolled optician' when he is not registered in any of the registers<sup>5</sup>; or to take or use any name, title, addition or description falsely implying, or otherwise to pretend, that he is registered in any of the registers<sup>6</sup>.

It is also an offence for any body corporate<sup>7</sup> to take or use, either alone or in combination with any other words<sup>8</sup>, the title 'ophthalmic optician' or the title 'optometrist' when it is not enrolled in the list<sup>9</sup> of bodies corporate carrying on business as ophthalmic opticians<sup>10</sup>; or the title 'dispensing optician' when it is not enrolled in the list of bodies corporate carrying on business as dispensing opticians<sup>11</sup>; or the title 'registered optician' or 'enrolled optician' when it is not enrolled in either of the lists<sup>12</sup>; or to take or use any name, title, addition or description falsely implying, or otherwise to pretend, that it is enrolled in either of the lists<sup>13</sup>.

Any individual or body corporate committing any of these offences is liable on summary conviction to a fine<sup>14</sup>.

On any prosecution for an offence of taking or using a name, title or addition falsely implying registration or enrolment, or for otherwise pretending such registration or enrolment<sup>15</sup>, the taking or use of the title of optician by a person or a body corporate<sup>16</sup> is to be taken to imply that he is registered in one of the registers or, as the case may be, it is enrolled in one of the lists; but the implication may be rebutted if the defendant proves that he or it took or, as appropriate, used the title in circumstances where it would have been unreasonable for people to believe, in consequence of his or its taking or use of it, that he was in fact registered in one of the registers or, as the case may be, it was enrolled in either of the lists<sup>17</sup>.

1 Opticians Act 1989 s 28(9). As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

2 Opticians Act 1989 s 28(1)(a). For the meaning of 'ophthalmic optician' see PARA 804 note 2 ante. 'Optometrist', 'optometry' and other similar terms are not defined in the Act. For the meanings of 'register' and 'registered' see PARA 838 note 2 post. As to registration see PARA 837 et seq post.

3 Ibid s 28(1)(b). For the meaning of 'dispensing optician' see PARA 807 note 8 ante.

4 For the meaning of 'registered optician' see PARA 839 note 4 post.

5 Opticians Act 1989 s 28 (1)(c).

6 Ibid s 28(1)(d), (e). As to what constitutes a false implication that a person is a qualified practitioner see the cases cited in PARA 191 note 3 ante. The Trade Descriptions Act 1968 s 14(1), which prohibits the making of false or misleading statements as to services, may apply to professional men: see *R v Breeze* [1973] 2 All ER 1141, [1973] 1 WLR 994, CA; and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 495.

A national of a member state of the European Union, Iceland, Norway, Liechtenstein or Switzerland who has been granted authorisation to practise has the right to use: (1) the professional title and designatory letters applicable to the opticians profession in the United Kingdom; and (2) the lawful academic title, and where appropriate its abbreviation, acquired by him in the relevant state in which he formerly qualified and in the language of that state: European Communities (Recognition of Professional Qualifications) (First General System) Regulations 2005, SI 2005/18, reg 10(1)(a), (b). Where a person makes use of an academic title, the General Optical Council may require that the title be followed by the name and location of the establishment or

examining board which awarded it: reg 10(2). As to authorisation to practise see PARA 840 text to notes 16-17 post. For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

7 As to offences by bodies corporate see PARA 812 post.

8 Opticians Act 1989 s 28(9).

9 For the meaning of 'enrolled' see PARA 842 note 1 post; and for the meaning of 'list' see PARA 841 note 4 post. As to the enrolment of bodies corporate see PARAS 841-843 et seq post.

10 Opticians Act 1989 s 28(5)(a).

11 Ibid s 28(5)(b).

12 Ibid s 28(5)(c).

13 Ibid s 28(5)(d), (e). See also note 6 supra.

14 Ibid s 28(1), (5). The penalty is a fine of an amount not exceeding level 4 on the standard scale: see s 28(1), (5). As to the standard scale see PARA 185 note 11 ante. As to the waiver of the prohibition in the case of the death or bankruptcy of the optician see PARA 811 post.

15 Ie the offences under ibid s 28(1)(d), (e), (5)(d), (e): see the text to notes 6, 13 supra.

16 This provision applies to a person who, or body corporate which, carries on the business: (1) of selling optical appliances (ibid s 28(3)(a), (7)(a)); or (2) of supplying optical appliances in pursuance of arrangements made as mentioned in s 27(4) (see PARA 807 ante) (s 28(3)(b), (7)(b)). It does not, however, apply to one who or which sells or supplies optical appliances only as mentioned in s 27(5)(a)-(e) (see PARA 807 ante): s 28(4), (8). For the meaning of 'optical appliance' see PARA 804 note 2 ante.

17 Ibid s 28(2), (6).

## **UPDATE**

### **803-812 Regulation of the Profession**

Notwithstanding anything in any enactment, proceedings for an offence under the Opticians Act 1989 Pt 4 (ss 24-30A) may be begun at any time within the period of six months beginning with the date on which evidence sufficient in the opinion of the General Optical Council to justify a prosecution for the offence comes to its knowledge, or within a period of two years beginning with the date of the commission of the offence, whichever period first expires: s 30A (added by SI 2005/848).

### **809 Restrictions on the false use of titles**

NOTES 2, 3, 5--Opticians Act 1989 s 28(1)(a), (b), (c) amended: SI 2007/3101.

NOTE 6--SI 2005/18 replaced: European Communities (Recognition of Professional Qualifications) Regulations 2007, SI 2007/2781 (amended by SI 2008/2683, SI 2009/1587, SI 2009/1885).

NOTE 14--Maximum fine now level 5 on the standard scale: Opticians Act 1989 s 28(1) (amended by SI 2005/848).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7.  
OPTICIANS/(1) REGULATION OF THE PROFESSION/810. Restrictions on advertising.

### **810. Restrictions on advertising.**

The General Optical Council<sup>1</sup> may make rules<sup>2</sup> prohibiting or regulating the use by registered opticians<sup>3</sup> and enrolled bodies corporate<sup>4</sup> of any means of giving publicity, whether by advertisements or not, to their practice or business of ophthalmic or dispensing opticians<sup>5</sup>. However, this does not include the power to prohibit the display, for the purposes of the practice or business, of optical appliances<sup>6</sup> or parts of optical appliances on premises where the fitting and supply of optical appliances is being carried on as part of that business or practice, or any building comprising those premises<sup>7</sup>.

A registered optician or an enrolled body corporate must not use in relation to his or its practice or business a means of giving publicity which is not legal, decent, honest or truthful, or which is of a character that could reasonably be regarded as likely to bring the profession of ophthalmic optician or of dispensing optician into disrepute, or which contains any reference to the efficiency of or the facilities given by other registered opticians or enrolled bodies corporate<sup>8</sup>, or, in relation to his or its own practice or business, which makes a claim not capable of substantiation, or which suggests superiority over any other practice or business<sup>9</sup>.

1 As to the General Optical Council see PARA 813 et seq post.

2 As to the making of rules see PARA 825 post.

3 For the meaning of 'registered optician' see PARA 839 note 4 post.

4 For the meaning of 'enrolled' see PARA 842 note 1 post. As to the enrolment of bodies corporate see PARAS 841-843 et seq post.

5 Opticians Act 1989 s 31(1)(a). Such rules may make different provision for different classes of cases: s 31(6). For the meaning of 'ophthalmic optician' see PARA 804 note 2 ante; and for the meaning of 'dispensing optician' see PARA 807 note 8 ante. By virtue of the Interpretation Act 1978 s 17(2)(b), the Rules on Publicity 1985, approved by the General Optical Council (Rules on Publicity) Order of Council 1985, SI 1985/203 (see the text to notes 8-9 infra), have effect under the Opticians Act 1989 s 31(1)(a).

As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

6 For the meaning of 'optical appliance' see PARA 804 note 2 ante.

7 Opticians Act 1989 s 31(2).

8 General Optical Council (Rules on Publicity) Order of Council 1985, SI 1985/203, r 3(a). The standard to be applied is that considered appropriate for professional persons: *Le Scroog v General Optical Council* [1982] 3 All ER 257, [1982] 1 WLR 1238, PC, decided under previous rules which required publicity to be of a 'dignified and restrained character'.

9 General Optical Council (Rules on Publicity) Order of Council 1985, SI 1985/203, r 3(b).

## **UPDATE**

### **803-812 Regulation of the Profession**

Notwithstanding anything in any enactment, proceedings for an offence under the Opticians Act 1989 Pt 4 (ss 24-30A) may be begun at any time within the period of six months beginning with the date on which evidence sufficient in the opinion of the

General Optical Council to justify a prosecution for the offence comes to its knowledge, or within a period of two years beginning with the date of the commission of the offence, whichever period first expires: s 30A (added by SI 2005/848).

### **810 Restrictions on advertising**

TEXT AND NOTES--As to exercise of power to make rules, see the Opticians Act 1989 s 31A (added by SI 2005/848).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7.  
OPTICIANS/(1) REGULATION OF THE PROFESSION/811. Death or bankruptcy of registered optician.

### **811. Death or bankruptcy of registered optician.**

Where a registered optician<sup>1</sup> dies at a time when he is carrying on business or is in practice as an optician, the prohibition on the false use of titles<sup>2</sup> does not, during the three years beginning with his death or such longer period as the General Optical Council<sup>3</sup> in any particular case allows, operate to prevent his executors or administrators<sup>4</sup>, his widow<sup>5</sup>, any of his children<sup>6</sup>, or trustees on behalf of his widow or any of his children<sup>7</sup>, from taking or using in relation to that business or practice, in conjunction with the name in which he carried it on, any title which he was entitled to take or use immediately before his death<sup>8</sup>. Similarly, where a registered optician becomes bankrupt at a time when he is carrying on business or is in practice as an optician, that prohibition does not, during the three years beginning with the bankruptcy, operate to prevent his trustee in bankruptcy from taking or using in relation to that business or practice, in conjunction with the name in which the bankrupt carried it on, any title which he was entitled to take or use immediately before his bankruptcy<sup>9</sup>.

Where a person, by virtue of these dispensations, takes or uses any title in relation to the business or practice of a deceased or bankrupt optician and an offence is committed, in the course of that business or practice, against any of the provisions which place restrictions upon the testing of sight, on the sale and supply of optical appliances and the fitting of contact lenses<sup>10</sup>, the disciplinary committee of the General Optical Council may, if it thinks fit, direct that the relevant dispensation cease to apply in relation to that business or practice<sup>11</sup>.

1 For the meaning of 'registered optician' see PARA 839 note 4 post.

2 *Ie* under the Opticians Act 1989 s 28 (see PARA 809 ante).

3 As to the General Optical Council see PARA 813 et seq post.

4 Opticians Act 1989 s 29(1)(a). As to executors and administrators see EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARA 1 et seq.

As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

5 Opticians Act 1989 s 29(1)(b). As from a day to be appointed, this provision is amended so as to refer to his surviving spouse or his surviving civil partner: s 29(1)(b) (prospectively substituted by the Civil Partnership Act 2004 ss 261(1), 263(10)(b), Sch 27 para 135). At the date at which this volume states the law no such day had been appointed. A woman cannot be a person's widow unless she was his wife at the time of his death: see *Colgan v Department of Health for Scotland* 1937 SC 16; *Re Norman's Will Trusts, Mitchell v Cozens* (1940) 84 Sol Jo 186. There is little doubt that if a woman remarries she ceases to be the widow of her deceased husband: cf *Re Norman's Will Trusts, Mitchell v Cozens* supra.

6 Opticians Act 1989 s 29(1)(c). As to the construction of statutory references to children see the Family Law Reform Act 1987 s 1; and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 125.

7 Opticians Act 1989 s 29(1)(d). As from a day to be appointed, this provision is amended so as to refer to trustees on behalf of his surviving spouse or his surviving civil partner or any of his children: s 29(1)(d) (prospectively amended by the Civil Partnership Act 2004 s 263(10)(b), Sch 27 para 135). At the date at which this volume states the law no such day had been appointed.

8 Opticians Act 1989 s 29(1).

9 *Ibid* s 29(2). As to trustees in bankruptcy see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 316 et seq. As to bankruptcy generally see BANKRUPTCY AND INDIVIDUAL INSOLVENCY.

10     Ibid ss 24, 25, 27: see PARAS 804, 807-808 ante. For the meaning of 'optical appliance' see PARA 804 note 2 ante.

11     Ibid s 29(3). As to the disciplinary committee see PARAS 857-858 post. The Opticians Act 1989 has effect in relation to any case in which it is alleged that there has been a conviction for any offence under ss 24, 25, 27, and to any direction under s 29(3), as it has effect in relation to a disciplinary case and any disciplinary order: s 29(4). For the meaning of 'disciplinary case' see PARA 855 note 2 post; and for the meaning of 'disciplinary order' see PARA 846 post. As to discipline generally see PARA 846 et seq post.

## **UPDATE**

### **803-812 Regulation of the Profession**

Notwithstanding anything in any enactment, proceedings for an offence under the Opticians Act 1989 Pt 4 (ss 24-30A) may be begun at any time within the period of six months beginning with the date on which evidence sufficient in the opinion of the General Optical Council to justify a prosecution for the offence comes to its knowledge, or within a period of two years beginning with the date of the commission of the offence, whichever period first expires: s 30A (added by SI 2005/848).

### **811 Death or bankruptcy of registered optician**

TEXT AND NOTES--See Opticians Act 1989 s 29(2A) (added by SI 2007/3101).

NOTES 5, 7--Day now appointed: SI 2005/3175.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7.  
OPTICIANS/(1) REGULATION OF THE PROFESSION/812. Offences by bodies corporate.

### **812. Offences by bodies corporate.**

Where an offence under the Opticians Act 1989 which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any responsible officer<sup>1</sup> of the body corporate or of a branch or department of the body corporate or any person purporting to act in any such capacity, he as well as the body corporate is deemed to be guilty of the offence and is liable to be proceeded against and punished accordingly<sup>2</sup>.

<sup>1</sup> 'Responsible officer' means any director, manager, secretary or other similar officer of a body corporate or of a branch or department of a body corporate or any person purporting to act in any such capacity: Opticians Act 1989 ss 17(13), 36(1).

As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

<sup>2</sup> Opticians Act 1989 s 30.

### **UPDATE**

### **803-812 Regulation of the Profession**

Notwithstanding anything in any enactment, proceedings for an offence under the Opticians Act 1989 Pt 4 (ss 24-30A) may be begun at any time within the period of six months beginning with the date on which evidence sufficient in the opinion of the General Optical Council to justify a prosecution for the offence comes to its knowledge, or within a period of two years beginning with the date of the commission of the offence, whichever period first expires: s 30A (added by SI 2005/848).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7.  
OPTICIANS/(2) THE GENERAL OPTICAL COUNCIL/(i) Constitution, Members and Officers/813.  
Functions and constitution.

## **(2) THE GENERAL OPTICAL COUNCIL**

### **(i) Constitution, Members and Officers**

#### **813. Functions and constitution.**

The General Optical Council<sup>1</sup> has the general function of promoting high standards of professional education and professional conduct among opticians and the additional functions assigned to it by or under the Opticians Act 1989<sup>2</sup>.

The Council consists<sup>3</sup> of nine persons nominated by the Privy Council<sup>4</sup>, six persons chosen to represent registered ophthalmic opticians<sup>5</sup>, five persons chosen to represent registered dispensing opticians<sup>6</sup>, four persons nominated by the examining bodies<sup>7</sup>, and four registered medical practitioners<sup>8</sup>.

1 The Council is a body corporate: Opticians Act 1989 s 1(1). The Council was established under the Opticians Act 1958 s 1(1) (repealed) and is continued by the Opticians Act 1989 s 1(1). As to bodies corporate see COMPANIES; CORPORATIONS.

As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

2 Opticians Act 1989 s 1(2). As to the duty of the Council to co-operate with the Council for the Regulation of Health Care Professionals, and as to the power of that Council to require the General Optical Council to make rules see PARA 836 post.

3 The Privy Council may by order alter membership of the Council: see *ibid* Sch 1 para 13; and PARA 821 post. As to the exercise of powers of the Privy Council under the Opticians Act 1989 see PARA 835 post. As to the Privy Council generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

As to the retirement of members of the General Optical Council see PARA 818 post; and as to their resignation see PARA 819 post. As to the power of the Council to remunerate its members see PARA 823 post.

4 *Ibid* s 1(4), Sch 1 para 1(a) (Sch 1 para 1(a), (e) amended by the General Optical Council (Membership) Order of Council 1998, SI 1998/3117, art 2(2)(a), (c)). As to such members see further PARA 814 post.

5 Opticians Act 1989 Sch 1 para 1(b) (Sch 1 para 1(b), (c) amended, and Sch 1 para 1(d) substituted, by the General Optical Council (Membership) Order of Council 1998, SI 1998/3117, art 3(2)(a)-(c)). As to such members see further PARA 815 post. For the meaning of 'registered ophthalmic optician' see PARA 804 note 2 ante.

6 Opticians Act 1989 Sch 1 para 1(c) (as amended: see note 5 *supra*). As to such members see further PARA 815 post. For the meaning of 'registered dispensing optician' see PARA 838 note 7 post.

7 *Ibid* Sch 1 para 1(d) (as substituted: see note 5 *supra*). As to such members see further PARA 816 post.

8 *Ibid* Sch 1 para 1(e) (as amended: see note 4 *supra*). As to such members see further PARA 817 post. For the meaning of 'registered medical practitioner' see PARA 4 ante.

### **UPDATE**

#### **813-822 Constitution, Members and Officers**

The General Optical Council is now to be constituted as provided for by order of the Privy Council, subject to the Opticians Act 1989 Sch 1 (which relates to the constitution



etc of the Council): s 1(4) (substituted by SI 2008/1774). For general provision as to membership see now the Opticians Act 1989 Sch 1 para 1A (Sch 1 paras 1A-1C substituted by SI 2008/1774). As to the matters which an order under the Opticians Act 1989 s 1(4) must include see Sch 1 para 1B; and as to the registration of members' private interests see Sch 1 para 1C. In exercise of the powers conferred by the Opticians Act 1989 s 1(4), Sch 1 para 1B, the Privy Council has made the General Optical Council (Constitution) Order 2009, SI 2009/442.

### **813 Functions and constitution**

TEXT AND NOTES--In exercising its functions, the Council must (1) have proper regard for (a) the interests of persons using or needing the services of registered optometrists, registered dispensing opticians or business registrants in the United Kingdom; and (b) any differing interests of different categories of registrants; (2) co-operate, in so far as is appropriate and reasonably practicable, with public bodies or other persons concerned with (a) the employment (whether or not under a contract of service) of registered optometrists or registered dispensing opticians; (b) the education or training of individual registrants or other health care professionals; (c) the regulation of, or the co-ordination of the regulation of, other health or social care professionals; (d) the regulation of health services; and (e) the provision, supervision or management of health services: Opticians Act 1989 Sch 1 para 11A(1) (Sch 1 para 11A added by SI 2008/1774). In carrying out its duty to co-operate under head (2), the Council must have regard to any differing considerations relating to practising as a registered optometrist or a registered dispensing optician, or carrying on a business as a business registrant, which apply in England, Scotland, Wales or Northern Ireland: Opticians Act 1989 Sch 1 para 11A(2). For these purposes 'other health care professionals' means persons regulated by a body mentioned in the National Health Service Reform and Health Care Professions Act 2002 s 25(3) (see PARA 294), other than the Council: Opticians Act 1989 Sch 1 para 11A(3).

TEXT AND NOTE 2--For 'professional education and professional conduct among opticians' read 'professional education, conduct and performance among registrants': Opticians Act 1989 s 1(2) (amended by SI 2005/848).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7.  
OPTICIANS/(2) THE GENERAL OPTICAL COUNCIL/(i) Constitution, Members and Officers/814.  
Members nominated by the Privy Council.

#### **814. Members nominated by the Privy Council.**

One of the persons nominated to the General Optical Council<sup>1</sup> by the Privy Council<sup>2</sup> must be a person appearing to it to be specially qualified to advise the General Optical Council on educational problems generally and may be a registered optician<sup>3</sup> or a registered medical practitioner<sup>4</sup> so long as he is not in practice as an optician or medical practitioner<sup>5</sup>. With that exception, however, none of the persons nominated by the Privy Council may be a registered optician<sup>6</sup>, a registered medical practitioner<sup>7</sup> or a director of a body corporate carrying on business as opticians<sup>8</sup>.

1 As to the functions and constitution of the General Optical Council see PARA 813 ante.

2 As to the exercise of powers of the Privy Council under the Opticians Act 1989 see PARA 835 post. As to the Privy Council generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

If, under the Health and Social Care (Community Health and Standards) Act 2003 s 187, the Secretary of State has given a direction to a special health authority to exercise any function of a Minister of the Crown relating to the making of appointments to a body mentioned in s 187, the Privy Council may direct the special health authority to exercise to the extent specified in the direction its functions in relation to the nomination of persons to be members of the General Optical Council: Opticians Act 1989 s 1(4), Sch 1 para 2A(1), (2)(a) (added by the Health and Social Care (Community Health and Standards) Act 2003 s 187(8), Sch 12 para 4). As to the Secretary of State see PARA 5 ante. As to special health authorities see HEALTH SERVICES vol 54 (2008) PARA 136 et seq.

As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

3 For the meaning of 'registered optician' see PARA 839 note 4 post.

4 For the meaning of 'registered medical practitioner' see PARA 4 ante.

5 Opticians Act 1989 Sch 1 para 2(2).

6 Ibid Sch 1 para 2(1)(a).

7 Ibid Sch 1 para 2(1)(b).

8 Ibid Sch 1 para 2(1)(c). As to the enrolment of bodies corporate see PARAS 841-843 et seq post.

#### **UPDATE**

#### **813-822 Constitution, Members and Officers**

The General Optical Council is now to be constituted as provided for by order of the Privy Council, subject to the Opticians Act 1989 Sch 1 (which relates to the constitution etc of the Council): s 1(4) (substituted by SI 2008/1774). For general provision as to membership see now the Opticians Act 1989 Sch 1 para 1A (Sch 1 paras 1A-1C substituted by SI 2008/1774). As to the matters which an order under the Opticians Act 1989 s 1(4) must include see Sch 1 para 1B; and as to the registration of members' private interests see Sch 1 para 1C. In exercise of the powers conferred by the Opticians Act 1989 s 1(4), Sch 1 para 1B, the Privy Council has made the General Optical Council (Constitution) Order 2009, SI 2009/442.

**814 Members nominated by the Privy Council**

NOTE 2--1989 Act Sch 1 para 2A repealed: Health Act 2006 Sch 9.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7.  
OPTICIANS/(2) THE GENERAL OPTICAL COUNCIL/(i) Constitution, Members and Officers/815.  
Members representing registered ophthalmic opticians or dispensing opticians.

### **815. Members representing registered ophthalmic opticians or dispensing opticians.**

Subject to provisions relating to casual vacancies<sup>1</sup>, the persons chosen to represent registered ophthalmic opticians<sup>2</sup> or dispensing opticians<sup>3</sup> on the General Optical Council<sup>4</sup> are to be elected in accordance with a scheme made by the Council, and approved by the Privy Council<sup>5</sup>. The General Optical Council may at any time submit to the Privy Council a scheme for the variation or revocation and replacement of the principal scheme or any scheme varying or replacing that scheme<sup>6</sup>.

1 See PARA 819 post.

2 For the meaning of 'registered ophthalmic optician' see PARA 804 note 2 ante.

3 For the meaning of 'dispensing optician' see PARA 807 note 8 ante.

4 As to the functions and constitution of the General Optical Council see PARA 813 ante.

5 Opticians Act 1989 s 1(4), Sch 1 para 3(1). As to such scheme see the General Optical Council Election Scheme 2001, approved by the General Optical Council (Membership) Order of Council 2001, SI 2001/3057. This scheme replaces that made under the Opticians Act 1958 Sch 1 para 3 (repealed) and approved by the Privy Council on 13 May 1974. As to the exercise of powers of the Privy Council under the Opticians Act 1989 see PARA 835 post. As to the Privy Council generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

6 Opticians Act 1989 Sch 1 para 3(2). See note 5 supra.

## **UPDATE**

### **813-822 Constitution, Members and Officers**

The General Optical Council is now to be constituted as provided for by order of the Privy Council, subject to the Opticians Act 1989 Sch 1 (which relates to the constitution etc of the Council): s 1(4) (substituted by SI 2008/1774). For general provision as to membership see now the Opticians Act 1989 Sch 1 para 1A (Sch 1 paras 1A-1C substituted by SI 2008/1774). As to the matters which an order under the Opticians Act 1989 s 1(4) must include see Sch 1 para 1B; and as to the registration of members' private interests see Sch 1 para 1C. In exercise of the powers conferred by the Opticians Act 1989 s 1(4), Sch 1 para 1B, the Privy Council has made the General Optical Council (Constitution) Order 2009, SI 2009/442.

### **815 Members representing registered ophthalmic opticians or dispensing opticians**

NOTE 5--SI 2001/3057 revoked: SI 2008/1774.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7.  
OPTICIANS/(2) THE GENERAL OPTICAL COUNCIL/(i) Constitution, Members and Officers/816.  
Members nominated by examining bodies.

### **816. Members nominated by examining bodies.**

Of the persons nominated to the General Optical Council<sup>1</sup> by the examining bodies: (1) two are nominated by the College of Optometrists<sup>2</sup>; (2) one, who must be a person engaged in the education or examination of persons training as ophthalmic opticians<sup>3</sup>, is nominated jointly by the Anglia Polytechnic University<sup>4</sup>, the University of Aston<sup>5</sup>, the University of Bradford<sup>6</sup>, the City University<sup>7</sup>, the Glasgow Caledonian University<sup>8</sup>, the University of Manchester Institute of Science and Technology<sup>9</sup>, the University of Ulster<sup>10</sup> and the University of Wales, Cardiff<sup>11</sup>; and (3) one, who must be a person engaged in the education or examination of persons training as dispensing opticians<sup>12</sup>, is nominated by the Association of British Dispensing Opticians, after consulting the Anglia Polytechnic University<sup>13</sup>, the Bradford and Ilkley Community College<sup>14</sup>, the City and Islington College (City Campus)<sup>15</sup> and the Glasgow Caledonian University<sup>16</sup>.

1 As to the functions and constitution of the General Optical Council see PARA 813 ante.

2 Opticians Act 1989 s 1(4), Sch 1 para 4(a) (Sch 1 para 4(a) amended, and Sch 1 para 4(c) substituted, by the General Optical Council (Membership) Order of Council 1998, SI 1998/3117, art 2(2)(d)(i), (ii)).

As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

3 For the meaning of 'ophthalmic optician' see PARA 804 note 2 ante.

4 Opticians Act 1989 Sch 1 para 4(c)(i) (as substituted: see note 2 supra).

5 Ibid Sch 1 para 4(c)(ii) (as substituted: see note 2 supra).

6 Ibid Sch 1 para 4(c)(iii) (as substituted: see note 2 supra).

7 Ibid Sch 1 para 4(c)(iv) (as substituted: see note 2 supra).

8 Ibid Sch 1 para 4(c)(v) (as substituted: see note 2 supra).

9 Ibid Sch 1 para 4(c)(vi) (as substituted: see note 2 supra).

10 Ibid Sch 1 para 4(c)(vii) (as substituted: see note 2 supra).

11 Ibid Sch 1 para 4(c)(viii) (as substituted: see note 2 supra).

12 For the meaning of 'dispensing optician' see PARA 807 note 8 ante.

13 Opticians Act 1989 Sch 1 para 4(d)(i) (added by the General Optical Council (Membership) Order of Council 1998, SI 1998/3117, art 3(e)).

14 Ibid Sch 1 para 4(d)(ii) (as added: see note 13 supra).

15 Ibid Sch 1 para 4(d)(iii) (as added: see note 13 supra).

16 Ibid Sch 1 para 4(d)(iv) (as added: see note 13 supra).

## **UPDATE**

### **813-822 Constitution, Members and Officers**

The General Optical Council is now to be constituted as provided for by order of the Privy Council, subject to the Opticians Act 1989 Sch 1 (which relates to the constitution etc of the Council): s 1(4) (substituted by SI 2008/1774). For general provision as to membership see now the Opticians Act 1989 Sch 1 para 1A (Sch 1 paras 1A-1C substituted by SI 2008/1774). As to the matters which an order under the Opticians Act 1989 s 1(4) must include see Sch 1 para 1B; and as to the registration of members' private interests see Sch1 para 1C. In exercise of the powers conferred by the Opticians Act 1989 s 1(4), Sch 1 para 1B, the Privy Council has made the General Optical Council (Constitution) Order 2009, SI 2009/442.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7.  
OPTICIANS/(2) THE GENERAL OPTICAL COUNCIL/(i) Constitution, Members and Officers/817.  
Medical practitioners nominated as members.

### **817. Medical practitioners nominated as members.**

The four registered medical practitioners<sup>1</sup> on the General Optical Council<sup>2</sup> must be ophthalmologists and must be nominated by the Royal College of Ophthalmologists<sup>3</sup>, and one of the four must be a person appearing to the College to be a suitable person to represent ophthalmologists practising in Scotland<sup>4</sup>.

1 For the meaning of 'registered medical practitioner' see PARA 4 ante.

2 As to the functions and constitution of the General Optical Council see PARA 813 ante.

3 As to the medical Royal Colleges see PARA 64 ante.

4 Opticians Act 1989 s 1(4), Sch 1 para 5 (substituted by the General Optical Council (Membership) Order of Council 1998, SI 1998/3117, art 2(2)(e)).

As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

## **UPDATE**

### **813-822 Constitution, Members and Officers**

The General Optical Council is now to be constituted as provided for by order of the Privy Council, subject to the Opticians Act 1989 Sch 1 (which relates to the constitution etc of the Council): s 1(4) (substituted by SI 2008/1774). For general provision as to membership see now the Opticians Act 1989 Sch 1 para 1A (Sch 1 paras 1A-1C substituted by SI 2008/1774). As to the matters which an order under the Opticians Act 1989 s 1(4) must include see Sch 1 para 1B; and as to the registration of members' private interests see Sch 1 para 1C. In exercise of the powers conferred by the Opticians Act 1989 s 1(4), Sch 1 para 1B, the Privy Council has made the General Optical Council (Constitution) Order 2009, SI 2009/442.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7.  
OPTICIANS/(2) THE GENERAL OPTICAL COUNCIL/(i) Constitution, Members and Officers/818.  
Retirement of members.

### **818. Retirement of members.**

At the expiration of each successive period of five years from 1 January 1992, the following members of the General Optical Council<sup>1</sup> must retire<sup>2</sup>: all the members chosen to represent registered opticians<sup>3</sup>, two of the members nominated by the Privy Council<sup>4</sup>, and the four ophthalmologists nominated by the Royal College of Ophthalmologists<sup>5</sup>. All remaining members of the Council must retire on 1 January 1994 and at the end of each succeeding period of five years commencing on that date<sup>6</sup>.

Elections or nominations required to fill any vacancy occurring at the end of any of these periods must, so far as practicable, be held or made before the expiration of that period<sup>7</sup>.

A person ceasing to be a member of the Council is eligible for re-nomination or re-election<sup>8</sup>.

1 As to the functions and constitution of the General Optical Council see PARA 813 ante.

2 Opticians Act 1989 s 1(4), Sch 1 para 6(1). As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

3 Opticians Act 1989 Sch 1 para 6(1)(b). For the meaning of 'registered optician' see PARA 839 note 4 post. As to such members see PARA 815 ante.

4 Ibid Sch 1 para 6(1)(a). Neither of these persons may be the person appointed as specially qualified to advise on educational problems generally: Sch 1 para 6(1)(a). As to the members nominated by the Privy Council see PARA 814 ante.

5 Ibid Sch 1 para 6(1)(c) (amended by the General Optical Council (Membership) Order of Council 1998, SI 1998/3117, art 2(2)(f)). As to such members see PARA 817 ante.

6 Opticians Act 1989 Sch 1 para 6(2) (amended by the General Optical Council (Membership) Order of Council 1998, SI 1998/3117, art 2(2)(g)). This provision is expressed to be subject to the Opticians Act 1989 Sch 1 para 6(2A) (added by the General Optical Council (Membership) Order of Council 1998, SI 1998/3117, art 2(2)(h)), but this provision ceased to have effect on 31 December 2001.

7 Opticians Act 1989 Sch 1 para 6(3).

8 Ibid Sch 1 para 9.

## **UPDATE**

### **813-822 Constitution, Members and Officers**

The General Optical Council is now to be constituted as provided for by order of the Privy Council, subject to the Opticians Act 1989 Sch 1 (which relates to the constitution etc of the Council): s 1(4) (substituted by SI 2008/1774). For general provision as to membership see now the Opticians Act 1989 Sch 1 para 1A (Sch 1 paras 1A-1C substituted by SI 2008/1774). As to the matters which an order under the Opticians Act 1989 s 1(4) must include see Sch 1 para 1B; and as to the registration of members' private interests see Sch 1 para 1C. In exercise of the powers conferred by the Opticians Act 1989 s 1(4), Sch 1 para 1B, the Privy Council has made the General Optical Council (Constitution) Order 2009, SI 2009/442.





Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7.  
OPTICIANS/(2) THE GENERAL OPTICAL COUNCIL/(i) Constitution, Members and Officers/819.  
Resignation; casual vacancies.

### **819. Resignation; casual vacancies.**

A member of the General Optical Council<sup>1</sup> may resign his office at any time by giving notice in writing<sup>2</sup> addressed to the registrar<sup>3</sup>.

Where a casual vacancy occurs among the members of the Council, the vacancy must be filled: (1) if the member whose office has become vacant was chosen to represent registered opticians<sup>4</sup>, by a person nominated by the Council as having similar qualifications for membership<sup>5</sup>; and (2) in any other case by a person nominated by the same authority, after the same consultation, if any, as in the case of the member whose office has become vacant<sup>6</sup>. A person nominated to fill a casual vacancy holds office until the date upon which the member whose vacancy he has filled would have regularly retired<sup>7</sup>.

1 As to the functions and constitution of the General Optical Council see PARA 813 ante.

2 For the meaning of 'writing' see PARA 20 note 22 ante.

3 Opticians Act 1989 s 1(4), Sch 1 para 7(1). As to the registrar see PARA 822 post.

As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

4 For the meaning of 'registered optician' see PARA 839 note 4 post. As to such members see PARA 815 ante.

5 Opticians Act 1989 Sch 1 para 7(2)(a).

6 Ibid Sch 1 para 7(2)(b).

7 Ibid Sch 1 para 7(3). As to the retirement of members see PARA 818 ante.

### **UPDATE**

#### **813-822 Constitution, Members and Officers**

The General Optical Council is now to be constituted as provided for by order of the Privy Council, subject to the Opticians Act 1989 Sch 1 (which relates to the constitution etc of the Council): s 1(4) (substituted by SI 2008/1774). For general provision as to membership see now the Opticians Act 1989 Sch 1 para 1A (Sch 1 paras 1A-1C substituted by SI 2008/1774). As to the matters which an order under the Opticians Act 1989 s 1(4) must include see Sch 1 para 1B; and as to the registration of members' private interests see Sch 1 para 1C. In exercise of the powers conferred by the Opticians Act 1989 s 1(4), Sch 1 para 1B, the Privy Council has made the General Optical Council (Constitution) Order 2009, SI 2009/442.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7.  
OPTICIANS/(2) THE GENERAL OPTICAL COUNCIL/(i) Constitution, Members and Officers/820.  
Chairman of the Council.

## **820. Chairman of the Council.**

The chairman of the General Optical Council<sup>1</sup> is nominated by the Privy Council from among the members of the General Optical Council nominated by the Privy Council<sup>2</sup>, and he holds office until he next retires from membership of the General Optical Council<sup>3</sup>.

A person ceasing to be chairman of the General Optical Council is eligible again to be nominated chairman<sup>4</sup>.

1 As to the functions and constitution of the General Optical Council see PARA 813 ante.

2 Opticians Act 1989 s 1(4), Sch 1 para 8(1). As to such members see PARA 814 ante. As to the exercise of powers of the Privy Council under the Opticians Act 1989 see PARA 835 post. As to the Privy Council generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

If, under the Health and Social Care (Community Health and Standards) Act 2003 s 187, the Secretary of State has given a direction to a special health authority to exercise any function of a Minister of the Crown relating to the making of appointments to a body mentioned in s 187, the Privy Council may direct the special health authority to exercise to the extent specified in the direction its functions in relation to the nomination of the chairman of the General Optical Council: Opticians Act 1989 Sch 1 para 2A(1), (2)(b) (added by the Health and Social Care (Community Health and Standards) Act 2003 s 187(8), Sch 12 para 4). As to the Secretary of State see PARA 5 ante. As to special health authorities see HEALTH SERVICES vol 54 (2008) PARA 136 et seq.

As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

3 Opticians Act 1989 Sch 1 para 8(2). As to the retirement of members see PARA 818 ante.

4 Ibid Sch 1 para 9.

## **UPDATE**

### **813-822 Constitution, Members and Officers**

The General Optical Council is now to be constituted as provided for by order of the Privy Council, subject to the Opticians Act 1989 Sch 1 (which relates to the constitution etc of the Council): s 1(4) (substituted by SI 2008/1774). For general provision as to membership see now the Opticians Act 1989 Sch 1 para 1A (Sch 1 paras 1A-1C substituted by SI 2008/1774). As to the matters which an order under the Opticians Act 1989 s 1(4) must include see Sch 1 para 1B; and as to the registration of members' private interests see Sch 1 para 1C. In exercise of the powers conferred by the Opticians Act 1989 s 1(4), Sch 1 para 1B, the Privy Council has made the General Optical Council (Constitution) Order 2009, SI 2009/442.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7.  
OPTICIANS/(2) THE GENERAL OPTICAL COUNCIL/(i) Constitution, Members and Officers/821.  
Alterations in membership.

## **821. Alterations in membership.**

The Privy Council<sup>1</sup>, after consultation with the General Optical Council<sup>2</sup> and any other body or person it thinks fit to consult, may by order<sup>3</sup> make such alterations in the membership of the General Optical Council<sup>4</sup> as may be expedient in view of changes in circumstances, and may make consequential alterations in relation to the committees which the General Optical Council is required to maintain<sup>5</sup>. However, no order may be made which would operate to reduce the number of members chosen to represent registered opticians<sup>6</sup> on the General Optical Council below seven<sup>7</sup>.

1 As to the exercise of powers of the Privy Council under the Opticians Act 1989 see PARA 835 post. As to the Privy Council generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

2 As to the functions and constitution of the General Optical Council see PARA 813 ante.

3 The power is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: Opticians Act 1989 s 34(5)(a), (6)(a). Such an order may revoke any previous order made under these provisions or the Opticians Act 1958 s 1, Sch 1 para 13 (repealed) if it appears to the Privy Council, after consultation with the General Optical Council and any other body or person it thinks fit to consult, that the order ought to be revoked: Opticians Act 1989 s 1(4), Sch 1 para 13(4). The General Optical Council (Membership) Order of Council 1998, SI 1998/3117, has been made, amending the provisions of the Opticians Act 1989 Sch 1 paras 1, 4-6: see PARAS 813, 816-818 ante. As to the annulment of statutory instruments see STATUTES vol 44(1) (Reissue) PARA 1516.

As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

4 'Alterations in the membership of the General Optical Council' means alterations as to the numbers of members (Opticians Act 1989 Sch 1 para 13(2)(a)), the qualifications which a person must have to be a member (Sch 1 para 13(2)(b)), and who may nominate members (Sch 1 para 13(2)(c)).

5 Ibid Sch 1 para 13(1). The Privy Council may also make consequential amendments to Sch 1: Sch 1 para 13(1). The committees which the General Optical Council is required to maintain are the investigating committee (see PARAS 855-856 post), the disciplinary committee (see PARAS 857-858 post), the education committee (see PARA 831 post), and the companies committee (see PARA 832 post). As to the power of the General Optical Council to appoint other committees see PARA 830 post.

6 For the meaning of 'registered optician' see PARA 839 note 4 post. As to such members see PARA 815 ante.

7 Opticians Act 1989 Sch 1 para 13(3).

## **UPDATE**

### **813-822 Constitution, Members and Officers**

The General Optical Council is now to be constituted as provided for by order of the Privy Council, subject to the Opticians Act 1989 Sch 1 (which relates to the constitution etc of the Council): s 1(4) (substituted by SI 2008/1774). For general provision as to membership see now the Opticians Act 1989 Sch 1 para 1A (Sch 1 paras 1A-1C substituted by SI 2008/1774). As to the matters which an order under the Opticians Act 1989 s 1(4) must include see Sch 1 para 1B; and as to the registration of members' private interests see Sch 1 para 1C. In exercise of the powers conferred by the

Opticians Act 1989 s 1(4), Sch 1 para 1B, the Privy Council has made the General Optical Council (Constitution) Order 2009, SI 2009/442.

### **821 Alterations in membership**

TEXT AND NOTES--Opticians Act 1989 Sch 1 para 13 repealed: SI 2008/1774.

NOTE 3--SI 1998/3117 revoked: SI 2008/1774.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7.  
OPTICIANS/(2) THE GENERAL OPTICAL COUNCIL/(i) Constitution, Members and Officers/822.  
Registrar of the Council.

## **822. Registrar of the Council.**

There is a registrar of the General Optical Council<sup>1</sup>. The registrar is appointed by the Council and holds and vacates office in accordance with the terms of his appointment<sup>2</sup>.

<sup>1</sup> Opticians Act 1989 s 1(3). As to the functions and constitution of the General Optical Council see PARA 813 ante.

As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

<sup>2</sup> Opticians Act 1989 s 1(4), Sch 1 para 10.

### **UPDATE**

#### **813-822 Constitution, Members and Officers**

The General Optical Council is now to be constituted as provided for by order of the Privy Council, subject to the Opticians Act 1989 Sch 1 (which relates to the constitution etc of the Council): s 1(4) (substituted by SI 2008/1774). For general provision as to membership see now the Opticians Act 1989 Sch 1 para 1A (Sch 1 paras 1A-1C substituted by SI 2008/1774). As to the matters which an order under the Opticians Act 1989 s 1(4) must include see Sch 1 para 1B; and as to the registration of members' private interests see Sch1 para 1C. In exercise of the powers conferred by the Opticians Act 1989 s 1(4), Sch 1 para 1B, the Privy Council has made the General Optical Council (Constitution) Order 2009, SI 2009/442.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7. OPTICIANS/(2) THE GENERAL OPTICAL COUNCIL/(ii) Powers and Duties of the General Optical Council/823. Administrative powers.

## **(ii) Powers and Duties of the General Optical Council**

### **823. Administrative powers.**

Subject to any specific limitations imposed upon it<sup>1</sup>, the General Optical Council has power to do anything which in its opinion is calculated to facilitate the proper discharge of its functions<sup>2</sup>. In particular it may: (1) appoint, in addition to a registrar<sup>3</sup>, such officers and servants as it may determine<sup>4</sup>; (2) pay to its members or committee<sup>5</sup> members fees for attendance at meetings, and travelling and subsistence allowances while attending meetings or while on any other Council business<sup>6</sup>; (3) pay to its officers and servants such remuneration as it may determine<sup>7</sup>; and (4) pay to any officers or servants in whose case it may determine to do so, such pensions and gratuities, or provide and maintain for them such superannuation schemes, whether contributory or not, as it may determine<sup>8</sup>.

The powers of the Council and of any of its committees may be exercised notwithstanding any vacancy, and no proceedings of the Council or of any of its committees are to be invalidated by any defect in the nomination or election of a member<sup>9</sup>.

The Council may make standing orders for regulating its proceedings, including the quorum, and the proceedings of any of its committees except the disciplinary committee<sup>10</sup>.

1     Ile by the Opticians Act 1989 s 1(4), Sch 1 paras 11, 12 (see the text and notes 2-10 infra), and Sch 1 para 13 (see PARA 821 ante).

As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

2     Opticians Act 1989 Sch 1 para 11(1). As to the constitution of the General Optical Council and its functions see PARA 813 ante. For the meaning of 'functions' see PARA 830 note 3 post.

3     As to the registrar see PARA 822 ante.

4     Opticians Act 1989 Sch 1 para 11(2)(a).

5     As to the committees of the Council see PARAS 830-833 post.

6     Opticians Act 1989 Sch 1 para 11(2)(b). The fees payable are such as the General Optical Council, with the approval of the Privy Council, may determine: Sch 1 para 11(2)(b). As to the exercise of powers of the Privy Council under the Opticians Act 1989 see PARA 835 post. As to the Privy Council generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

7     Ibid Sch 1 para 11(2)(c).

8     Ibid Sch 1 para 11(2)(d).

9     Ibid Sch 1 para 11(3).

10    Ibid Sch 1 para 12. As to the disciplinary committee see PARAS 857-858 post.

## **UPDATE**

### **823-829 Powers and Duties of the General Optical Council**

The General Optical Council must publish an annual report that includes a description of the arrangements that it has in place to ensure that it adheres to good practice in relation to equality and diversity, a statistical report relating to its fitness to practice functions, and a strategic plan: see the Opticians Act 1989 s 32A (added by SI 2008/1774).

As from a day to be appointed the Office of the Health Professions Adjudicator ('the OHPA') is to take over responsibility for the adjudication of fitness to practice cases from the General Optical Council: see the Health and Social Care Act 2008 (ss 98-110) (in force in part). As to the OHPA generally, see further PARA 189A.

### **823 Administrative powers**

TEXT AND NOTES--Rules under the Opticians Act 1989 ss 2-5D may make provision for a body (including a committee of the Council which is not one of the committees to which any of those provisions relate) to assist the Council in connection with the exercise of any function relating to the appointment of members or particular members of any of the committees or the panel to which those sections relate, including any function relating to tenure of office or suspension or removal from office: Sch 1 para 12B (added by SI 2008/1774).

NOTE 6--Words 'with the approval of the Privy Council' omitted: Opticians Act 1989 Sch 1 para 11(2)(b) (amended by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848).

TEXT AND NOTE 9--Opticians Act 1989 Sch 1 para 11(3) amended: SI 2008/1774.

TEXT AND NOTE 10--Opticians Act 1989 Sch 1 para 12 amended: SI 2005/848, SI 2008/1774.

Standing orders of the Council may make provision with regard to the provisional suspension of a member of the Council from office, pending the taking of a decision about the suspension or removal from office of the member in accordance with the provisions of an order under the 1989 Act s 1(4): Sch 1 para 11(4) (added by SI 2008/1774).



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7. OPTICIANS/(2) THE GENERAL OPTICAL COUNCIL/(ii) Powers and Duties of the General Optical Council/824. Rules for the regulation of the profession.

## **824. Rules for the regulation of the profession.**

The General Optical Council<sup>1</sup> may make rules<sup>2</sup>:

948 (1) prohibiting or regulating:

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1. (a) the use by registered opticians<sup>3</sup> and enrolled<sup>4</sup> bodies corporate of any means of giving publicity, whether by advertisements or not, to their practice or business of ophthalmic or dispensing opticians<sup>5</sup>;
2. (b) the carrying on of practice or business by registered opticians and enrolled bodies corporate under names other than those under which they are registered or enrolled<sup>6</sup>;
3. (c) the administration of drugs by registered opticians, enrolled bodies corporate and their employees in the course of their practice or business of ophthalmic or dispensing opticians<sup>7</sup>;
4. (d) the practice of orthoptics by registered opticians, enrolled bodies corporate and their employees<sup>8</sup>;
5. (e) the prescription, supply and fitting by registered opticians, enrolled bodies corporate and their employees of contact lenses<sup>9</sup>;

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949 (2) specifying requirements which registered opticians, enrolled bodies corporate or employees of registered opticians or enrolled bodies corporate must meet if they are to prescribe, fit or supply contact lenses<sup>10</sup>.

The Council must make and submit to the Privy Council<sup>11</sup> rules providing that where it appears to a registered optician that a person consulting him is suffering from an injury or disease of the eye, the optician must, except:

950 (i) in an emergency<sup>12</sup>;

951 (ii) where that person is consulting him for the purpose of being given treatment in accordance with rules under head (1)(d) above<sup>13</sup>; or

952 (iii) in such other cases as may be prescribed<sup>14</sup>,

take the prescribed steps to refer that person to a registered medical practitioner<sup>15</sup> for advice and treatment<sup>16</sup>.

1 As to the functions and constitution of the General Optical Council see PARA 813 ante.

2 Any such rules may make different provision for different classes of cases: Opticians Act 1989 s 31(6). The rules do not come into force until approved by order of the Privy Council: see s 34(1); and PARA 825 post. As to the making of rules see PARA 825 post.

As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

3 For the meaning of 'registered optician' see PARA 839 note 4 post.

4 For the meaning of 'enrolled' see PARA 842 note 1 post. As to the enrolment of bodies corporate see PARAS 841-843 et seq post.

5 Opticians Act 1989 s 31(1)(a). For the meaning of 'ophthalmic optician' see PARA 804 note 2 ante; and for the meaning of 'dispensing optician' see PARA 807 note 8 ante. As to such rules see PARA 810 ante. The power of the Council to make rules by virtue of s 31(1)(a) does not include the power to prohibit the display, for the purposes of the practice or business of a registered optician or enrolled body corporate, of optical appliances or parts of optical appliances on premises where the fitting and supply of optical appliances is being carried on as part of that business or practice or any building comprising those premises: s 31(2). For the meaning of 'optical appliance' see PARA 804 note 2 ante.

6 Ibid s 31(1)(b). For the meaning of 'registered' see PARA 838 note 2 post. At the date at which this volume states the law no such rules had been made.

7 Ibid s 31(1)(c). At the date at which this volume states the law no such rules had been made.

8 Ibid s 31(1)(d). At the date at which this volume states the law no such rules had been made.

9 Ibid s 31(1)(e). As to such rules see PARA 808 ante.

10 Ibid s 31(3). This power is a power: (1) in relation to registered opticians or employees of registered opticians or of enrolled bodies corporate, to specify qualifications which they must have (s 31(4)(a)); and (2) in relation to enrolled bodies corporate, to specify conditions which they must satisfy (s 31(4)(b)). As to such rules see PARA 808 ante.

11 As to the exercise of powers of the Privy Council under the Opticians Act 1989 see PARA 835 post. As to the Privy Council generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

12 Ibid s 31(5)(a) (s 31(5) amended, and s 31(5A) added, by the National Health Service (Primary Care) Act 1997 s 30(2), (3)).

13 Opticians Act 1989 s 31(5)(b) (as amended: see note 12 supra).

14 Ibid s 31(5)(c) (as amended: see note 12 supra). For the meaning of 'prescribed' see PARA 806 note 6 ante. Rules made by virtue of s 31(5)(c) (as amended) may impose conditions which must be satisfied if the exception for which those rules provide is to apply: s 31(5A) (as added: see note 12 supra).

15 For the meaning of 'registered medical practitioner' see PARA 4 ante.

16 Opticians Act 1989 s 31(5) (as amended: see note 12 supra). Any such rules may make different provision for different classes of cases: see s 31(6); and note 2 supra. As to such rules see PARA 806 ante.

## UPDATE

### 823-829 Powers and Duties of the General Optical Council

The General Optical Council must publish an annual report that includes a description of the arrangements that it has in place to ensure that it adheres to good practice in relation to equality and diversity, a statistical report relating to its fitness to practice functions, and a strategic plan: see the Opticians Act 1989 s 32A (added by SI 2008/1774).

As from a day to be appointed the Office of the Health Professions Adjudicator ('the OHPA') is to take over responsibility for the adjudication of fitness to practice cases from the General Optical Council: see the Health and Social Care Act 2008 (ss 98-110) (in force in part). As to the OHPA generally, see further PARA 189A.

### 824-825 Rules for the regulation of the profession, Procedure for making rules and orders

As to exercise of power to make rules, see the Opticians Act 1989 s 31A (added by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7. OPTICIANS/(2) THE GENERAL OPTICAL COUNCIL/(ii) Powers and Duties of the General Optical Council/825. Procedure for making rules and orders.

## **825. Procedure for making rules and orders.**

Rules made by the General Optical Council<sup>1</sup> under the Opticians Act 1989, and an electoral scheme submitted by it<sup>2</sup>, do not come into force until approved by order of the Privy Council<sup>3</sup>. The powers under the Opticians Act 1989 of the Privy Council to make orders<sup>4</sup>, of the Lord Chancellor to make rules<sup>5</sup>, and of the Secretary of State to make regulations<sup>6</sup>, are exercisable by statutory instrument<sup>7</sup>. A statutory instrument containing certain orders of the Privy Council<sup>8</sup> or regulations made by the Secretary of State<sup>9</sup> is subject to annulment in pursuance of a resolution of either House of Parliament<sup>10</sup>. Specified orders may not be made unless a draft of the order has been laid before and approved by resolution of each House of Parliament<sup>11</sup>.

1 As to the functions and constitution of the General Optical Council see PARA 813 ante.

2 *Ie* under the Opticians Act 1989 s 1(4), Sch 1 para 3: see PARA 815 ante.

3 *Ibid* s 34(1). The Privy Council may approve rules under s 31(1)(a) (see PARAS 810, 824 ante) and any such electoral scheme either as submitted to it or subject to such modifications as appear to it requisite: s 34(2). Where the Privy Council proposes to approve any such rules or scheme subject to modifications, it must notify to the General Optical Council the modifications it proposes to make and consider any observations of that Council on them: s 34(3). The Privy Council, after consulting the General Optical Council, may by order vary or revoke any rules made under s 31(1)(a) and previously approved by it (whether the approval was before or after the commencement of s 34): s 34(4). The date for the commencement of s 34 was 16 February 1990: s 38. As to the exercise of powers of the Privy Council under the Opticians Act 1989 see PARA 835 post. As to the Privy Council generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

4 Opticians Act 1989 s 34(5)(a).

5 *Ie* under *ibid* s 22 (see PARA 859 post): s 34(5)(b). As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

6 *Ie* under *ibid* s 26 (see PARA 805 ante): s 34(5)(c). As to the Secretary of State see PARA 5 ante.

7 *Ibid* s 34(5).

8 *Ibid* s 34(6)(a). The orders mentioned in the text are: an order approving rules under s 4 (see PARA 856 post), s 5 (see PARA 858 post), s 31 (see PARA 824 ante), other than an order which is made by virtue of s 34(2) and approves rules under s 31(1)(a) subject to modifications (see note 3 supra) (s 34(7)(a)); an order approving an electoral scheme under Sch 1 para 3 (see note 2 infra) (s 34(7)(b)); and an order under s 16(3) (see PARA 846 note 15 post), s 27 (see PARA 807 ante), Sch 1 para 13 (see PARA 821 ante) (s 34(7)(c)).

9 *Ibid* s 34(6)(b).

10 *Ibid* s 34(6). As to the annulment of statutory instruments see STATUTES vol 44(1) (Reissue) PARA 1516.

11 *Ibid* s 34(8). The specified orders are: an order which is made by virtue of s 34(2) and approves rules under s 31(1)(a) subject to modifications (see note 3 supra) (s 34(9)(a)); or an order which is made by virtue of s 34(4), unless it is contained in a statutory instrument that states that the General Optical Council has indicated its consent to the terms of the order either in the course of consultations under s 34 or in observations under s 34(3) (see note 3 supra) (s 34(9)(b)).

## **UPDATE**

### **823-829 Powers and Duties of the General Optical Council**

The General Optical Council must publish an annual report that includes a description of the arrangements that it has in place to ensure that it adheres to good practice in relation to equality and diversity, a statistical report relating to its fitness to practice functions, and a strategic plan: see the Opticians Act 1989 s 32A (added by SI 2008/1774).

As from a day to be appointed the Office of the Health Professions Adjudicator ('the OHPA') is to take over responsibility for the adjudication of fitness to practice cases from the General Optical Council: see the Health and Social Care Act 2008 (ss 98-110) (in force in part). As to the OHPA generally, see further PARA 189A.

### **824-825 Rules for the regulation of the profession, Procedure for making rules and orders**

As to exercise of power to make rules, see the Opticians Act 1989 s 31A (added by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848).

### **825 Procedure for making rules and orders**

TEXT AND NOTES 1-3--Opticians Act 1989 s 34(1) amended: SI 2008/1774.

NOTE 3--The Opticians Act 1989 s 34(1) does not apply to rules made under s 10 (see PARA 837) in so far as they relate to fees: s 34(1A) (added by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848). The Privy Council may approve rules under s 23C (see PARA 855A) either in the form submitted to it or subject to such modifications as appear to it requisite: 1989 Act s 34(2) (substituted by SI 2005/848). Reference to scheme omitted: 1989 Act s 34(3) (amended by SI 2005/848).

NOTE 6--Now under 1989 Act s 25 or 26: s 34(5)(c) (amended by SI 2005/848).

NOTE 8--1989 Act s 34(7) amended: SI 2008/1774.

NOTE 9--1989 Act s 34(8), (9) repealed: SI 2005/848.

TEXT AND NOTE 11--1989 Act s 34(8), (9) repealed: SI 2005/848.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7. OPTICIANS/(2) THE GENERAL OPTICAL COUNCIL/(ii) Powers and Duties of the General Optical Council/826. Expenses and accounts.

## **826. Expenses and accounts.**

The General Optical Council<sup>1</sup> may, after paying its expenses, allocate any money received by it whether by way of fees or otherwise, other than a sum paid or recovered under a penalty order<sup>2</sup>, to purposes connected with optical education and research or any other public purposes connected with the profession of ophthalmic opticians<sup>3</sup> or dispensing opticians<sup>4</sup> in such manner as it thinks fit<sup>5</sup>.

The Council must keep accounts of all sums received or paid by it, and the accounts for each financial year of the Council must be audited by auditors<sup>6</sup> appointed by it and, as soon thereafter as may be, must be published and laid before Parliament<sup>7</sup>.

1 As to the functions and constitution of the General Optical Council see PARA 813 ante.

2 See under the Opticians Act 1989 s 16(6): see PARA 846 post. For the meaning of 'penalty order' see PARA 846 post.

3 For the meaning of 'ophthalmic optician' see PARA 804 note 2 ante.

4 For the meaning of 'dispensing optician' see PARA 807 note 8 ante.

5 Opticians Act 1989 s 32(1). As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

6 A person must not be appointed auditor under the Opticians Act 1989 s 32(2) unless he is eligible for appointment as a company auditor under the Companies Act 1989 s 25 (see COMPANIES vol 15 (2009) PARA 969): Opticians Act 1989 s 32(3) (substituted by the Companies Act 1989 (Eligibility for Appointment as Company Auditor) (Consequential Amendments) Regulations 1991, SI 1991/1997, reg 2, Schedule para 73).

7 Opticians Act 1989 s 32(2). As to the laying of documents before Parliament see PARLIAMENT vol 34 (Reissue) PARA 941.

## **UPDATE**

### **823-829 Powers and Duties of the General Optical Council**

The General Optical Council must publish an annual report that includes a description of the arrangements that it has in place to ensure that it adheres to good practice in relation to equality and diversity, a statistical report relating to its fitness to practice functions, and a strategic plan: see the Opticians Act 1989 s 32A (added by SI 2008/1774).

As from a day to be appointed the Office of the Health Professions Adjudicator ('the OHPA') is to take over responsibility for the adjudication of fitness to practice cases from the General Optical Council: see the Health and Social Care Act 2008 (ss 98-110) (in force in part). As to the OHPA generally, see further PARA 189A.

## **826 Expenses and accounts**

TEXT AND NOTES 1-5--Replaced. The Council may allocate any money received by it whether by way of fees or otherwise, other than any sum paid under a financial penalty

order or recovered under the 1989 Act s 23C(7) (see PARA 855A), to any person or body (1) set up to investigate and resolve consumer complaints into the supply of goods and services by registrants, or (2) for purposes connected with the profession of optometrist or dispensing optician: s 32(1) (substituted by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848).

NOTE 6--For 'company auditor under the Companies Act 1989 s 25' read 'statutory auditor under the Companies Act 2006 Pt 42 (ss 1209-1264)': Opticians Act 1989 s 32(3) (amended by SI 2008/948).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7. OPTICIANS/(2) THE GENERAL OPTICAL COUNCIL/(ii) Powers and Duties of the General Optical Council/827. Approval of training institutions and qualifications.

## **827. Approval of training institutions and qualifications.**

For the purposes of the Opticians Act 1989, the General Optical Council<sup>1</sup> may approve any institution<sup>2</sup> where the instruction given to persons training as opticians appears to the Council to be such as to secure to them adequate knowledge and skill for the practice of their profession<sup>3</sup>. The Council may also approve for the purposes of the Act any qualification<sup>4</sup> which appears to it to be granted to candidates who reach such a standard of proficiency at a qualifying examination as to secure to them adequate knowledge and skill for the practice of their profession<sup>5</sup>. An institution may be approved as suitable for the giving of all, or some part of, the instruction necessary for the training of ophthalmic opticians<sup>6</sup> or of dispensing opticians<sup>7</sup>, or of both, and a qualification may be so approved as suitable to be granted to ophthalmic opticians or to dispensing opticians<sup>8</sup>. The Council must from time to time publish a list of approved training institutions and approved qualifications, indicating the purpose for which the approval was granted<sup>9</sup>.

Where the Council has refused to approve an institution or qualification as suitable for any purpose, the Privy Council, on representations being made to it within one month<sup>10</sup> of the refusal, may, if it thinks fit, after considering the representations and communicating with the General Optical Council, order the Council to approve the institution or qualification for that purpose<sup>11</sup>.

1 As to the functions and constitution of the General Optical Council see PARA 813 ante.

2 Such an institution is known as an 'approved training institution': Opticians Act 1989 ss 12(1), 36(1).

As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

3 Opticians Act 1989 s 12(1).

4 Such a qualification is known as an 'approved qualification': *ibid* ss 12(2), 36(1).

5 *Ibid* s 12(2).

6 For the meaning of 'ophthalmic optician' see PARA 804 note 2 ante.

7 For the meaning of 'dispensing optician' see PARA 807 note 8 ante.

8 Opticians Act 1989 s 12(3).

9 *Ibid* s 12(5).

10 For the meaning of 'month' see PARA 13 note 14 ante.

11 Opticians Act 1989 s 12(4). As to the exercise of powers of the Privy Council under the Opticians Act 1989 see PARA 835 post. As to the Privy Council generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

## **UPDATE**

### **823-829 Powers and Duties of the General Optical Council**

The General Optical Council must publish an annual report that includes a description of the arrangements that it has in place to ensure that it adheres to good practice in relation to equality and diversity, a statistical report relating to its fitness to practice functions, and a strategic plan: see the Opticians Act 1989 s 32A (added by SI 2008/1774).

As from a day to be appointed the Office of the Health Professions Adjudicator ('the OHPA') is to take over responsibility for the adjudication of fitness to practice cases from the General Optical Council: see the Health and Social Care Act 2008 (ss 98-110) (in force in part). As to the OHPA generally, see further PARA 189A.

## **827 [Education and training]**

TEXT AND NOTES--The Council now has power to establish standards for education and training: see the Opticians Act 1989 s 12 (amended by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848). For transitional provision in relation to approved institutions or qualifications see the Opticians Act 1989 (Transitional Provisions) Order 2005, SI 2005/1472.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7. OPTICIANS/(2) THE GENERAL OPTICAL COUNCIL/(ii) Powers and Duties of the General Optical Council/828. Supervision of training institutions and qualifications.

## **828. Supervision of training institutions and qualifications.**

It is the duty of the General Optical Council<sup>1</sup> to keep itself informed of the nature of the instruction given by any approved training institution<sup>2</sup> to persons training as opticians and of the examinations on the results of which approved qualifications<sup>3</sup> are granted<sup>4</sup>.

For this purpose, the Council may appoint persons to visit approved training institutions and to attend at the examinations held by the bodies which grant approved qualifications<sup>5</sup>. It is the duty of these visitors to report to the Council as to the sufficiency of the instruction given by the institutions visited by them, or of the examinations attended by them<sup>6</sup>, and as to any other matters relating to such institutions or examinations which may be specified by the Council either generally or in any particular case<sup>7</sup>; but no visitor may interfere with the giving of any instruction or the holding of any examination<sup>8</sup>.

1 As to the functions and constitution of the General Optical Council see PARA 813 ante.

2 For the meaning of 'approved training institution' see PARA 827 note 2 ante.

3 For the meaning of 'approved qualification' see PARA 827 note 4 ante.

4 Opticians Act 1989 s 13(1). As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

5 Opticians Act 1989 s 13(2). The Council may pay to visitors such fees and travelling and subsistence allowances, to be paid as part of the expenses of the Council, as the Council, with the approval of the Privy Council, may determine: s 13(11). As to the expenses of the Council see PARA 826 ante. As to the exercise of powers of the Privy Council under the Opticians Act 1989 see PARA 835 post. As to the Privy Council generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

6 Ibid s 13(4)(a).

7 Ibid s 13(4)(b).

8 Ibid s 13(3).

## **UPDATE**

### **823-829 Powers and Duties of the General Optical Council**

The General Optical Council must publish an annual report that includes a description of the arrangements that it has in place to ensure that it adheres to good practice in relation to equality and diversity, a statistical report relating to its fitness to practice functions, and a strategic plan: see the Opticians Act 1989 s 32A (added by SI 2008/1774).

As from a day to be appointed the Office of the Health Professions Adjudicator ('the OHPA') is to take over responsibility for the adjudication of fitness to practice cases from the General Optical Council: see the Health and Social Care Act 2008 (ss 98-110) (in force in part). As to the OHPA generally, see further PARA 189A.

## **828 Supervision of training [establishments] and qualifications**

TEXT AND NOTES--References to institutions are now to establishments, references to opticians are now to optometrists or dispensing opticians, and references to examinations are now to assessments: Opticians Act 1989 s 13(1)-(4) (amended by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848).

NOTE 5--Privy Council approval is no longer required: 1989 Act s 13(11) (amended by SI 2005/848).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7. OPTICIANS/(2) THE GENERAL OPTICAL COUNCIL/(ii) Powers and Duties of the General Optical Council/829. Withdrawal of approval of training institutions and qualifications.

### **829. Withdrawal of approval of training institutions and qualifications.**

Where it appears to the General Optical Council<sup>1</sup>, whether as a result of a report by a visitor<sup>2</sup> or otherwise, that the instruction given by any approved training institution<sup>3</sup> to persons training as opticians<sup>4</sup>, or the examinations taken by such persons<sup>5</sup>, are not such as to secure the possession by them of adequate knowledge and skill for the practice of their profession<sup>6</sup>, and that for that reason the approval of the institution or qualification<sup>7</sup> in question should be withdrawn<sup>8</sup>, the Council must give notice in writing<sup>9</sup> of its opinion to the institution or body, sending with it a copy of any report on which the opinion is based<sup>10</sup>. On receipt of the notice, the institution or body may within such period (not being less than one month<sup>11</sup>) as the Council specifies in the notice, make to the Council observations on or objections to the notice and any report sent with it<sup>12</sup>. As soon as may be after the expiration of the specified period, the Council must determine whether or not to withdraw its approval, taking into account any observations or objections duly made<sup>13</sup>. The Council must give notice in writing of any decision to withdraw approval of an institution or qualification to the institution or body concerned; and the decision does not take effect until the expiration of one month from the date of the giving of the notice or, if during that time the institution or body makes representations with respect to the decision to the Privy Council, until the representations are finally dealt with<sup>14</sup>.

Where the General Optical Council has decided to withdraw approval of a training institution or a qualification, whether entirely or to a limited extent, the Privy Council, on representations being made to it within one month from the giving of notice of the decision, may, if it thinks fit, after considering the representations and communicating with the General Optical Council, order the Council to annul the withdrawal of approval or, in the case of an institution approved as suitable for more than one purpose, to withdraw approval in relation to one or some of the purposes only<sup>15</sup>.

1 As to the functions and constitution of the General Optical Council see PARA 813 ante.

2 As to visitors see PARA 828 ante.

3 For the meaning of 'approved training institution' see PARA 827 note 2 ante.

4 Opticians Act 1989 s 13(5)(a)(i). As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

5 Opticians Act 1989 s 13(5)(a)(ii).

6 Ibid s 13(5)(a).

7 For the meaning of 'approved qualification' see PARA 827 note 4 ante.

8 Opticians Act 1989 s 13(5)(b).

9 For the meaning of 'writing' see PARA 20 note 22 ante.

10 Opticians Act 1989 s 13(5).

11 For the meaning of 'month' see PARA 13 note 14 ante.

12 Opticians Act 1989 s 13(6).

13 Ibid s 13(7). Where an institution has been approved as suitable for more than one purpose, the Council may, instead of entirely withdrawing approval of the institution, withdraw approval in relation to one or some of the purposes only; and references to the withdrawal or approval are to be construed accordingly: s 13(9).

14 Ibid s 13(8).

15 Ibid s 13(10). As to the exercise of powers of the Privy Council under the Opticians Act 1989 see PARA 835 post. As to the Privy Council generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

## **UPDATE**

### **823-829 Powers and Duties of the General Optical Council**

The General Optical Council must publish an annual report that includes a description of the arrangements that it has in place to ensure that it adheres to good practice in relation to equality and diversity, a statistical report relating to its fitness to practice functions, and a strategic plan: see the Opticians Act 1989 s 32A (added by SI 2008/1774).

As from a day to be appointed the Office of the Health Professions Adjudicator ('the OHPA') is to take over responsibility for the adjudication of fitness to practice cases from the General Optical Council: see the Health and Social Care Act 2008 (ss 98-110) (in force in part). As to the OHPA generally, see further PARA 189A.

### **829 Withdrawal of approval of training [establishments] and qualifications**

TEXT AND NOTES--References to institutions are now to establishments, reference to opticians is now to optometrists or dispensing opticians, and references to examinations are now to assessments: Opticians Act 1989 s 13(5)-(10) (amended by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848).

TEXT AND NOTES 9, 14--Where rules are made under the 1989 Act s 23A(2) (service of notification), a notice under s 13(5) or (8) may be given by means of an electronic communication: s 13(5A) (added by SI 2005/848).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7. OPTICIANS/(2) THE GENERAL OPTICAL COUNCIL/(iii) Committees of the General Optical Council/830. General power to appoint committees.

### **(iii) Committees of the General Optical Council**

#### **830. General power to appoint committees.**

The General Optical Council<sup>1</sup> may set up a committee for any purpose, other than a purpose for which it is required to set up a committee<sup>2</sup>, and may delegate to such a committee, with or without restrictions or conditions as it thinks fit, any functions<sup>3</sup> exercisable by it except the power to make rules under the Opticians Act 1989<sup>4</sup>, any functions expressly conferred by that Act on some other committee<sup>5</sup>, and, subject to any express provision for delegation in the rules, any functions expressly conferred on the Council by rules under the Act<sup>6</sup>. The number of members of such a committee, and their term of office, must be fixed by the Council<sup>7</sup>. A committee may include persons who are not Council members, but at least two-thirds of the members must be Council members<sup>8</sup>. Every member of a committee who at the time of his appointment was a Council member must, upon ceasing to be a Council member, cease also to be a committee member<sup>9</sup>.

1 As to the constitution of the General Optical Council see PARA 813 ante.

2 The purposes for which the Council is required to set up a committee are fulfilled by the investigating committee (see PARAS 855-856 post), the disciplinary committee (see PARAS 857-858 post), the education committee (see PARA 831 post) and the companies committee (see PARA 832 post).

3 'Functions' includes powers and duties: Opticians Act 1989 s 36(1). As to the functions of the General Optical Council see PARA 813 ante.

4 Ibid s 6(1)(a). As to the making of rules see PARA 825 ante.

As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

5 Opticians Act 1989 s 6(1)(b).

6 Ibid s 6(1)(c).

7 Ibid s 6(2).

8 Ibid s 6(3).

9 Ibid s 6(4). For this purpose, however, a Council member is not deemed to have ceased by reason of retirement to be a member if he has again been nominated or elected a member not later than the day of his retirement: s 6(5). As to the retirement of Council members see PARA 818 ante; and as to their resignation see PARA 819 ante.

### **UPDATE**

#### **830 General power to appoint committees**

TEXT AND NOTES--Any function delegated to a committee set up under the Opticians Act 1989 s 6 may be further delegated by that committee to an officer or employee of the Council except to the extent that the Council limits or prohibits its further delegation: s 6(6) (s 6(6), (7) added by the Opticians Act 1989 (Amendment) Order 2005, SI

2005/848). The delegation of a function does not prevent the exercise of the function by the committee by whom the delegation is made: 1989 Act s 6(7) (as so added).

As to powers of delegation of the Council, its Committees and the registrar see 1989 Act s 6A (added by SI 2005/848).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7.  
OPTICIANS/(2) THE GENERAL OPTICAL COUNCIL/(iii) Committees of the General Optical Council/831. The education committee.

### **831. The education committee.**

There is a committee of the General Optical Council<sup>1</sup>, known as the education committee, to which the Council must refer for advice on all matters relating to optical training and examinations<sup>2</sup>. The education committee is constituted in accordance with rules<sup>3</sup> made by the Council, which rules must secure that the committee includes one person appearing to the Council to represent persons training student ophthalmic opticians<sup>4</sup>, one person appearing to the Council to represent persons training student dispensing opticians<sup>5</sup>, and one person nominated by the Secretary of State<sup>6</sup>, being in each case persons who are not members of the Council<sup>7</sup>.

The committee consists of the persons appointed as follows<sup>8</sup>:

- 183 953 (1) the Council must appoint from among its members:
- 6. (a) three members of the Council from among the persons nominated by the Privy Council, one of whom must be the person nominated by the Privy Council as specially qualified to advise the General Optical Council on educational problems generally<sup>9</sup>;
  - 7. (b) two members of the Council from among the persons chosen to represent registered ophthalmic opticians<sup>10</sup>;
  - 8. (c) three members of the Council from among the persons chosen to represent registered dispensing opticians<sup>11</sup>;
  - 9. (d) the members of the Council nominated by the College of Optometrists<sup>12</sup>;
  - 10. (e) the member of the Council engaged in the education or examination of persons training as ophthalmic opticians nominated by specified examining bodies<sup>13</sup>;
  - 11. (f) the member of the Council nominated by the Association of British Dispensing Opticians<sup>14</sup>; and
  - 12. (g) two members of the Council from among the persons nominated by the Royal College of Ophthalmologists<sup>15</sup>;
- 184 954 (2) the Council must appoint from persons who, in each case, are not members of the Council<sup>16</sup>:
- 185
- 13. (a) one person appearing to the Council to represent persons training student ophthalmic opticians<sup>17</sup>;
  - 14. (b) one person appearing to the Council to represent persons training student dispensing opticians<sup>18</sup>; and
  - 15. (c) one person nominated by the Secretary of State<sup>19</sup>.
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Appointments to the committee are for a period not exceeding one year expiring on 31 December following the appointment<sup>20</sup>. A member of the committee may at any time, by notice in writing<sup>21</sup> addressed to the registrar<sup>22</sup>, resign his office<sup>23</sup>.

Where a casual vacancy occurs among the members of the committee, it must be filled by a person appointed by the Council as being a person having qualifications for membership similar to those of the member whose office has become vacant<sup>24</sup>; and a person appointed to fill a casual vacancy holds office until the date upon which the member whose vacancy he has filled would have regularly retired<sup>25</sup>.

1 As to the functions and constitution of the General Optical Council see PARA 813 ante.

2 Opticians Act 1989 s 2(1). As to the exercise and regulation of the committee's powers and proceedings see PARA 823 text to notes 8-10 ante.

As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

3 As to the rules that have been made see the Education Committee Rules 1999, approved by the General Optical Council (Education Committee Rules) Order of Council 1999, SI 1999/1211. As to the making of rules see PARA 825 ante.

4 Opticians Act 1989 s 2(2)(a). For the meaning of 'ophthalmic optician' see PARA 804 note 2 ante.

5 Ibid s 2(2)(b). For the meaning of 'dispensing optician' see PARA 807 note 8 ante.

6 Ibid s 2(2)(c). As to the Secretary of State see PARA 5 ante.

7 Ibid s 2(2).

8 General Optical Council (Education Committee Rules) Order of Council 1999, SI 1999/1211, r 3.

9 Ibid r 4(a). As to the members of the General Optical Council nominated by the Privy Council see PARA 814 ante.

10 Ibid r 4(b). As to such members see PARA 815 ante. For the meaning of 'registered ophthalmic optician' see PARA 804 note 2 ante.

11 Ibid r 4(c). As to such members see PARA 815 ante. For the meaning of 'registered dispensing optician' see PARA 838 note 7 post.

12 Ibid r 4(d). As to such members see PARA 816 ante.

13 Ibid r 4(e). The specified examining bodies are those set out in the Opticians Act 1989 s 1(4), Sch 1 para 4(c) (as substituted): see PARA 816 ante.

14 General Optical Council (Education Committee Rules) Order of Council 1999, SI 1999/1211, r 4(f). As to this member see PARA 816 ante.

15 Ibid r 4(g). As to such members see PARA 817 ante.

16 Ibid r 5.

17 Ibid r 5(a).

18 Ibid r 5(b).

19 Ibid r 5(c).

20 Ibid r 6. Where a member, other than a member appointed under r 5 (see the text to notes 16-19 supra), ceases to be a member of the Council, he ceases also to be a member of the committee: r 6. As to the retirement of Council members see PARA 818 ante; and as to their resignation see PARA 819 ante.

21 For the meaning of 'writing' see PARA 20 note 22 ante.

22 As to the registrar see PARA 822 ante.

23 General Optical Council (Education Committee Rules) Order of Council 1999, SI 1999/1211, r 7.



24 Ibid r 8. However, if a vacancy occurs after 30 September in any year there is no obligation to fill the vacancy before the succeeding 1 January: r 8.

25 Ibid r 9.

## **UPDATE**

### **831 The education committee**

TEXT AND NOTE 2--For 'to which ... examinations' read 'for the purpose of giving advice and assistance to the Council (whether or not in response to a reference from it) on matters relating to optical training, education and assessment': Opticians Act 1989 s 2(1) (amended by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848).

NOTE 3--Education Committee Rules 1999 replaced: General Optical Council (Committee Constitution Rules) Order of Council 2005, SI 2005/1474.

TEXT AND NOTES 4-7--Words 'which rules ... members of the Council' omitted: 1989 Act s 2(2) (amended by SI 2005/848).

TEXT AND NOTES 8-25--Replaced. The education committee now consists of 14 members appointed by the General Optical Council, selected from among its members and appointed so that (1) three are persons nominated by the Privy Council pursuant to the 1989 Act Sch 1 para 1(a), one of whom must be the person nominated by the Privy Council in accordance with Sch 1 para 2(2) as specially qualified to advise the General Optical Council on educational problems generally; (2) five are persons chosen pursuant to Sch 1 para 1(b) to represent registered ophthalmic opticians or nominated pursuant to Sch 1 para 4(a) or (c); (3) four are persons chosen pursuant to Sch 1 para 1(c) to represent registered dispensing opticians or nominated pursuant to Sch 1 para 4(d); and (4) two are registered medical practitioners referred to in Sch 1 para 1(e): SI 2005/1474 r 3. 'Education committee' means the committee referred to in the 1989 Act s 2(1) (see PARA 831 NOTE 2): SI 2005/1474 r 3. The quorum of the committee is five and must include at least one member of the committee appointed under head (1), one member of the committee appointed under head (2), and one member of the committee appointed under head (3): SI 2005/1474 r 4.

Appointments to the committee expire on 31 December in each year: SI 2005/1474 r 30(1). Where a member of the committee ceases to be a member of the Council, he must cease to be a member of the committee: r 30(2). A member of the committee may resign at any time by notifying the Council accordingly: r 30(3). Where a casual vacancy occurs among the members of the committee: (a) where the member of the committee whose office has become vacant was a member of the Council chosen to represent registered optometrists or registered dispensing opticians, the Council must fill the vacancy by appointing a member of the Council who was chosen to represent the same profession; (b) in any other case, the Council must fill the vacancy by appointing a person who became a member of the Council by virtue of the same provision of the 1989 Act Sch 1 as applied to his predecessor: SI 2005/1474 r 31(1)(a), (c). A person appointed to fill a casual vacancy in the committee holds office until the date upon which the term of office of his predecessor would have expired: r 31(2). The committee must elect a chairman: r 32. The validity of any proceedings of the committee is not affected by any defect in the appointment of a member: r 33.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7. OPTICIANS/(2) THE GENERAL OPTICAL COUNCIL/(iii) Committees of the General Optical Council/832. The companies committee.

### **832. The companies committee.**

There is a committee of the General Optical Council<sup>1</sup>, known as the companies committee, to which the Council must refer for advice on all matters relating to bodies corporate carrying on business as ophthalmic or dispensing opticians<sup>2</sup>, other than matters which are required by the Opticians Act 1989 to be referred to the investigating committee<sup>3</sup> or the disciplinary committee<sup>4</sup>. The companies committee is constituted in accordance with rules<sup>5</sup> made by the Council, which rules must secure that the committee includes at least one person appearing to the Council to represent the interests of bodies corporate carrying on business as ophthalmic opticians<sup>6</sup>, and at least one person appearing to it to represent the interests of bodies corporate carrying on business as dispensing opticians<sup>7</sup>, being in each case persons who are not members of the Council<sup>8</sup>. Before making such rules, the Council must consult organisations appearing to it to represent the interests of a substantial number of the bodies corporate carrying on business as ophthalmic opticians and as dispensing opticians respectively<sup>9</sup>.

The committee consists of the following persons appointed by the Council<sup>10</sup>:

- 955 (1) four members of the Council, including at least one of the members nominated by the Privy Council<sup>11</sup>, at least one of the members chosen to represent the interests of registered ophthalmic opticians<sup>12</sup>, and at least one of the members chosen to represent the interests of registered dispensing opticians<sup>13</sup>;
- 956 (2) four persons, not being members of the Council, who appear to it to represent the interests of bodies corporate carrying on business as ophthalmic opticians<sup>14</sup>;
- 957 (3) three persons, not being members of the Council, who appear to it to represent the interests of bodies corporate carrying on business as dispensing opticians<sup>15</sup>;
- 958 (4) a registered medical practitioner, who may be a member of the Council<sup>16</sup>, and who appears to the Council to represent the interests of registered medical practitioners engaged in the testing of sight<sup>17</sup> in the practices of bodies corporate<sup>18</sup>.

Appointments to the committee are for a period of one year expiring on 31 December<sup>19</sup>. A member of the committee may at any time, by notice in writing<sup>20</sup> addressed to the registrar<sup>21</sup>, resign his office<sup>22</sup>.

Where a casual vacancy occurs among the members of the committee, it must be filled by a person appointed by the Council as being a person having qualifications for membership similar to those of the member whose office is vacant; and the person appointed to fill a casual vacancy holds office until the date upon which the member whose vacancy he has filled would have regularly retired<sup>23</sup>.

1 As to the functions and constitution of the General Optical Council see PARA 813 ante.

2 For the meaning of 'ophthalmic optician' see PARA 804 note 2 ante; and for the meaning of 'dispensing optician' see PARA 807 note 8 ante.

3 As to the investigating committee see PARAS 855-856 post.

4 Opticians Act 1989 s 3(1). As to the exercise and regulation of the committee's powers and proceedings see PARA 823 text to notes 8-10 ante. As to the disciplinary committee see PARAS 857-858 post.

As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

5 As to the rules that have been made see the Companies Committee Rules 1994, approved by the General Optical Council (Companies Committee Rules) Order of Council 1994, SI 1994/2579. As to the making of rules see PARA 825 ante.

6 Opticians Act 1989 s 3(2)(a).

7 Ibid s 3(2)(b).

8 Ibid s 3(2).

9 Ibid s 3(3).

10 General Optical Council (Companies Committee Rules) Order of Council 1994, SI 1994/2579, r 3.

11 Ibid r 4(a). As to such members see PARA 814 ante.

12 Ibid r 4(b). As to such members see PARA 815 ante. For the meaning of 'registered ophthalmic optician' see PARA 804 note 2 ante.

13 Ibid r 4(c). As to such members see PARA 815 ante. For the meaning of 'registered dispensing optician' see PARA 838 note 7 post.

14 Ibid r 5(a).

15 Ibid r 5(b).

16 As to the nominated registered medical practitioner members of the Council see PARA 817 ante. For the meaning of 'registered medical practitioner' see PARA 4 ante.

17 As to the meaning of 'testing sight' see PARA 804 note 3 ante.

18 General Optical Council (Companies Committee Rules) Order of Council 1994, SI 1994/2579, r 6.

19 Ibid r 7. However, where a member appointed under r 4 (see the text to notes 11-13 supra) ceases to be a member of the Council, he also ceases to be a member of the committee: r 7. As to the retirement of Council members see PARA 818 ante; and as to their resignation see PARA 819 ante.

20 For the meaning of 'writing' see PARA 20 note 22 ante.

21 As to the registrar see PARA 822 ante.

22 General Optical Council (Companies Committee Rules) Order of Council 1994, SI 1994/2579, r 8.

23 Ibid r 9.

## **UPDATE**

### **832 The companies committee**

TEXT AND NOTES 1-9--Opticians Act 1989 ss 3-5 replaced by ss 3-5C (substituted by SI 2005/848).

TEXT AND NOTES 3, 4--Investigating committee and disciplinary committee abolished; the reference is now to the Investigation Committee (see PARA 833), the Registration Appeals Committee (see PARA 833B) or the Fitness to Practise Committee see PARA 833): 1989 Act s 3(1).

NOTE 5--Companies Committee Rules 1994 replaced: General Optical Council (Committee Constitution Rules) Order of Council 2005, SI 2005/1474.

TEXT AND NOTE 9--The Council must now consult organisations appearing to it to represent the interests of substantial numbers of business registrants: *ibid* s 3(3).

TEXT AND NOTES 10-23--Replaced. The companies committee consists of 11 members appointed by the General Optical Council and includes (1) four members selected from among the members of the Council and appointed, so that (a) one is a person nominated by the Privy Council pursuant to the 1989 Act Sch 1 para 1(a); (b) one is a person chosen to represent registered ophthalmic opticians pursuant to Sch 1 para 1(b); (c) one is a person chosen to represent registered dispensing opticians pursuant to Sch 1 para 1(c); and (d) one is a registered medical practitioner referred to in Sch 1 para 1(e); and (2) seven members selected from among persons who are not members of the Council and appointed only if they appear to the Council to represent the interests of business registrants: SI 2005/1474 rr 5-7. 'Companies committee' means the committee referred to in the 1989 Act s 3(1): SI 2005/1474 r 2(1) (see PARA 832 NOTE 4): r 3. The quorum of the committee is four and must include at least two members of the committee appointed under head (1), and two members of the committee appointed under head (2): r 8.

Appointments to the committee expire on 31 December in each year: SI 2005/1474 r 30(1). Where a committee member ceases to be a member of the Council, he must cease to be a member of the committee: r 30(2). A member of the committee may resign at any time by notifying the Council accordingly: r 30(3). Where a casual vacancy occurs among the members of the committee: (i) where the member of the committee whose office has become vacant was a member of the Council chosen to represent registered dispensing opticians, the Council must fill the vacancy by appointing a member of the Council who was chosen to represent the same profession; (ii) where the member whose office has become vacant was a member of the committee appointed under head (2), the Council must fill the vacancy by appointing a person in accordance with the requirements of head (2); (iii) in any other case, the Council must fill the vacancy by appointing a person who became a member of the Council by virtue of the same provision of the 1989 Act Sch 1 as applied to his predecessor: r 31(1). A person appointed to fill a casual vacancy holds office until the date on which the term of office of his predecessor would have expired: r 31(2). The committee must elect a chairman: r 32. The validity of any proceedings of the committee is not affected by any defect in the appointment of a member: r 33.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7. OPTICIANS/(2) THE GENERAL OPTICAL COUNCIL/(iii) Committees of the General Optical Council/833. The investigating committee and the disciplinary committee.

### **833. The investigating committee and the disciplinary committee.**

There is a committee of the General Optical Council<sup>1</sup>, known as the investigating committee<sup>2</sup>, for the preliminary investigation of disciplinary cases<sup>3</sup>; and there is also a committee of the Council, known as the disciplinary committee<sup>4</sup>, for the consideration and determination of disciplinary cases referred to it by the investigating committee<sup>5</sup> and of any other cases of which it has cognisance under the Opticians Act 1989<sup>6</sup>.

1 As to the functions and constitution of the General Optical Council see PARA 813 ante.

2 As to the investigating committee see PARAS 855-856 post.

3 Opticians Act 1989 s 4(1). For the meaning of 'disciplinary case' see PARA 855 note 2 post.

As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

4 As to the disciplinary committee see PARAS 857-858 post.

5 Opticians Act 1989 s 5(1)(a).

6 Ibid s 5(1)(b).

## **UPDATE**

### **833 The [Investigation Committee and the Fitness to Practise Committee]**

TEXT AND NOTES--Opticians Act 1989 ss 3-5 replaced by ss 3-5C (substituted by SI 2005/848).

There is a committee of the General Optical Council known as the Investigation Committee for the purpose of investigating any allegation that (1) a registered optometrist's or a registered dispensing optician's fitness to practise is impaired; (2) a business registrant's fitness to carry on business as an optometrist or a dispensing optician or both is impaired; or (3) a student registrant's fitness to undertake training as an optometrist or a dispensing optician is impaired: 1989 Act s 4(1). The Investigation Committee may refer any allegation before it to the Fitness to Practise Committee for consideration: s 4(2)). The Investigation Committee must be constituted as provided by rules made under s 4(3) by the Council: s 4(3).

There is a committee of the Council known as the Fitness to Practise Committee for the purpose of inquiring into and determining allegations relating to (a) the fitness of registered optometrists and registered dispensing opticians to practise; (b) the fitness of business registrants to carry on business as an optometrist or a dispensing optician or both; and (c) the fitness of student registrants to undertake training as an optometrist or a dispensing optician: s 5C(1). All the members of the Fitness to Practise Committee are members of the Hearings Panel: s 5C(2). Subject to s 5C(2), the Fitness to Practise Committee must be constituted as provided by rules made under s 5C(2) by the Council: s 5C(3). The members of the Fitness to Practise Committee who are to hear any particular case are to be determined in accordance with rules made by the Council under s 5C(3): s 5C(4).

As to fitness to practise proceedings, see the General Optical Council (Fitness to Practise Rules) Order of Council 2005, SI 2005/1475 (amended by SI 2008/2690, SI 2009/1182).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7. OPTICIANS/(2) THE GENERAL OPTICAL COUNCIL/(iii) Committees of the General Optical Council/833A. The Registration Committee.

### **833A. The Registration Committee.**

There is a committee of the General Optical Council<sup>1</sup> known as the Registration Committee, for the purpose of giving advice and assistance to the Council (whether or not in response to a reference from it) on matters relating to registration, other than matters required by the Opticians Act 1989 to be considered by the Registration Appeals Committee<sup>2</sup>. The Registration Committee must be constituted as provided by rules made<sup>3</sup> by the Council<sup>4</sup>.

1 As to the functions and constitution of the General Optical Council see PARA 813.

2 Opticians Act 1989 s 5(1) (s 5 substituted by SI 2005/848). As to the Registration Appeals Committee see PARA 833B.

3 le under the 1989 Act s 5(2).

4 Ibid s 5(2). See the General Optical Council (Committee Constitution Rules) Order of Council 2005, SI 2005/1474.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7. OPTICIANS/(2) THE GENERAL OPTICAL COUNCIL/(iii) Committees of the General Optical Council/833B. The Registration Appeals Committee.

### **833B. The Registration Appeals Committee.**

There is a committee of the General Optical Council<sup>1</sup> known as the Registration Appeals Committee, for the purpose of hearing and determining appeals against any decision of the registrar refusing to enter the name of an individual or body corporate in, or to restore it to, the appropriate register<sup>2</sup>. All the members of the Registration Appeals Committee must be members of the Hearings Panel<sup>3</sup> and subject to that, the Registration Appeals Committee must be constituted as provided by rules made<sup>4</sup> by the Council<sup>5</sup>.

1 As to the functions and constitution of the General Optical Council see PARA 813.

2 Opticians Act 1989 s 5A(1) (s 5A substituted by SI 2005/848).

3 1989 Act s 5A(2). As to the Hearings Panel see PARA 833D.

4 le under ibid s 5A(2).

5 Ibid s 5A(3). See the General Optical Council (Committee Constitution Rules) Order of Council 2005, SI 2005/1474.

The members of the Registration Appeals Committee who are to hear any particular case must be determined in accordance with rules made by the Council under s 5A(3): s 5A(4).



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7. OPTICIANS/(2) THE GENERAL OPTICAL COUNCIL/(iii) Committees of the General Optical Council/833C. The Standards Committee.

### **833C. The Standards Committee.**

There is a committee of the General Optical Council<sup>1</sup> known as the Standards Committee for the purpose of giving advice and assistance to the Council (whether or not in response to a reference from it) on matters relating to the standards of conduct and performance expected of registrants or those seeking admission to a register<sup>2</sup>. The Standards Committee must be constituted as provided by rules made<sup>3</sup> by the Council<sup>4</sup>.

1 As to the functions and constitution of the General Optical Council see PARA 813.

2 Opticians Act 1989 s 5B(1) (s 5B substituted by SI 2005/848).

3 Ie under the 1989 Act s 5B(2).

4 Ibid s 5B(2). See the General Optical Council (Committee Constitution Rules) Order of Council 2005, SI 2005/1474.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7. OPTICIANS/(2) THE GENERAL OPTICAL COUNCIL/(iii) Committees of the General Optical Council/833D. The Hearings Panel.

### **833D. The Hearings Panel.**

The General Optical Council<sup>1</sup> must appoint a panel of persons ('the Hearings Panel') from whom members of the Fitness to Practise Committee<sup>2</sup> and the Registration Appeals Committee<sup>3</sup> must be selected<sup>4</sup>. No person may be appointed to the Hearings Panel if he is a member of the Council; and unless he satisfies such requirements as may be prescribed by rules made by the Council<sup>5</sup>.

The Hearings Panel is to consist of (1) no more than forty members of whom at least twelve are registered optometrists, eight are registered dispensing opticians, and twelve are lay persons; and (2) no fewer than thirty-two members of whom at least nine are registered optometrists, six are registered dispensing opticians, and nine are lay persons<sup>6</sup>.

1 As to the functions and constitution of the General Optical Council see PARA 813.

2 As to the Fitness to Practise Committee, see PARA 833.

3 As to the Registration Appeals Committee, see PARA 833B.

4 Opticians Act 1989 s 5D(1) (s 5D added by SI 2005/848). The Council must pay members of the Hearings Panel such fees, allowances and expenses as the Council may determine: 1989 Act s 5D(3).

5 Ibid s 5D(2).

6 Ibid s 5D(4).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7. OPTICIANS/(2) THE GENERAL OPTICAL COUNCIL/(iv) Powers of the Privy Council/834. Default powers of the Privy Council.

#### **(iv) Powers of the Privy Council**

##### **834. Default powers of the Privy Council.**

If at any time it appears to the Privy Council that the General Optical Council<sup>1</sup> has failed, but ought, to discharge any of its functions<sup>2</sup> under the Opticians Act 1989, other than certain excepted functions<sup>3</sup>, the Privy Council may notify its opinion to the General Optical Council and may direct the latter to discharge such of those functions in the manner and within such time or times as may be specified in the direction<sup>4</sup>. If the General Optical Council fails to comply with the direction, the Privy Council may itself discharge the function or functions in question<sup>5</sup>.

1 As to the constitution of the General Optical Council see PARA 813 ante.

2 As to the functions of the General Optical Council see PARA 813 ante. For the meaning of 'functions' see PARA 830 note 3 ante.

3 The excepted functions are those of the General Optical Council under the Opticians Act 1989 s 1 (see PARA 813 ante), s 8 (see PARA 840 post), s 12 (see PARA 827 ante), s 13 (see PARAS 828-829 ante), s 22 (see PARA 859 post), s 32(1) (see PARA 826 ante): s 33(3)(a).

4 Ibid s 33(1). As to the exercise by the Privy Council of its powers under the Opticians Act 1989 see PARA 835 post. As to the Privy Council generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

5 Opticians Act 1989 s 33(2).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7. OPTICIANS/(2) THE GENERAL OPTICAL COUNCIL/(iv) Powers of the Privy Council/835. Exercise of powers conferred on the Privy Council.

### **835. Exercise of powers conferred on the Privy Council.**

For the purpose of exercising any powers conferred on it by the Opticians Act 1989, the quorum of the Privy Council is two<sup>1</sup>.

Any document purporting to be an instrument of appointment or approval made by the Privy Council under the Opticians Act 1989 or any other instrument so made<sup>2</sup>, and signed by the clerk of the Privy Council or by any other person authorised by it in that behalf<sup>3</sup>, is evidence of the fact that the instrument was so made and of the terms of the instrument<sup>4</sup>.

1 Opticians Act 1989 s 35(1). As to the Privy Council generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

2 Opticians Act 1989 s 35(2)(a).

3 Ibid s 35(2)(b).

4 Ibid s 35(2).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7.  
OPTICIANS/(2) THE GENERAL OPTICAL COUNCIL/(v) External Regulation of the Profession/836.  
External regulation.

## **(v) External Regulation of the Profession**

### **836. External regulation.**

The General Optical Council<sup>1</sup> is subject to the oversight of the Council for the Regulation of Health Care Professionals<sup>2</sup> and must in the exercise of its functions co-operate with that Council<sup>3</sup>. Where it considers the decision to be unduly lenient, or that it should not have been made, and that it would be desirable for the protection of members of the public<sup>4</sup>, the Council for the Regulation of Health Care Professionals has powers to refer to the High Court a disciplinary order<sup>5</sup> made by the disciplinary committee of the General Optical Council<sup>6</sup>, a final decision of that committee not to take any disciplinary measure<sup>7</sup>, and a decision of the General Optical Council, or one of its committees or officers, to restore a person to the register or list following removal from it following disciplinary proceedings<sup>8</sup>.

Her Majesty may by Order in Council<sup>9</sup> make provision modifying the regulation of the profession<sup>10</sup> so far as appears to be necessary or expedient for the purpose of securing or improving the regulation of the profession or the services which the profession provides or to which it contributes<sup>11</sup>, and modifying, as respects the General Optical Council, the range of functions of that body in relation to which the Council for the Regulation of Health Care Professionals performs its functions<sup>12</sup>.

The provisions of the Competition Act 1998 prohibiting agreements which have as their object the prevention, restriction or distortion of competition within the United Kingdom apply to rules made by professional bodies<sup>13</sup>.

1 As to the functions and constitution of the General Optical Council see PARA 813 ante.

2 See the National Health Service Reform and Health Care Professions Act 2002 s 25(2), (3)(c); and PARA 303 ante. As to the Council for the Regulation of Health Care Professionals, its duties and powers see PARA 294 et seq ante.

3 See *ibid* s 27(1); and PARA 304 ante. As to the power of the Council for the Regulation of Health Care Professionals to give directions requiring the General Optical Council to make rules where it considers that it would be desirable to do so for the protection of members of the public see PARA 304 ante. As to the power of the Secretary of State to make provision in regulations about the investigation by the Council for the Regulation of Health Care Professionals of complaints made to it about the way in which the General Optical Council has exercised any of its functions see PARA 305 ante. As to the Secretary of State see PARA 5 ante.

4 See the National Health Service Reform and Health Care Professions Act 2002 s 29; and PARA 306 ante.

5 *Ie* under the Opticians Act 1989 s 17: see PARAS 846-852 post.

6 See the National Health Service Reform and Health Care Professions Act 2002 s 29(1)(f); and PARA 306 ante. As to the disciplinary committee see PARAS 857-858 post.

As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

7 *Ie* under the Opticians Act 1989 s 17 (see PARAS 846-852 post): see the National Health Service Reform and Health Care Professions Act 2002 s 29(2)(a); and PARA 306 ante.

8 See *ibid* s 29(2)(c); and PARA 306 ante. As to restoration to a register or list see PARA 853 post.

9 As to Orders in Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 907.

- 10     le the profession regulated under the Opticians Act 1989.
- 11     See the Health Act 1999 s 60(1)(a), (2)(a); and PARA 291 ante.
- 12     See *ibid* s 60(1)(e); and PARA 291 ante. As to the scope of such orders and the procedure for making them see PARAS 292-293 ante.
- 13     See the Competition Act 1998 Ch 1 (ss 1-11); and COMPETITION vol 18 (2009) PARA 116 et seq.

## **UPDATE**

### **836 External regulation**

TEXT AND NOTES--Council for the Regulation of Health Care Professionals renamed as the Council for Healthcare Regulatory Excellence: see the Health and Social Care Act 2008 s 113(1).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7. OPTICIANS/(3) REGISTRATION, QUALIFICATION AND ENROLMENT/837. Rules as to registers and lists.

### **(3) REGISTRATION, QUALIFICATION AND ENROLMENT**

#### **837. Rules as to registers and lists.**

The General Optical Council<sup>1</sup> may make rules<sup>2</sup> with respect to the form and keeping of the registers<sup>3</sup> and lists<sup>4</sup> and the making of entries and alterations in them and, in particular: (1) regulating the making of applications for registration<sup>5</sup> or enrolment<sup>6</sup> or for transfer from one register or list to another, and providing for the evidence to be produced in support of any such application<sup>7</sup>; (2) providing for the notification to the Council of any change in the particulars entitling a person to be registered or a body corporate to be enrolled<sup>8</sup>; (3) prescribing a fee to be charged on the entry of a name in, or the restoration of a name to, the register or list<sup>9</sup>; (4) prescribing a fee to be charged in respect of the retention in the register or list of any name in any year subsequent to the year in which the name was first entered in the register or list<sup>10</sup>; (5) providing for the entry in the register of qualifications, whether or not approved<sup>11</sup>, possessed by persons whose names are registered in it and for the removal of such qualifications from the register, and prescribing a fee to be charged in respect of the entry<sup>12</sup>; (6) authorising the registrar<sup>13</sup> to refuse to enter a name in, or restore it to, the register or list until a fee prescribed for the entry or restoration has been paid<sup>14</sup>, and to erase from the register or list the name of a person who or body corporate which, after the prescribed<sup>15</sup> notices and warnings, fails to pay the fee prescribed in respect of the retention of that name in the register or list<sup>16</sup>; (7) prescribing anything required or authorised to be prescribed by the provisions of the Opticians Act 1989 relating to the registers or lists<sup>17</sup>.

Rules which provide for the erasure of a name from the register or list on failure to pay a fee must provide for its restoration to the register or list on the making of the prescribed application in that behalf and on payment of that fee and any additional fee prescribed in respect of the restoration<sup>18</sup>.

Rules prescribing fees may provide for the charging of different fees in different classes of cases<sup>19</sup>.

1 As to the General Optical Council see PARA 813 et seq ante.

2 As to the making of rules see PARA 825 ante. By virtue of the Interpretation Act 1978 s 17(2)(b), the Registration and Enrolment Rules 1976, approved by the General Optical Council (Registration and Enrolment Rules) Order of Council 1977, SI 1977/176 (see PARAS 838 et seq post), have effect as if made under the Opticians Act 1989 s 10.

3 For the meaning of 'register' see PARA 838 note 2 post.

4 For the meaning of 'list' see PARA 841 note 4 post.

5 For the meaning of 'registration' see PARA 838 note 2 post.

6 For the meaning of 'enrolment' see PARA 842 note 1 post.

7 Opticians Act 1989 s 10(1)(a). As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

8 Opticians Act 1989 s 10(1)(b). For the meaning of 'registered' see PARA 838 note 2 post; and for the meaning of 'enrolled' see PARA 842 note 1 post.

- 9 Ibid s 10(1)(c).
- 10 Ibid s 10(1)(d).
- 11 Ie under ibid s 12(2): see PARA 827 ante.
- 12 Ibid s 10(1)(e).
- 13 As to the registrar see PARA 822 ante.
- 14 Opticians Act 1989 s 10(1)(f)(i).
- 15 For the meaning of 'prescribed' see PARA 806 note 6 ante.
- 16 Opticians Act 1989 s 10(f)(ii).
- 17 Ibid s 10(g).
- 18 Ibid s 10(3).
- 19 Ibid s 10(4).

## **UPDATE**

### **837-845 Registration, Qualification and Enrolment**

SI 1977/176 replaced: General Optical Council (Registration Rules) Order of Council 2005, SI 2005/1478 (amended by SI 2007/3101, SI 2008/1940).

### **837 Rules as to registers and lists**

TEXT AND NOTES--The Council may provide for the registration of particular specialties or proficiencies: Opticians Act 1989 s 10 (amended by SI 2005/848, SI 2007/3101). Registrants must have in place a policy of insurance to insure against civil liabilities for work done by them: 1989 Act s 10A (added by SI 2005/848; and amended by SI 2007/3101). For transitional provision see the Opticians Act 1989 (Transitional Provisions) Order 2005, SI 2005/1472.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7.  
OPTICIANS/(3) REGISTRATION, QUALIFICATION AND ENROLMENT/838. Registers of opticians.

### **838. Registers of opticians.**

The General Optical Council<sup>1</sup> must maintain: (1) two registers<sup>2</sup> of ophthalmic opticians<sup>3</sup>, one for the registration of persons engaged or proposing to engage both in the testing of sight<sup>4</sup> and in the fitting and supply of optical appliances<sup>5</sup>, and the other for the registration of persons engaged or proposing to engage in the testing of sight but not in the fitting and supply of optical appliances<sup>6</sup>; and (2) a register of dispensing opticians<sup>7</sup>. Each register must contain the names, addresses, qualifications and other prescribed<sup>8</sup> particulars of all persons who are entitled to be registered in it and who apply in the prescribed manner for registration<sup>9</sup>.

1 As to the General Optical Council see PARA 813 et seq ante.

2 'Register' means either of the registers of ophthalmic opticians or the register of dispensing opticians; and, except where used in relation to medical practitioners, 'registered' and 'registration' have corresponding meanings: Opticians Act 1989 s 36(1). For the meaning of 'registered medical practitioner' see PARA 4 ante.

3 For the meaning of 'ophthalmic optician' see PARA 804 note 2 ante.

4 As to the meaning of 'testing sight' see PARA 804 note 3 ante.

5 For the meaning of 'optical appliance' see PARA 804 note 2 ante.

6 Opticians Act 1989 s 7(a). As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

7 Opticians Act 1989 s 7(b). For the meaning of 'dispensing optician' see PARA 807 note 8 ante. 'Registered dispensing optician' means a person who is registered in the register of dispensing opticians: s 36(1).

8 For the meaning of 'prescribed' see PARA 806 note 6 ante.

9 Opticians Act 1989 s 7. Each register must contain the following particulars of each optician registered in it: full name; permanent address and practice addresses, if any; qualifications held by the optician and recognised by the Council under s 8(2), (4)-(6) (see PARA 840 post) and other optical, academic or professional qualifications approved by the Council for inclusion in the register; registration number; and date of registration or restoration: General Optical Council (Registration and Enrolment Rules) Order of Council 1977, SI 1977/176, r 5(1)(a)-(g) (amended by SI 1979/1638; SI 1985/2024). As to the address in the register and applications for registration see PARAS 839, 843 post. As to the approval of qualifications and restoration to the register see PARAS 827 ante, 853 post.

## **UPDATE**

### **837-845 Registration, Qualification and Enrolment**

SI 1977/176 replaced: General Optical Council (Registration Rules) Order of Council 2005, SI 2005/1478 (amended by SI 2007/3101, SI 2008/1940).

### **838 [Register of optometrists]**

TEXT AND NOTES--Registers of ophthalmic opticians replaced by a register of optometrists: Opticians Act 1989 s 7 (amended by SI 2005/848).

The Council must also maintain a register of persons undertaking training as optometrists and a register of persons undertaking training as dispensing opticians: 1989 Act s 8A (added by SI 2005/848).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7. OPTICIANS/(3) REGISTRATION, QUALIFICATION AND ENROLMENT/839. The address in the register.

### **839. The address in the register.**

The address to be specified in the register<sup>1</sup> is: (1) the optician's permanent address, with an indication as to whether or not he works there as a dispensing<sup>2</sup> or ophthalmic optician<sup>3</sup> and the name under which he practises as a registered optician<sup>4</sup> at that address<sup>5</sup>; and (2) his practice addresses<sup>6</sup>, if any, other than the permanent address, including in each case the name under which he practises at the practice address<sup>7</sup>.

It is, however, sufficient compliance with these requirements if the register entry relating to any optician who practises as an employee<sup>8</sup> of a prescribed category of employer<sup>9</sup> contains a single practice address, whether or not it is also a permanent address, being any address at which his employer provides ophthalmic services or arranges for such services to be provided<sup>10</sup>.

1 For the meaning of 'register' see PARA 838 note 2 ante. As to the requirement to specify the address in the register see PARA 838 ante.

2 For the meaning of 'dispensing optician' see PARA 807 note 8 ante.

3 For the meaning of 'ophthalmic optician' see PARA 804 note 2 ante.

4 'Registered optician' means a person who is registered in any of the registers: Opticians Act 1989 s 36(1).

5 General Optical Council (Registration and Enrolment Rules) Order of Council 1977, SI 1977/176, r 5(1)(b) (r 5(1)(b) amended, and r 5(1)(c), (2), (3) added, by SI 1979/1638).

As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

6 'Practice address' means an address at which a registered optician provides ophthalmic services including testing sight, or the fitting and supply of optical appliances, or both, except an address at which he provides such services only in an emergency, or in the place of a registered optician who is ill or on holiday, or as a fee-earning visiting practitioner, or on less than 12 days a year: General Optical Council (Registration and Enrolment Rules) Order of Council 1977, SI 1977/176, r 2 (definition added by SI 1979/1638). As to the meaning of 'testing sight' see PARA 804 note 3 ante; and for the meaning of 'optical appliance' see PARA 804 note 2 ante.

7 General Optical Council (Registration and Enrolment Rules) Order of Council 1977, SI 1977/176, r 5(1)(c) (as added: see note 5 supra).

8 'Employee' does not include a registered optician who is employed in a fee-earning capacity, but, in relation to an enrolled body corporate, it includes a director; and 'employer' is to be construed accordingly: *ibid* r 2 (definition added by SI 1979/1638). For the meaning of 'enrolled' see PARA 842 note 1 post. As to the enrolment of bodies corporate see PARAS 841-843 et seq post.

9 I.e. an optician who practises as an employee of a registered optician, an enrolled body corporate, a registered medical practitioner, an authority or person carrying on a hospital, clinic, nursing home or other institution providing medical or surgical treatment, or a Minister of the Crown or government department: General Optical Council (Registration and Enrolment Rules) Order of Council 1977, SI 1977/176, r 5(3) (as added: see note 5 supra). For the meaning of 'registered medical practitioner' see PARA 4 ante. As to Ministers of the Crown and government departments see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 354 et seq.

10 *Ibid* r 5(2) (as added: see note 5 supra).

## **UPDATE**

### **837-845 Registration, Qualification and Enrolment**

SI 1977/176 replaced: General Optical Council (Registration Rules) Order of Council 2005, SI 2005/1478 (amended by SI 2007/3101, SI 2008/1940).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7. OPTICIANS/(3) REGISTRATION, QUALIFICATION AND ENROLMENT/840. Entitlement to registration.

#### **840. Entitlement to registration.**

The following persons are entitled to be registered<sup>1</sup> in the appropriate register<sup>2</sup>:

- 959 (1) any person who, on application made on or before 1 June 1961 or between that date and 16 February 1990, satisfied the General Optical Council<sup>3</sup> that he held a qualification recognised for the purpose by the Council, and that he had adequate practical experience in the work of an ophthalmic<sup>4</sup> or dispensing<sup>5</sup> optician, and was of good character<sup>6</sup>;
- 960 (2) any person who at any time satisfies the Council that he holds a qualification as an ophthalmic or dispensing optician for the time being approved by the Council<sup>7</sup>, being a qualification granted to him after receiving instruction from one or more approved institutions, and that he has had adequate practical experience in the work of an ophthalmic or dispensing optician<sup>8</sup>;
- 961 (3) a person who at any time satisfies the Council that he holds a qualification as an ophthalmic optician or dispensing optician for the time being recognised by the Council, being a qualification granted outside the United Kingdom<sup>9</sup>, and that he has had adequate practical experience in the work of an ophthalmic or dispensing optician and is of good character<sup>10</sup>;
- 962 (4) any person who on 1 January 1959<sup>11</sup> was entitled to have his name included on one of the health service ophthalmic lists<sup>12</sup> and whose name had not at that time been removed from one of those lists by direction of a health service tribunal<sup>13</sup>;
- 963 (5) a person who on an application made on or after 16 February 1990 satisfies the Council that he held on 1 June 1961 a qualification as an ophthalmic optician or dispensing optician for the time being recognised by the Council and that he has had adequate practical experience in the work of an ophthalmic or dispensing optician and is of good character<sup>14</sup>.

Where the Council has refused to grant an application under head (1) or head (5) above, the Privy Council may if it thinks fit, on representations made to it and after considering the representations and communicating with the General Optical Council, order the Council to grant the application<sup>15</sup>.

The General Optical Council, being the designated authority for the profession of ophthalmic opticians in the United Kingdom<sup>16</sup>, may not, on grounds of inadequate qualifications, refuse to authorise a national of a member state of the European Union, Iceland, Norway, Liechtenstein or Switzerland to practise the profession on the same conditions as apply to a United Kingdom applicant, if that person holds the diploma required to practise in another such state or can satisfy certain other conditions as to experience and qualifications<sup>17</sup>.

<sup>1</sup> For the meaning of 'registered' see PARA 838 note 2 ante.

<sup>2</sup> 'The appropriate register' means: (1) in the case of a person whose qualifications, including experience, are appropriate for an ophthalmic optician, both registers of ophthalmic opticians and the register of dispensing opticians; (2) in the case of a person whose qualifications, including experience, are only appropriate for a dispensing optician, the register of dispensing opticians: Opticians Act 1989 s 8(7). However, a person may not at one time be registered in more than one register: s 8(8). As to the registers see PARA 838 ante. As to the entry of qualifications in the register see PARA 838 ante.

As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

3 As to the General Optical Council see PARA 813 et seq ante.

4 For the meaning of 'ophthalmic optician' see PARA 804 note 2 ante.

5 For the meaning of 'dispensing optician' see PARA 807 note 8 ante.

6 Opticians Act 1989 ss 8(4), (5), 38.

7 le approved under ibid s 12: see PARA 827 ante.

8 Ibid s 8(1).

9 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

10 Opticians Act 1989 s 8(2).

11 le at the time of the establishment of the General Optical Council (see PARA 813 note 1 ante).

12 'Health service ophthalmic lists' means the lists of ophthalmic or dispensing opticians undertaking to provide general ophthalmic services or supplementary eye services which on 1 January 1959 were kept by virtue of the National Health Service Act 1946 s 41 (repealed), or corresponding Scottish or Northern Ireland legislation: Opticians Act 1989 s 36(1). These lists are now kept by virtue of the National Health Service Act 1977 ss 38, 39 (both as amended): see HEALTH SERVICES vol 54 (2008) PARA 299 et seq.

13 Opticians Act 1989 s 8(3).

14 Ibid ss 8(6), 38.

15 Ibid s 8(9). As to the exercise of powers of the Privy Council under the Opticians Act 1989 see PARA 835 ante. As to the Privy Council generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

16 European Communities (Recognition of Professional Qualifications) (First General System) Regulations 2005, SI 2005/18, reg 4(1), Sch 1 Pt 1.

17 See ibid reg 5. As to proof of experience and qualifications see further regs 6-9. As to the use of titles by such persons see PARA 809 note 6 ante.

## UPDATE

### 837-845 Registration, Qualification and Enrolment

SI 1977/176 replaced: General Optical Council (Registration Rules) Order of Council 2005, SI 2005/1478 (amended by SI 2007/3101, SI 2008/1940).

### 840 Entitlement to registration

TEXT AND NOTES 1-15--Registration is dependant on the applicant being a fit person to be registered: see Opticians Act 1989 s 8 (amended by SI 2005/848, SI 2007/3101). The General Optical Council must establish and maintain separate registers of visiting optometrists and visiting dispensing opticians from relevant European states: see Opticians Act 1989 ss 8B-8D (added by SI 2007/3101).

There are new requirements for training and development for registered persons and for those seeking to restore their name to the register: see the 1989 Act ss 11A, 11B (added by SI 2005/848; and amended by SI 2007/3101).

NOTE 16--SI 2005/18 replaced: European Communities (Recognition of Professional Qualifications) Regulations 2007, SI 2007/2781 (amended by SI 2008/2683, SI 2009/1587).



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7. OPTICIANS/(3) REGISTRATION, QUALIFICATION AND ENROLMENT/841. Lists of bodies corporate carrying on business as opticians.

### **841. Lists of bodies corporate carrying on business as opticians.**

The General Optical Council<sup>1</sup> must maintain a list of bodies corporate carrying on business as ophthalmic opticians<sup>2</sup> and a list of bodies corporate carrying on business as dispensing opticians<sup>3</sup>. Each list<sup>4</sup> must contain prescribed<sup>5</sup> particulars<sup>6</sup> of the bodies which are entitled to be enrolled<sup>7</sup> and which apply in the prescribed manner<sup>8</sup> to be enrolled<sup>9</sup>.

1 As to the General Optical Council see PARA 813 et seq ante.

2 Opticians Act 1989 s 9(1)(a). For the meaning of 'ophthalmic optician' see PARA 804 note 2 ante.

As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

3 Opticians Act 1989 s 9(1)(b). For the meaning of 'dispensing optician' see PARA 807 note 8 ante.

4 'List' means the list of bodies corporate carrying on business as ophthalmic opticians or the list of bodies corporate carrying on business as dispensing opticians: *ibid* s 36(1).

5 For the meaning of 'prescribed' see PARA 806 note 6 ante. As to the power of the General Optical Council to make rules in this respect see PARA 837 ante.

6 The list must contain the following particulars of each body corporate: its name; its principal place of business and the name under which the business is carried on there; the addresses of all places at which it carries on business as ophthalmic or dispensing opticians and the name under which that business is carried on at each place; the enrolment number; and the date of enrolment in or restoration to the list: General Optical Council (Registration and Enrolment Rules) Order of Council 1977, SI 1977/176, r 6 (substituted by SI 1979/1638; and amended by SI 1985/2024).

7 As to entitlement to be enrolled see PARA 842 post. For the meaning of 'enrolled' see PARA 842 note 1 post.

8 As to the mode of application see PARA 843 post.

9 Opticians Act 1989 s 9(1).

### **UPDATE**

### **837-845 Registration, Qualification and Enrolment**

SI 1977/176 replaced: General Optical Council (Registration Rules) Order of Council 2005, SI 2005/1478 (amended by SI 2007/3101, SI 2008/1940).

### **841 Lists of bodies corporate carrying on business as opticians**

TEXT AND NOTES--References to ophthalmic opticians are now to optometrists or dispensing opticians: Opticians Act 1989 s 9 amended: SI 2005/848.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7. OPTICIANS/(3) REGISTRATION, QUALIFICATION AND ENROLMENT/842. Bodies entitled to be enrolled.

#### **842. Bodies entitled to be enrolled.**

A body corporate is entitled to be enrolled<sup>1</sup> in the appropriate list<sup>2</sup>:

- 964 (1) if it satisfies the General Optical Council<sup>3</sup> that a majority of its directors are registered opticians<sup>4</sup> or, in the case of a body corporate having only one director, that he is a registered optician<sup>5</sup>;
- 965 (2) if its name or a name under which it carried on business was on 20 November 1957 included in one of the health service ophthalmic lists<sup>6</sup> or it subsequently came into existence on the reconstruction of a body corporate entitled to be so enrolled<sup>7</sup>;
- 966 (3) if it satisfies the Council that the greater part of its business consists of activities other than the testing of sight<sup>8</sup> and the fitting and supply of optical appliances<sup>9</sup>, and that so much of its business as consists of the testing of sight is carried on under the management of a registered ophthalmic optician<sup>10</sup>, and that so much as consists of the fitting and supply of optical appliances is carried on under the management of a registered optician<sup>11</sup>;
- 967 (4) if it is a society registered under either the Industrial and Provident Societies Act 1965<sup>12</sup> or the Industrial and Provident Societies Act (Northern Ireland) 1969<sup>13</sup>, and satisfies the Council that so much of its business as consists of the testing of sight or of the fitting and supply of optical appliances is carried on under the management of a registered ophthalmic optician or of a registered optician, as the case may be<sup>14</sup>.

1 'Enrolled' means enrolled in one of the lists; and 'enrolment' is to be construed accordingly: Opticians Act 1989 s 36(1). As to bodies corporate see COMPANIES; CORPORATIONS.

2 For the meaning of 'list' see PARA 841 note 4 ante.

3 As to the General Optical Council see PARA 813 et seq ante.

4 For the meaning of 'registered optician' see PARA 839 note 4 ante.

5 Opticians Act 1989 s 9(2)(a). As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

6 For the meaning of 'health service ophthalmic lists' see PARA 840 note 12 ante.

7 Opticians Act 1989 s 9(2)(b). A body corporate is not entitled to be enrolled by virtue of s 9(2)(b) if its name, or the name of any body on the reconstruction of which it came into existence, or a name under which it or any such body carried on business, has at any time been removed from one of the health service ophthalmic lists by direction of a health service tribunal (see HEALTH SERVICES vol 54 (2008) PARA 306 et seq) (s 9(3)(a)), or has been erased from the list in consequence of an erasure order (s 9(3)(b)). For the meaning of 'erasure order' see PARA 846 post. As to the reconstruction of companies see COMPANIES vol 15 (2009) PARAS 1434-1436.

8 As to the meaning of 'testing sight' see PARA 804 note 3 ante.

9 Opticians Act 1989 s 9(2)(c)(i). For the meaning of 'optical appliance' see PARA 804 note 2 ante.

10 Ibid s 9(2)(c)(ii). For the meaning of 'registered ophthalmic optician' see PARA 804 note 2 ante.

11 Ibid s 9(2)(c)(iii).

12 See FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 2395.

13 Opticians Act 1989 s 9(2)(d)(i).

14 Ibid s 9(2)(d)(ii).

## **UPDATE**

### **837-845 Registration, Qualification and Enrolment**

SI 1977/176 replaced: General Optical Council (Registration Rules) Order of Council 2005, SI 2005/1478 (amended by SI 2007/3101, SI 2008/1940).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7. OPTICIANS/(3) REGISTRATION, QUALIFICATION AND ENROLMENT/843. Registration and enrolment.

### **843. Registration and enrolment.**

Applications to the General Optical Council<sup>1</sup> for the inclusion of a name in the register<sup>2</sup> or list<sup>3</sup>, for the transfer<sup>4</sup> of the name of a registered optician<sup>5</sup> from one register to another or of the name of an enrolled<sup>6</sup> body corporate from one list to the other, or for the retention<sup>7</sup> of those names in the register or list, must be made on the appropriate form<sup>8</sup>. On an application for the inclusion of a name in the register or list, the Council may require such evidence in verification of information given as in its view is necessary to establish whether the applicant is entitled to be registered or enrolled<sup>9</sup>. Fees are payable for the registration, enrolment, transfer, or retention of any name in or to the register or list<sup>10</sup>. The registrar<sup>11</sup> has authority to refuse to enter a name in a register or list, and to refuse to transfer a name to a register or list, until the prescribed fees have been paid<sup>12</sup>.

A registered optician must notify the Council within one month of any change in his name or permanent address and of the loss of any qualification entered on the register<sup>13</sup>; and an enrolled body corporate must notify the Council within one month of any change in its name or the address of its principal place of business<sup>14</sup>, and must notify the Council forthwith if at any time any particulars supplied by it in support of its application for enrolment no longer apply in any material respect<sup>15</sup>. When the registrar receives information that an entry in the register or the list has become incorrect, or application is made by or on behalf of a registered optician or an enrolled body corporate for an entry in the register or list to be altered, and the registrar satisfies himself by means of a statutory declaration or otherwise that the information is true or the ground of the application is sufficient, he must make the required correction or alteration<sup>16</sup>.

The registrar may remove from the register or the list the name of any registered optician or enrolled body corporate, upon receipt of a written application by or on behalf of that optician or body stating the grounds on which the application is made and accompanied by a statutory declaration that the applicant is not aware of any reason for the institution of proceedings which might lead to the making of an erasure order<sup>17</sup>.

1 As to the General Optical Council see PARA 813 et seq ante.

2 For the meaning of 'register' see PARA 838 note 2 ante.

3 For the meaning of 'list' see PARA 841 note 4 ante.

4 An application for transfer must be accompanied by such information as the Council may reasonably require for establishing whether the registered optician (see note 5 infra) or enrolled body corporate (see note 6 infra) is entitled to be registered or enrolled in the other register or list: General Optical Council (Registration and Enrolment Rules) Order of Council 1977, SI 1977/176, r 9(1). Where the Council is satisfied that the applicant is so entitled, it must delete the name from one register or list and insert it in the other: r 9(2). As to fees for such transfers see the text and note 10 infra.

As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

5 For the meaning of 'registered optician' see PARA 839 note 4 ante.

6 For the meaning of 'enrolled' see PARA 842 note 1 ante.

7 An application for retention must be accompanied by such information as the Council may reasonably require for establishing whether the registered optician or enrolled body corporate is entitled to have his or its name retained in the register or list: General Optical Council (Registration and Enrolment Rules) Order of

Council 1977, SI 1977/176, r 10(1). The appropriate form must be sent by the registrar to the permanent address of every registered optician and to the principal place of business of every enrolled body corporate not later than 14 March each year (r 10(2)), accompanied by a notice of the fees payable and a warning that failure to pay the appropriate fee will entail removal from the register or list (r 10(3)). Failure to receive a form of notice does not constitute a ground for retention in the register or list: r 10(4). As to the fee for retention see the text and note 10 infra.

8 Ibid rr 8(1), 9(1), 10(1). 'Appropriate form' means a form issued by the Council for the type of application in question; and a requirement that an application be made on an appropriate form implies that the Council is entitled to require completion of the form: r 2.

9 Ibid r 8(2).

10 See ibid rr 20, 21, 23-26, 28, 29, Appendix (substituted by SI 2004/3459).

11 As to the registrar see PARA 822 ante.

12 General Optical Council (Registration and Enrolment Rules) Order of Council 1977, SI 1977/176, r 7. Where the registrar has not received from a registered optician or enrolled body corporate, by 31 March in any year, a retention fee due on that date, he must send a warning to that registered optician or enrolled body corporate that failure to pay the fee will result in the removal from the register or the list of the name in relation to which the fee was due; and if the fee is not received within 14 days of the issue of the warning he must remove the name from the register or list: r 11.

13 Ibid r 12. As to the entry of qualifications on the register see PARA 838 ante. On registering the death of an ophthalmic or dispensing optician, a registrar of births and deaths must send forthwith by post to the registrar of the General Optical Council a copy certified under his hand of the entry relating to the death in the register of deaths: Opticians Act 1989 s 10(2). The cost of the certificate and of sending it by post is payable by the registrar of the General Optical Council to the registrar of births and deaths from whom it is received: s 10(2). For the meaning of 'ophthalmic optician' see PARA 804 note 2 ante; and for the meaning of 'dispensing optician' see PARA 807 note 8 ante. As to the registration of births, deaths and marriages see REGISTRATION CONCERNING THE INDIVIDUAL vol 39(2) (Reissue) PARA 501 et seq; and as to registration officers see REGISTRATION CONCERNING THE INDIVIDUAL vol 39(2) (Reissue) PARA 609 et seq.

14 General Optical Council (Registration and Enrolment Rules) Order of Council 1977, SI 1977/176, r 13.

15 Ibid r 14.

16 Ibid r 15(1). No charge may be made for such a correction or alteration: r 15(2). As to statutory declarations see the Statutory Declarations Act 1835 (as amended); and CIVIL PROCEDURE vol 11 (2009) PARA 1024.

As to the noting in the register of a suspension order see PARA 846 notes 12, 13 post.

17 General Optical Council (Registration and Enrolment Rules) Order of Council 1977, SI 1977/176, r 16. For the meaning of 'erasure order' see PARA 846 post.

## **UPDATE**

### **837-845 Registration, Qualification and Enrolment**

SI 1977/176 replaced: General Optical Council (Registration Rules) Order of Council 2005, SI 2005/1478 (amended by SI 2007/3101, SI 2008/1940).

### **843 Registration and enrolment**

NOTE 13--Reference to an ophthalmic or dispensing optician is now to a registrant: Opticians Act 1989 s 10(2) (amended by SI 2005/848).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7. OPTICIANS/(3) REGISTRATION, QUALIFICATION AND ENROLMENT/844. Publication of registers and lists.

#### **844. Publication of registers and lists.**

The General Optical Council<sup>1</sup> must cause the registers<sup>2</sup> and lists<sup>3</sup> which it is required to maintain to be printed and published as often as it thinks fit<sup>4</sup>. Where any of the registers or lists are not published in any year, the Council must cause any alterations in the entries in that register or list which have been made since the last publication to be printed and published within that year<sup>5</sup>.

1 As to the General Optical Council see PARA 813 et seq ante.

2 For the meaning of 'register' see PARA 838 note 2 ante.

3 For the meaning of 'list' see PARA 841 note 4 ante.

4 Opticians Act 1989 s 11(1). As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

5 Opticians Act 1989 s 11(2). As to the making of alterations to the registers or lists see PARA 843 ante.

#### **UPDATE**

#### **837-845 Registration, Qualification and Enrolment**

SI 1977/176 replaced: General Optical Council (Registration Rules) Order of Council 2005, SI 2005/1478 (amended by SI 2007/3101, SI 2008/1940).

#### **844-845 [Publication of registers and proof of registration]**

Opticians Act 1989 s 11 substituted: Opticians Act 1989 (Amendment) Order 2005, SI 2005/848.

The General Optical Council must publish from time to time information from each register in such form (including electronic form) as it considers appropriate: 1989 Act s 11(1). Such information must include (1) a list of all persons or bodies whose names are in the registers on a date specified by the Council at the time of publication; (2) the number assigned to the person or body on the appropriate register; and (3) such other particulars (if any) as the Council may direct in relation to registrants or a particular class of registrants: s 11(2) s 11 as so substituted). A copy of the appropriate register purporting to be published by the Council is evidence in all proceedings that the persons or bodies whose names are in the appropriate register are registrants, and the absence of the name of any person or body from such a copy of the appropriate register is evidence, until the contrary is shown, that that person or body is not a registrant: s 11(3).

The registrar may issue a certificate that (a) a person's or body's name is in the appropriate register; (b) a person's or body's name is not in the appropriate register; (c) a person's or body's name was in the appropriate register at a specified date or during a specified period; (d) a person's or body's name was not in the appropriate register at a specified date or during a specified period; or (e) a person's or body's

name has never been in the appropriate register: s 11(4). A certificate so issued is evidence of the matters certified: s 11(5). Section 11(3), (4) applies to entries made in accordance with rules made under s 10(1A).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7. OPTICIANS/(3) REGISTRATION, QUALIFICATION AND ENROLMENT/845. Registers and lists as evidence.

### **845. Registers and lists as evidence.**

A copy of any of the registers<sup>1</sup> or lists<sup>2</sup> purporting to be printed and published by the General Optical Council<sup>3</sup>, as altered by any alterations purporting to be printed and published by the Council<sup>4</sup>, is evidence in all proceedings that the individuals specified in the register are registered<sup>5</sup> in it or, as the case may be, that the bodies corporate specified in the list are enrolled<sup>6</sup> in it; and the absence of the name of any individual or body corporate from any such copy of a register or list is evidence, until the contrary is shown, that he is not so registered or, as the case may be, that it is not so enrolled<sup>7</sup>.

In the case of an individual or body corporate whose name does not appear in any such copy of a register or list as altered, a certified copy under the hand of the registrar<sup>8</sup> of the entry relating to that individual or body corporate in the register or list is evidence of the entry<sup>9</sup>.

1 For the meaning of 'register' see PARA 838 note 2 ante.

2 For the meaning of 'list' see PARA 841 note 4 ante.

3 As to the General Optical Council see PARA 813 et seq ante.

4 As to printing and publication of the registers and lists and alterations to them see PARA 844 ante.

5 For the meaning of 'registered' see PARA 838 note 2 ante.

6 For the meaning of 'enrolled' see PARA 842 note 1 ante.

7 Opticians Act 1989 s 11(3). As to copies of public documents as evidence see CIVIL PROCEDURE vol 11 (2009) PARA 884 et seq.

As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

8 As to the registrar see PARA 822 ante.

9 Opticians Act 1989 s 11(4).

## **UPDATE**

### **837-845 Registration, Qualification and Enrolment**

SI 1977/176 replaced: General Optical Council (Registration Rules) Order of Council 2005, SI 2005/1478 (amended by SI 2007/3101, SI 2008/1940).

### **844-845 [Publication of registers and proof of registration]**

Opticians Act 1989 s 11 substituted: Opticians Act 1989 (Amendment) Order 2005, SI 2005/848.

The General Optical Council must publish from time to time information from each register in such form (including electronic form) as it considers appropriate: 1989 Act s 11(1) (s 11 as so substituted). Such information must include (1) a list of all persons or bodies whose names are in the registers on a date specified by the Council at the time

of publication; (2) the number assigned to the person or body on the appropriate register; and (3) such other particulars (if any) as the Council may direct in relation to registrants or a particular class of registrants: s 11(2) (s 11 as so substituted). A copy of the appropriate register purporting to be published by the Council is evidence in all proceedings that the persons or bodies whose names are in the appropriate register are registrants, and the absence of the name of any person or body from such a copy of the appropriate register is evidence, until the contrary is shown, that that person or body is not a registrant: s 11(3) (s 11 as so substituted).

The registrar may issue a certificate that (a) a person's or body's name is in the appropriate register; (b) a person's or body's name is not in the appropriate register; (c) a person's or body's name was in the appropriate register at a specified date or during a specified period; (d) a person's or body's name was not in the appropriate register at a specified date or during a specified period; or (e) a person's or body's name has never been in the appropriate register: s 11(4) (s 11 as so substituted). A certificate so issued is evidence of the matters certified: s 11(5) (s 11 as so substituted). Section 11(3), (4) applies to entries made in accordance with rules made under s 10(1A) (see PARA 837) as it applies to registration in the appropriate register: s 11(6) (s 11 as so substituted).



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7. OPTICIANS/(4) DISCIPLINE/(i) Jurisdiction/846. Disciplinary order against registered opticians on conviction or for serious professional misconduct.

## **(4) DISCIPLINE**

### **(i) Jurisdiction**

#### **846. Disciplinary order against registered opticians on conviction or for serious professional misconduct.**

If any registered optician<sup>1</sup> is convicted by any court in the United Kingdom<sup>2</sup> of any criminal offence<sup>3</sup>, or is judged by the disciplinary committee of the General Optical Council<sup>4</sup> to have been guilty of serious professional misconduct<sup>5</sup>, the committee may make a disciplinary order against him<sup>6</sup>. A 'disciplinary order' is an erasure order, a suspension order or a penalty order<sup>7</sup>. The power to make a disciplinary order is a power to make any of these orders<sup>8</sup>, or an erasure order or a suspension order together with a penalty order<sup>9</sup>.

An 'erasure order' is an order, in relation to a registered optician, that his name be erased from the register<sup>10</sup> and, in relation to an enrolled body corporate, that its name be erased from the list in which it is enrolled<sup>11</sup>. A 'suspension order' is an order, in relation to a registered optician, that his registration be suspended for a specified period not exceeding 12 months<sup>12</sup> and, in relation to an enrolled body corporate, that its enrolment in the list be suspended for a specified period not exceeding 12 months<sup>13</sup>. A 'penalty order' is an order that a registered optician or an enrolled body corporate must pay to the Council a specified sum<sup>14</sup> not exceeding the maximum penalty<sup>15</sup>. The penalty order must specify a period within which the sum specified in it is to be paid<sup>16</sup>, and the General Optical Council may recover the specified sum from the person or body against whom the order was made if the person or body does not pay it within that period<sup>17</sup>.

1 For the meaning of 'registered optician' see PARA 839 note 4 ante.

2 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

3 Opticians Act 1989 s 17(1)(a). The purpose of giving a disciplinary committee powers over a professional man who has been convicted of crime is not to punish him for a second time for the same offence but to protect the public who may come to him as patients and to maintain the high standards and good reputation of an honourable profession: *Ziderman v General Dental Council* [1976] 2 All ER 334, [1976] 1 WLR 330, PC. Where a professional man has been convicted and punished for a criminal offence which also constitutes professional misconduct and the appropriate disciplinary body imposes what it decides is a proper disciplinary penalty, the court will not interfere on an appeal: *Laud v General Medical Council* (1980) Times, 8 March, PC. The maxim that a person ought not to be punished twice for the same offence does not apply to proceedings before a disciplinary committee: *R v Statutory Committee of the Pharmaceutical Society of Great Britain, ex p Pharmaceutical Society of Great Britain* [1981] 2 All ER 805, [1981] 1 WLR 886, DC. If the disciplinary committee is considering erasure, it must satisfy itself that the criminal offence is of so grave a character as to show that the professional man is unfit to continue to practise: *Ziderman v General Dental Council* supra.

As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

4 As to the disciplinary committee see PARAS 857-858 post. As to the General Optical Council see PARA 813 et seq ante.

5 Opticians Act 1989 s 17(1)(b). As to what constitutes serious professional misconduct see PARAS 143, 456 ante and the cases cited there. The words 'serious' and 'misconduct' must both be given their full weight; the word 'serious' relates to the misconduct of the optician and not to the reputation of the profession: *Threlfall v General Optical Council* [2004] EWHC 2683 (Admin) at 59-60, [2004] All ER (D) 416 (Nov) per Stanley Burnton J.

Legal assessors to disciplinary committees should be provided with a standard direction on professional misconduct: *Threlfall v General Optical Council* supra at 61 per Stanley Burnton J. As to legal assessors see PARA 859 post. Canvassing may in certain circumstances amount to 'infamous conduct': *Le Scroog v General Optical Council* [1982] 3 All ER 257, [1982] 1 WLR 1238, PC (the Opticians Act 1958 s 11 (repealed) contained the words 'infamous conduct in any professional respect'; these words have now been replaced by the words 'serious professional misconduct').

6 Opticians Act 1989 s 17(1). As to the service of notification of a disciplinary order see PARA 852 post. As to appeals see PARA 866 post. As to the power of the Council for the Regulation of Health Care Professionals to refer to the court a disciplinary order made by the disciplinary committee under s 17, or a decision of the committee not to make such an order, see PARA 306 ante.

7 Ibid ss 14, 36(1).

8 Ibid s 17(12)(a)-(c).

9 Ibid s 17(12)(d).

10 For the meaning of 'register' see PARA 838 note 2 ante.

11 Opticians Act 1989 s 14. For the meaning of 'list' see PARA 841 note 4 ante; and for the meaning of 'enrolled' see PARA 842 note 1 ante.

The registrar must erase from the register or the list the name of any registered optician or enrolled body corporate in respect of which he receives a direction to that effect from the disciplinary committee under s 17 (see PARAS 847-851 post) or s 19 (see PARA 854 post) on the date upon which such direction takes effect in accordance with s 23 (see PARA 866 post): General Optical Council (Registration and Enrolment Rules) Order of Council 1977, SI 1977/176, r 17; and see the Interpretation Act 1978 s 17(2)(a).

12 Opticians Act 1989 ss 14, 15(1). Whilst the registration of a person in the register is suspended by virtue of a suspension order, he must be treated as not being registered, notwithstanding that his name still appears in the register (s 15(2)); where a suspension order is made against a person, the registrar must make in the register a note of the fact and of the period for which the registration is to be suspended, and he must erase the note at such time as the order for any reason ceases to have effect (s 15(4)). For the meaning of 'registration' see PARA 838 note 2 ante.

13 Ibid ss 14, 15(1). While the enrolment of a body corporate is suspended by virtue of a suspension order, it must be treated as not being enrolled, notwithstanding that its name still appears in the list (s 15(3)); where a suspension order is made against a body corporate, the registrar must make in the list a note of the fact and of the period for which the enrolment is to be suspended, and must erase the note at such time as the order for any reason ceases to have effect (s 15(4)). For the meaning of 'enrolment' see PARA 842 note 1 ante.

14 Ibid s 14.

15 Ibid s 16(1). 'The maximum penalty' means £1,600 or such sum as is for the time being substituted in this definition by an order made by the Privy Council: s 16(2) (amended by the General Optical Council (Maximum Penalty) Order of Council 1994, SI 1994/3327, art 2). If it appears to the Privy Council that there has been a change in the value of money since the last occasion when the maximum penalty was fixed, the Privy Council may by order substitute for the sum specified such other sum as appears to it justified by the change: Opticians Act 1989 s 16(3), (8). An order under s 16(3) does not affect the punishment for an offence committed before the order comes into force: s 16(4). As to the making of orders see PARA 825 ante. As to the exercise of powers of the Privy Council under the Opticians Act 1989 see PARA 835 ante. As to the Privy Council generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

16 Ibid s 16(5). As to disciplinary action in respect of the failure to pay the penalty within the time specified see PARA 848 post.

17 Ibid s 16(6). The Council must pay the amount of the penalty paid or recovered into the Consolidated Fund: s 16(7). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 34 (Reissue) PARAS 952-955.

## UPDATE

### 846-866 Jurisdiction

Opticians Act 1989 ss 14-23 repealed: SI 2005/848. As to fitness to practise see now 1989 Act Pt 2A (ss 13A-13M); and PARA 846A. As to proceedings and appeals see now Pt 3A (ss 23A-23H); and PARA 855A.

For transitional provision see the Opticians Act 1989 (Transitional Provisions) Order 2005, SI 2005/1472.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7.  
OPTICIANS/(4) DISCIPLINE/(i) Jurisdiction/846A. Fitness to Practise.

## **846A. Fitness to Practise.**

### **1. Duty to provide guidance on fitness to practise**

The General Optical Council<sup>1</sup> must

- 968 (1) provide, in such manner as it considers appropriate, guidance for registered optometrists, registered dispensing opticians and student registrants, on matters relating to fitness to practise or, in the case of a student registrant, fitness to undertake training, and in particular on the standards of conduct and performance expected of them<sup>2</sup>; and
- 969 (2) establish and keep under review effective arrangements to protect members of the public from registered optometrists, registered dispensing opticians and student registrants whose fitness to practise or, in the case of a student registrant, fitness to undertake training, is impaired<sup>3</sup>;
- 970 (3) provide, in such manner as it considers appropriate, guidance to business registrants on matters relating to fitness to carry on business as an optometrist or a dispensing optician or both, and in particular on the standards of conduct and performance expected of such registrants in carrying on that business<sup>4</sup>; and
- 971 (4) establish and keep under review effective arrangements to protect the public from business registrants whose fitness to carry on business as an optometrist or a dispensing optician or both is impaired<sup>5</sup>.

Before issuing guidance or varying guidance already issued under these provisions, the Council must consult groups which, in its opinion, are representative of registrants or of persons with an interest in the subject matter of the guidance<sup>6</sup>. The Council must keep under review, and revise as appropriate, such guidance<sup>7</sup>.

1 As to the functions and constitution of the General Optical Council see PARA 813.

2 Opticians Act 1989 s 13A(1)(a) (s 13A added by SI 2005/848).

3 1989 Act s 13A(1)(b).

4 Ibid s 13A(2)(a).

5 Ibid s 13A(2)(b).

6 Ibid s 13A(3).

7 Ibid s 13A(4).

### **2. Power to require disclosure of information**

For the purpose of assisting the General Optical Council<sup>1</sup> or any of its committees in carrying out any of their functions<sup>2</sup> relating to (1) a registered optometrist's or a registered dispensing optician's fitness to practise; (2) a business registrant's fitness to carry on business as an optometrist or a dispensing optician or both; or (3) a student registrant's fitness to undertake training, the Council may require a registrant or any other person to supply any information<sup>3</sup> or produce any document which appears to the Council relevant to the discharge of those

functions<sup>4</sup>. As soon as reasonably practicable after the date on which an allegation has been made to the Council relating to a registered optometrist's or registered dispensing optician's fitness to practise or a student registrant's fitness to undertake training, the Council must require, from the registrant to whom the allegation relates, particulars of any person who employs him<sup>5</sup>.

If a person fails to supply any information or produce any document within 14 days of his being required to do so<sup>6</sup>, the Council may seek an order of the county court requiring the information to be supplied or the document to be produced<sup>7</sup>.

1 As to the functions and constitution of the General Optical Council see PARA 813.

2 Ie under the Opticians Act 1989.

3 Nothing in ibid s 13B requires or permits any disclosure of information which is prohibited by or under any other enactment; but if information is held in a form in which the prohibition operates because the information is capable of identifying an individual, the Council may, in exercising its functions under s 13B(1), require that the information be put into a form which is not capable of identifying that individual: s 13B(3) (s 13B added by SI 2005/848). In determining for these purposes whether a disclosure is not prohibited by reason of being a disclosure of personal information which is exempt from the non-disclosure provisions of the Data Protection Act 1998 by virtue of s 35(1) (see CONFIDENCE AND DATA PROTECTION vol 8(1) (Reissue) PARA 554), it must be assumed that the disclosure is required by the 1989 Act s 13B: s 13B(4).

4 Ibid s 13B(1). Section 13B(1) does not apply in relation to the supplying of information or the production of a document which a person could not be compelled to supply or produce in civil proceedings before the High Court of Justice in England and Wales, if the person's address in the appropriate register is in England or Wales, or if he is not registered, he is resident in England or Wales: s 13B(5)(c).

5 Ibid s 13B(2).

6 Ie under ibid s 13B(1).

7 Ibid s 13B(6).

### **3. Notification and disclosure**

As soon as is reasonably practicable after an allegation is received by the General Optical Council<sup>1</sup> relating to a registered optometrist's or registered dispensing optician's fitness to practise or, in the case of a business registrant, its fitness to carry on business as an optometrist or a dispensing optician or both, or in the case of a student registrant, his fitness to undertake training, it must notify the specified persons<sup>2</sup> of an investigation<sup>3</sup> by the Council or any of its committees of

972 (1) a registered optometrist's or a registered dispensing optician's fitness to practise;

973 (2) a business registrant's fitness to carry on business as an optometrist or a dispensing optician, or to carry on both businesses; or

974 (3) a student registrant's fitness to undertake training<sup>4</sup>.

The Council may disclose to any person any information relating to a registered optometrist's or a registered dispensing optician's fitness to practise; a business registrant's fitness to carry on business as an optometrist or a dispensing optician, or to carry on both businesses; or a student registrant's fitness to undertake training, which it considers it to be in the public interest to disclose<sup>5</sup>.

1 As to the functions and constitution of the General Optical Council see PARA 813.

2 le the Secretary of State and the National Assembly for Wales, and any person in the United Kingdom of whom the Council is aware by whom the registered optometrist, registered dispensing optician or student registrant is employed: Opticians Act 1989 s 13C(2) (s 13C added by SI 2005/848).

3 le under the 1989 Act Pt 2A (ss 13A-13M).

4 Ibid s 13C(1).

5 Ibid s 13C(3).

#### 4. Allegations

Where an allegation<sup>1</sup> is made to the General Optical Council<sup>2</sup> against

975 (1) a registered optometrist or a registered dispensing optician that his fitness to practise is or may be impaired;

976 (2) a business registrant that its fitness to carry on business as an optometrist or a dispensing optician, or both, is or may be impaired; or

977 (3) a student registrant that his fitness to undertake training as an optometrist or a dispensing optician is or may be impaired,

the only grounds on which the fitness to practise of

978 (a) a registered optometrist or registered dispensing optician, or the fitness to undertake training of a student registrant, is 'impaired'<sup>3</sup> are

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16. (i) misconduct;

17. (ii) except in the case of a student registrant, deficient professional performance;

18. (iii) a conviction<sup>4</sup> or caution in the British Islands for a criminal offence, or a conviction elsewhere for an offence which, if committed in England and Wales, would constitute a criminal offence;

19. (iv) the registrant having agreed to pay a penalty<sup>5</sup>;

20. (v) adverse physical or mental health; or

21. (vi) a determination by a body in the United Kingdom responsible under any enactment<sup>6</sup> for the regulation of a health or social care profession to the effect that his fitness to practise as a member of that profession is impaired, or a determination by a regulatory body<sup>7</sup> elsewhere to the same effect<sup>8</sup>;

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979 (b) a business registrant's fitness to carry on business as an optometrist or a dispensing optician or to carry on both businesses is impaired<sup>9</sup> are

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22. (i) misconduct by the business registrant or by one of its directors;

23. (ii) practices or patterns of behaviour occurring within the business which

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1. (A) the registrant knew or ought reasonably to have known of; and

2. (B) amount to misconduct or deficient professional performance;

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24. (iii) the instigation by the business registrant of practices or patterns of behaviour within the business where that practice or behaviour amounts, or would if implemented amount, to misconduct or deficient professional performance;

25. (iv) a conviction or caution in the British Islands of the business registrant or one of its directors for a criminal offence, or a conviction

- elsewhere for an offence which, if committed in England or Wales, would constitute a criminal offence;
26. (v) the registrant or one of its directors having agreed to pay a penalty<sup>10</sup>;
  27. (vi) a determination by a body in the United Kingdom responsible under any enactment for the regulation of a health or social care profession to the effect that
- 243.
3. (A) the business registrant's fitness to carry on business as a member of that profession is impaired; or
  4. (B) the fitness of a director of the business registrant to practise that profession is impaired,
  5. or a determination by a regulatory body elsewhere to the same effect<sup>11</sup>.
- 244.
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The Investigation Committee<sup>12</sup> must investigate the allegation made against the registrant and decide whether it ought to be considered by the Fitness to Practise Committee<sup>13</sup>. If the Investigation Committee decides that the allegation ought to be considered by the Fitness to Practise Committee,

- 980 (aa) it must give a direction to that effect to the registrar;
- 981 (bb) the registrar must refer the allegation to the Fitness to Practise Committee; and
- 982 (cc) the registrar must serve a notification of the Investigation Committee's decision on the registrant who, or which, is the subject of the allegation, and on the person making the allegation<sup>14</sup>.

If the Investigation Committee decides that the allegation ought not to be considered by the Fitness to Practise Committee, it may give a warning to the registrant who, or which, is subject to the allegation regarding his, or its, future conduct or performance<sup>15</sup>. If the Investigation Committee decides that the allegation ought not to be considered by the Fitness to Practise Committee and that no such warning is to be given, it must give a direction to that effect to the registrar; and the registrar must serve a notification of the Committee's decision on the registrant who, or which, is the subject of the allegation, on the person making the allegation and on certain persons<sup>16</sup>.

If the Investigation Committee is of the opinion that the Fitness to Practise Committee should consider making an order for interim suspension or interim conditional registration<sup>17</sup> in relation to the registrant who, or which, is the subject of the allegation, it must give a direction to that effect to the registrar; the registrar must refer the matter to the Fitness to Practise Committee for it to decide whether to make such an order; and the registrar must serve notification of the decision on the registrant who, or which, is the subject of the allegation, and on the person making the allegation<sup>18</sup>.

The provisions above also apply in any case where it comes to the attention of the Council that a registered optometrist's or registered dispensing optician's fitness to practise; a business registrant's fitness to carry on business as an optometrist or a dispensing optician or both; or a student registrant's fitness to undertake training, is, or may be, impaired by one or more of the matters mentioned in head (a) or (b) above but no allegation to that effect has been made to the Council against that registrant<sup>19</sup>.

The Council may make rules providing for the registrar; or any other officer of the Council, to exercise the functions of the Investigation Committee<sup>20</sup>, either generally or in relation to such classes of case as may be specified in the rules<sup>21</sup>.

- 1 The allegation may refer to acts or omissions which occurred outside the United Kingdom or at a time when the registrant was not registered: Opticians Act 1989 s 13D(4)(b) (ss 13D, 13E added by SI 2005/848).
- 2 As to the functions and constitution of the General Optical Council see PARA 813.
- 3 Ie for the purposes of the 1989 Act.
- 4 References to a conviction include a conviction by court martial: ibid s 13D(4)(a).
- 5 Ie under the Social Security Administration Act 1992 s 115A: see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 405.
- 6 'Enactment' includes a provision of subordinate legislation (within the meaning of the Interpretation Act 1978): 1989 Act s 13D(10)(a).
- 7 'Regulatory body' means a regulatory body which has the function of authorising persons to practise as a member of a health or social care profession: 1989 Act s 13D(10)(b).
- 8 Ibid s 13D(1), (2).
- 9 Ie for the purposes of the 1989 Act.
- 10 Ie under the 1992 Act s 115A.
- 11 1989 Act s 13D(1), (3).
- 12 As to the Investigation Committee, see PARA 855.
- 13 1989 Act s 13D(5). As to the Fitness to Practise Committee, see PARA 833.
- 14 Ibid s 13D(6)).
- 15 Ibid s 13D(7).
- 16 Ibid s 13D(8).
- 17 Ie under ibid s 13L: see PARA 846A.10.
- 18 Ibid s 13D(9).
- 19 Ibid s 13E(3). In such cases the 1989 Act and rules made under it apply as if an allegation to that effect has been made to the Council under s 13D against the registered optometrist, registered dispensing optician, student registrant or business registrant, and any reference to the person making an allegation must be disregarded: s 13E(3).
- 20 Ie under ibid s 13D.
- 21 Ibid s 13E(1).

## **5. Powers of the Fitness to Practise Committee**

Where an allegation against a registrant is referred<sup>1</sup> to the Fitness to Practise Committee<sup>2</sup>, the following provisions<sup>3</sup> apply<sup>4</sup>.

If the Fitness to Practise Committee finds that

- 983 (1) a registered optometrist's or registered dispensing optician's fitness to practise is impaired;
- 984 (2) a business registrant's fitness to carry on business as an optometrist or a dispensing optician or both is impaired; or
- 985 (3) a student registrant's fitness to undertake training is impaired,



it may if it thinks fit give a direction that

- 986 (a) except in a health case<sup>5</sup>, the name of the registrant be erased from the appropriate register;
- 987 (b) the registrant's registration be suspended (that is to say, is not to have effect) during such period not exceeding 12 months as may be specified in the direction<sup>6</sup>;
- 988 (c) the registrant's registration is to be conditional on his or its compliance, during such period not exceeding three years as may be specified in the direction, with such requirements so specified as the Committee see fit to impose for the protection of members of the public or in his or its interests<sup>7</sup>.

Where the Fitness to Practise Committee finds that a registered optometrist's or registered dispensing optician's fitness to practise is impaired on the ground of deficient professional performance, and the deficiency relates to the performance of a specialty or proficiency particulars of which are entered in the appropriate register in respect of him, the Committee may, instead of any of the directions specified in heads (a) to (c) above or, in addition to any of the directions specified in head (b) or (c) above, direct that (i) the entry relating to that specialty or proficiency be removed from the appropriate register; (ii) the entry relating to that specialty or proficiency be removed from the appropriate register temporarily, that is to say, for such period not exceeding twelve months as may be specified in the direction<sup>8</sup>; or (iii) the entry relating to that specialty or proficiency be conditional on the registered optometrist's or registered dispensing optician's compliance, during such period not exceeding three years as may be specified in the direction<sup>9</sup>, with such requirements so specified as the Committee sees fit to impose for the protection of members of the public or in his interests<sup>10</sup>.

If the Fitness to Practise Committee finds that the registered optometrist's or the registered dispensing optician's fitness to practise is not impaired, the business registrant's fitness to carry on the business of an optometrist or a dispensing optician or both is not impaired, or the student registrant's fitness to undertake training is not impaired, it may nevertheless give the registrant a warning regarding his or its future conduct or performance<sup>11</sup>.

If the Fitness to Practise Committee has directed that the registration of a registrant be suspended<sup>12</sup>, it may, if it thinks fit,

- 989 (A) direct that the current period of suspension be extended for such further period from the time when it would otherwise expire as is specified in the direction;
- 990 (B) except in a specified case<sup>13</sup>, direct that the name of the registrant be erased from the appropriate register;
- 991 (C) direct that the registrant's registration is, as from the expiry of the current period of suspension, to be conditional on his or its compliance, during such period not exceeding three years as may be specified in the direction, with such requirements so specified as the committee thinks fit to impose for the protection of members of the public or in his or its interests,

but, except as otherwise provided<sup>14</sup>, the Committee must not extend any period of suspension under these provisions for more than twelve months at a time<sup>15</sup>.

In a case where the Fitness to Practise Committee finds that the registered optometrist's, the registered dispensing optician's or the student registrant's impairment is due to adverse physical or mental health; and that person's name has been suspended from the appropriate register under the provisions above, it may give a direction extending his period of suspension indefinitely if the certain conditions<sup>16</sup> are satisfied<sup>17</sup>. Where the Fitness to Practise Committee has given such a direction extending indefinitely the suspension of a person's name from the appropriate register, it must review the direction if

- 992 (aa) the person requests it to do so;
- 993 (bb) at least two years have elapsed since the date on which the direction took effect; and
- 994 (cc) in a case where the direction has previously been reviewed<sup>18</sup>, at least two years have elapsed since the date of the last such review<sup>19</sup>.

If, under the provisions above, the Fitness to Practise Committee gives a direction that a registrant's name be erased from the appropriate register, for suspension<sup>20</sup>, or for conditional registration<sup>21</sup>, or if the committee varies any of the conditions imposed by a direction for conditional registration, the registrar must forthwith serve on the registrant concerned notification of the direction or variation, and of the registrant's right to appeal against it<sup>22</sup>.

1     Ie under the Opticians Act 1989 s 13D (other than under s 13D(9)): see PARA 846A.4.

2     As to the Fitness to Practise Committee, see PARA 833.

3     Ie *ibid* s 13F(2)-(5).

4     *Ibid* s 13F(1) (ss 13F, 13G added by SI 2005/848).

5     'Health case' means any case in which the Fitness to Practise Committee has determined that a registered optometrist's or registered dispensing optician's fitness to practise or a student registrant's fitness to undertake training is impaired by reason of a matter falling within the 1989 Act s 13D(2)(f) (see PARA 846A.4 head (a)(v)), but is not impaired by any matter falling within s 13D(2)(a)-(d), (g) (see PARA 846A.4 heads (a)(i)-(iv), (vi)): s 13G(6).

6     While a registrant's registration in the appropriate register is suspended by virtue of a direction under s 13F, the registrant must be treated, except as provided in s 13G(4), as not being registered in the appropriate register and the registrar must make a note (which he must erase when the direction for suspension ceases to have effect) in the appropriate register of that fact and of the period for which the registration is to be suspended, but ss 13D-13H continue to apply to the individual or body whose registration is suspended: s 13F(3), (5). An individual registrant must be treated for the purposes of compliance with rules made under ss 11A, 11B (see PARA 840) as if his registration in the appropriate register was not suspended: s 13G(4).

7     1989 Act s 13F(2), (3).

Where a direction that the inclusion of a person's name in the appropriate register be subject to conditions has been given under s 13F(3), (7) or (11), s 13F(13) applies: s 13F(12). If s 13F(13) applies, the Fitness to Practise Committee may (whether or not of its own motion), if it thinks fit (1) except in a health case, direct that the name of the registrant be erased from the appropriate register; (2) direct that a registrant's registration in the appropriate register be suspended during such period not exceeding twelve months as may be specified in the direction; (3) direct that the current period of conditional registration be extended for such further period from the time when it would otherwise expire as may be specified in the direction; or (4) revoke the direction, or revoke or vary any of the conditions imposed by the direction, for the remainder of the current period of conditional registration, but the Committee must not extend any period of conditional registration under s 13F for more than three years at a time: s 13F(13).

8     As to the application of *ibid* s 13F(6)-(13) to the temporary removal of an entry relating to a specialty or proficiency under head (ii), see s 13F(14), (15).

9     As to the application of *ibid* s 13F(6)-(13) to an entry relating to a specialty or proficiency being made conditional under head (iii), see s 13F(14), (15).

10    *Ibid* s 13F(4).

11    *Ibid* s 13F(5).

12    Ie under *ibid* s 13F(3) (see TEXT heads (a)-(c)) or s 13F(13).

13    Ie in a case to which *ibid* s 13F(8) applies.

14    Ie in *ibid* s 13F(8).

15 Ibid s 13F(6), (7). See further s 13F(12), (13), NOTE 7.

16 The conditions are (1) the period of suspension will, on the date on which the direction takes effect, have lasted for at least two years; and (2) that direction is made not more than two months before the date on which the period of suspension would otherwise expire: *ibid* s 13F(9).

17 Ibid s 13F(8).

18 *Ie* under *ibid* s 13F(9).

19 Ibid s 13F(9). On a review under s 13F(10), the Fitness to Practise Committee may (1) confirm the direction; (2) direct that the suspension be terminated; or (3) direct that the registrant's registration be conditional on his or its compliance, during such period not exceeding three years as may be specified in the direction, with such requirements so specified as the Committee sees fit to impose for the protection of members of the public or in his or its interests: s 13F(11). See further s 13F(12), (13), NOTE 5.

20 References to a direction for suspension include a reference to a direction extending a period of suspension: *ibid* s 13G(2)(a).

21 References to a direction for conditional registration include a reference to a direction extending a period of conditional registration: *ibid* s 13G(2)(b).

22 Ibid s 13G(1). The right of appeal is under s 23G.

## 6. Financial penalty order

In any case other than a health case<sup>1</sup> in which the Fitness to Practise Committee<sup>2</sup> has the power to impose a direction<sup>3</sup>, it may impose, either in addition to the direction or instead of it, a financial penalty order<sup>4</sup>. Such an order may specify any sum not exceeding the maximum penalty<sup>5</sup> and must specify the period within which the sum specified in it is to be paid<sup>6</sup>.

The General Optical Council may recover the sum specified in a financial penalty order from the person or body against whom the order was made if that person or body does not comply with it within the period specified in the order<sup>7</sup>.

1 For the meaning of 'health case' see PARA 846A.5.

2 As to the Fitness to Practise Committee, see PARA 833.

3 *Ie* under the Opticians Act 1989 s 13F: see PARA 846A.5.

4 Ibid s 13H(1) (s 13H added by SI 2005/848).

5 1989 Act s 13H(2). The 'maximum penalty' means a sum not exceeding £50,000 or such higher sum as may be substituted by an order made under s 13H(4): s 13H(3). For transitional provision see the Opticians Act 1989 (Transitional Provisions) Order 2005, SI 2005/1472.

If it appears to the General Optical Council (see PARA 813 *et seq*) that there has been a change in the value of money since the last occasion when the financial penalty was fixed, whether by the 1989 Act s 13H or by an order under s 13H, the Council may by order amend s 13H(3) so as to substitute for the sum for the time being therein specified such other sum as appears to the Council justified by the change: s 13H(4). The Council must publish such an order in such form as it considers appropriate: s 13H(5). An amendment made by order under s 13H(4) does not apply where the event which gave rise to the allegation occurred before the order came into force: s 13H(6).

6 Ibid s 13H(7).

7 Ibid s 13H(8). The Council must pay any sum paid under a financial penalty order or recovered under s 13H(8) into the Consolidated Fund: s 13H(9).

## 7. Power to order immediate suspension etc after a finding of impairment of fitness to practise

On giving a direction<sup>1</sup> for erasure or a direction for suspension, or a direction<sup>2</sup> for removal from the appropriate register of an entry relating to a specialty or proficiency, the Fitness to Practise Committee<sup>3</sup>, if satisfied that to do so is necessary for the protection of members of the public, or is otherwise in the public interest, or is in the best interests of the individual or body corporate, may order that the registration of the registrant be suspended forthwith or, in the case of an entry relating to a specialty or proficiency, that the removal from the register of the entry relating to the specialty or proficiency take place forthwith in accordance with the following provisions<sup>4</sup>.

On giving a direction<sup>5</sup> for conditional registration, or a direction<sup>6</sup> that an entry in the register relating to a specialty or proficiency be made conditional, the Fitness to Practise Committee, if satisfied that to do so is necessary for the protection of members of the public, otherwise in the public interest, or in the best interests of the individual or body corporate, may order that the registration of the registrant be made conditional forthwith or, in the case of an entry relating to a specialty or proficiency, that the entry in the register relating to the specialty or proficiency be made conditional forthwith<sup>7</sup>.

Where, on the giving of a direction<sup>8</sup>, an order under the provisions above is made in respect of a registrant, the registration in the appropriate register of that individual or body must be suspended (that is to say, does not have effect) or made conditional, or in the case of an entry in the register relating to a specialty or proficiency, removed or made conditional, from the time when the order is made until the time when the direction takes effect<sup>9</sup>; or an appeal against it<sup>10</sup> is (otherwise than by the dismissal of the appeal) determined<sup>11</sup>.

Where the Fitness to Practise Committee makes an order<sup>12</sup>, the registrar must forthwith serve a notification of the order on the individual to whom, or body corporate to which, it applies<sup>13</sup>. Except as provided<sup>14</sup>, while the registration of an individual or body corporate is suspended<sup>15</sup> from the appropriate register, the individual or body must be treated as not being registered in the appropriate register notwithstanding that his or its name still appears in any published copy of the appropriate register<sup>16</sup>.

The High Court of Justice may revoke any order imposed under the provisions above<sup>17</sup>, and its decision on any application for revocation is final<sup>18</sup>.

1    Ie under the Opticians Act 1989 s 13F(2): see PARA 846A.5.

2    Ie under *ibid* s 13F(4)(a) or (b): see PARA 846A.5 heads (i), (ii).

3    As to the Fitness to Practise Committee, see PARA 833.

4    Ibid s 13I(1) (s 13I added by SI 2005/848).

5    Ie under the 1989 Act s 13F(2).

6    Ie under *ibid* s 13F(4)(c): see PARA 846A.5.

7    Ibid s 13F(2).

8    Ie mentioned in *ibid* s 13I(1) or (2).

9    Ie in accordance with *ibid* s 23H.

10   Ie under *ibid* s 23G.

11   Ibid s 13I(3). If, when an order under s 13I(1) or (2) is made, the individual to whom, or body to which, it applies is neither present nor represented at the proceedings, s 13I(3) has effect as if, for the reference to the time when the order is made, there were substituted a reference to the time of service of a notification of the order as determined for the purposes of s 23A: s 13I(5).

12   Ie under *ibid* s 13I(1) or (2): see TEXT AND NOTES 1-6.

13 Ibid s 13I(4).

14 Ie in ibid s 13I(7).

15 Ie by virtue of ibid s 13I(1).

16 Ibid s 13I(6). Notwithstanding s 13I(6), ss 13D-13H (see PARAS 846A.2-846A.7) continue to apply to an individual or body corporate whose registration in the appropriate register is suspended; and an individual registrant must be treated for the purposes of compliance with rules made under ss 11A and 11B (see PARA 840) as if his registration were not suspended: s 13I(7).

17 Ie under ibid s 13I(1) or (2).

18 Ibid s 13I(7), (8)(c).

## **8. Removal from a register on grounds of fraud or error**

If it is proved to the satisfaction of the Fitness to Practise Committee<sup>1</sup> that the entry of a person's name in a register has been fraudulently procured or incorrectly made, or that an entry relating to a specialty or proficiency has been fraudulently procured or incorrectly made in a register, the Committee may, if it thinks fit, direct that the person's name or entry be removed<sup>2</sup>. Where the Committee so directs that a person's name or entry relating to a specialty or proficiency is to be removed from a register, the registrar must serve a notification of the direction on that person and of that person's right of appeal against it<sup>3</sup>.

1 As to the Fitness to Practise Committee, see PARA 833.

2 Opticians Act 1989 s 13J(1) (s 13J added by SI 2005/848).

3 1989 Act s 13J(2). There is a right of appeal under s 23G.

## **9. Restoration of names to a register**

A person whose name has been erased from a register<sup>1</sup> or who has had an entry relating to a specialty or proficiency removed<sup>2</sup> (otherwise than for a specified period) may apply to the registrar for his name, or his entry relating to a specialty or proficiency, to be restored to the appropriate register<sup>3</sup>. No such application may be considered by the Registration Appeals Committee<sup>4</sup> before the expiration of two years from the date of erasure or removal of an entry, or during any period of twelve months after any previous such application<sup>5</sup>. An application is invalid if made earlier than twenty-two months after the date of erasure or removal of an entry relating to a specialty or proficiency, or if made earlier than ten months after determination of a previous application for restoration<sup>6</sup>.

The Registration Appeals Committee may, if it thinks fit, on an application for restoration, direct the registrar to restore the person's name, or the entry relating to a specialty or proficiency, to the appropriate register<sup>7</sup>. Before determining whether to give a direction, the Registration Appeals Committee must require an applicant for restoration to provide such evidence as it considers appropriate as to his fitness to practise or fitness to undertake training or the fitness of the body corporate to carry on the business of an optometrist or a dispensing optician or both, and it must not give such a direction if that evidence does not satisfy it<sup>8</sup>.

If, during the same period of erasure, a second or subsequent application for the restoration to the appropriate register of a name or an entry relating to a specialty or proficiency, made by or on behalf of the individual or body corporate whose name has been erased or whose entry relating to a specialty or proficiency has been removed, is unsuccessful, the Registration Appeals Committee may direct that the individual's or body's right to make any further such applications is to be suspended indefinitely<sup>9</sup>.

1 le under the Opticians Act 1989 s 13F: see PARA 846A.5.

2 le under ibid s 13F: see PARA 846A.5.

3 Ibid s 13K(1) (s 13K added by SI 2005/848). Subject to the 1989 Act s 13J(4), the registrar must refer an application to the Registration Appeals Committee: s 13K(3).

An application for restoration may be for (1) restoration to the register from which the applicant's name was erased, or the entry relating to a specialty or proficiency was removed; or (2) admission to a different register or, in the case of an entry relating to a specialty or proficiency, inclusion of the entry in a different register, but in the case of an application for restoration of an entry relating to a specialty or proficiency, an application may only be made for restoration of the entry to a register in which the applicant's name is or will be included: s 13K(5).

4 As to the Registration Appeals Committee, see PARA 833B.

5 1989 Act s 13K(2).

6 Ibid s 13K(4).

7 Ibid s 13K(6).

8 Ibid s 13K(7).

9 Ibid s 13K(8). Where the Registration Appeals Committee gives a direction under s 13K(8), the registrar must forthwith serve on the person in respect of whom it has been made a notification of the direction and of the person's right to appeal against it in accordance with s 23G (see PARA 846A.5): s 13K(9).

Any person in respect of whom a direction has been given under s 13K(8) may, after the expiration of two years from the date on which the direction was given, apply to the registrar for that direction to be reviewed by the Registration Appeals Committee and, thereafter, may make further applications for review; but no such application may be entertained before the expiration of three years from the date of the most recent review decision: s 13K(10).

## 10. Interim orders

Where the Fitness to Practise Committee<sup>1</sup> is satisfied that it is necessary for the protection of members of the public or is otherwise in the public interest, or is in the interests of a registrant, for his registration to be suspended or to be made subject to conditions, or for an entry relating to a specialty or proficiency to be removed temporarily or made subject to conditions, the Committee may make an order specifying that

- 995 (1) the registrant's registration in the appropriate register is to be suspended (that is to say, does not have effect), or that an entry relating to a specialty or proficiency of his is to be removed, during such period not exceeding eighteen months as may be specified in the order (an 'interim suspension order')<sup>2</sup>; or
- 996 (2) his registration or entry relating to a specialty or proficiency is to be conditional on his compliance, during such period not exceeding eighteen months as may be specified in the order, with such requirements so specified as the Committee thinks fit to impose (an 'order for interim conditional registration')<sup>3</sup>.

If the Fitness to Practise Committee makes an interim suspension order or an order for interim conditional registration,

- 997 (a) it must review that order within the period of six months beginning on the date on which the order was made, and must also, for so long as the order remains in force, further review it (i) before the end of the period of six months beginning on the date of the immediately preceding decision, or (ii) if after the end of the period of three months beginning on the date of the decision of the immediately

- preceding review, the person concerned requests an earlier review, as soon as practicable after that request; and
- 998 (b) it may review it if new evidence relevant to the order becomes available after the order is made<sup>4</sup>.

Where an interim suspension order or an order for interim conditional registration has been made in relation to a person under these provisions, the Fitness to Practise Committee may

- 999 (A) revoke the order or revoke the condition imposed by the order,
- 1000 (B) vary any condition imposed by the order, or
- 1001 (C) if satisfied that to do so is necessary for the protection of members of the public or is otherwise in the public interest, or is in the interests of that person, replace an order for interim conditional registration with an interim suspension order having effect for the remainder of the term of the former, or replace an interim suspension order with an order for interim conditional registration having effect for the remainder of the term of the former<sup>5</sup>.

If an order is made under any of the provisions above, the registrar must forthwith serve a notification of the order on the person<sup>6</sup>. The Council may apply to the relevant court for an order made<sup>7</sup> by the Fitness to Practise Committee to be extended, and may apply again for further extensions<sup>8</sup>. On such an application the relevant court may extend (or further extend) for up to twelve months the period for which the order has effect<sup>9</sup>.

Where an order has effect under any of these provisions, the relevant court may

- 1002 (aa) in the case of an interim suspension order, terminate the suspension, or temporary period of removal in the case of an entry relating to a specialty or proficiency;
- 1003 (bb) in the case of an order for interim conditional registration, revoke or vary any condition imposed by the order; or
- 1004 (cc) in either case, substitute for the period specified in the order (or in the order extending it) some other period which could have been specified in the order when the order was made,

and the decision of the relevant court under any application under this provision is final<sup>10</sup>.

If an order is made in relation to any person under any of these provisions, the Fitness to Practise Committee must revoke that order (if it remains in effect at the time of the hearing of the allegation against the person before the Committee) immediately after it has determined the allegation<sup>11</sup>.

While a registrant's registration in the appropriate register is suspended by virtue of an interim suspension order<sup>12</sup> the registrant must be treated, except as otherwise provided<sup>13</sup>, as not being registered in the appropriate register, and the registrar must make a note<sup>14</sup> in the appropriate register of that fact and of the period for which the registration is to be suspended, but certain provisions<sup>15</sup> continue to apply to the individual or body whose registration is suspended<sup>16</sup>.

1 As to the Fitness to Practise Committee, see PARA 833.

2 Opticians Act 1989 s 13L(1), (2)(a) (ss 13L, 13M added by SI 2005/848).

3 1989 Act s 13L(1), (2)(b).

4 Ibid s 13L(3). Section s 13L(3) is subject to s 13L(9): s 13L(3).

For the purposes of s 13L(3) the first review after the relevant court's extension of an order made by the Fitness to Practise Committee, or after the Fitness to Practise Committee makes a replacement order under s 13L(4)(c), must take place (1) if the order (or the order which has been replaced) had not been reviewed at all under s 13L(3), within the period of six months beginning on the date on which the relevant court ordered the extension or on which a replacement order under s 13L(4)(c) was made; and (2) if it had been reviewed under s 13L(3), within the period of three months beginning on that date: s 13L(9).

5 Ibid s 13L(4).

6 Ibid s 13L(5)).

7 Ie under ibid s 13L(1) or (4).

8 Ibid s 13L(6), 13M(4)(c).

9 Ibid s 13L(7)). Any references in s 13L to an interim suspension order, or to an order for interim conditional registration, include a reference to such an order as extended under s 13L(7): s 13L(8).

10 Ibid s 13L(10).

11 Ibid s 13L(11). The determination is made in accordance with s 13F (see PARA 846A.5) and rules made under s 23C (see PARA 855A): s 13L(13) (s 13L as added).

The revocation of an interim suspension order or an order for interim conditional registration under s 13F(11) takes effect forthwith: s 13F(12).

12 Ie under ibid s 13M.

13 An individual registrant must be treated for the purposes of compliance with rules made under ibid ss 11A and 11B (see PARA 840) as if his registration in the appropriate register was not suspended: s 13M(2).

14 The registrar must erase any such note when the direction for suspension ceases to have effect: ibid s 13M(3).

15 Ie ibid ss 13D-13H (see PARAS 846A.4-846A.9), 13M.

16 Ibid s 13M(1).

## **UPDATE**

### **846-866 Jurisdiction**

Opticians Act 1989 ss 14-23 repealed: SI 2005/848. As to fitness to practise see now 1989 Act Pt 2A (ss 13A-13M); and PARA 846A. As to proceedings and appeals see now Pt 3A (ss 23A-23H); and PARA 855A.

For transitional provision see the Opticians Act 1989 (Transitional Provisions) Order 2005, SI 2005/1472.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7. OPTICIANS/(4) DISCIPLINE/(i) Jurisdiction/847. Disciplinary orders against bodies corporate for certain offences or loss of qualification.

### **847. Disciplinary orders against bodies corporate for certain offences or loss of qualification.**

If (1) an enrolled<sup>1</sup> body corporate is convicted of an offence under the Opticians Act 1989, or of aiding, abetting, counselling or procuring<sup>2</sup> the commission of, or inciting another person<sup>3</sup> to commit, such an offence<sup>4</sup>; or (2) in the case of certain bodies corporate<sup>5</sup>, the disciplinary committee<sup>6</sup> is of the opinion that the condition or any of the conditions for the enrolment<sup>7</sup> of that body corporate is no longer satisfied<sup>8</sup>, then the committee may make a disciplinary order<sup>9</sup> against the body corporate<sup>10</sup>.

1 For the meaning of 'enrolled' see PARA 842 note 1 ante. As to the enrolment of bodies corporate see PARAS 841-843 et seq ante.

2 As to aiding, abetting, counselling and procuring see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 49 et seq.

3 For the meaning of 'person' see PARA 7 note 5 ante.

4 Opticians Act 1989 s 17(2)(a). As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

5 Ie any body corporate for the time being enrolled by virtue of the Opticians Act 1989 s 9(2)(a), (c), (d): see PARA 842 ante.

6 As to the disciplinary committee see PARAS 857-858 post.

7 For the meaning of 'enrolment' see PARA 842 note 1 ante.

8 Opticians Act 1989 s 17(2)(b).

9 For the meaning of 'disciplinary order' see PARA 846 ante.

10 Opticians Act 1989 s 17(2). Where a registered optician dies while he is either a director of an enrolled body corporate or the manager of that part of the business of an enrolled body corporate which consists of the testing of sight or the fitting and supply of optical appliances, he is deemed, for the purpose of s 17(2), to have continued to be a director of that body or a manager of that part of its business, as the case may be, until the expiration of the three months beginning with the date of his death or until a director or manager is appointed in his place, whichever occurs first: s 17(3). For the meaning of 'optical appliance' see PARA 804 note 2 ante. For the meaning of 'registered optician' see PARA 839 note 4 ante. As to the meaning of 'testing sight' see PARA 804 note 3 ante. As to the service of notification of a disciplinary order see PARA 852 post. As to appeals see PARA 866 post. As to the power of the Council for the Regulation of Health Care Professionals to refer to the court a disciplinary order made by the disciplinary committee under s 17, or a decision of the committee not to make such an order, see PARA 306 ante.

## **UPDATE**

### **846-866 Jurisdiction**

Opticians Act 1989 ss 14-23 repealed: SI 2005/848. As to fitness to practise see now 1989 Act Pt 2A (ss 13A-13M); and PARA 846A. As to proceedings and appeals see now Pt 3A (ss 23A-23H); and PARA 855A.

For transitional provision see the Opticians Act 1989 (Transitional Provisions) Order 2005, SI 2005/1472.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7. OPTICIANS/(4) DISCIPLINE/(i) Jurisdiction/848. Disciplinary order for contravention of rules or failure to pay penalty.

#### **848. Disciplinary order for contravention of rules or failure to pay penalty.**

If it appears to the disciplinary committee<sup>1</sup> that a registered optician<sup>2</sup> or enrolled<sup>3</sup> body corporate has contravened or failed to comply with any rules made by the General Optical Council for the regulation of the opticians profession<sup>4</sup>, or has failed to pay the sum specified in a penalty order<sup>5</sup> within the period there specified<sup>6</sup>, the committee may make a disciplinary order<sup>7</sup> against the optician or body corporate<sup>8</sup>.

1 As to the disciplinary committee see PARAS 857-858 post.

2 For the meaning of 'registered optician' see PARA 839 note 4 ante.

3 For the meaning of 'enrolled' see PARA 842 note 1 ante. As to the enrolment of bodies corporate see PARAS 841-843 et seq ante.

4 Opticians Act 1989 s 17(4)(a). As to the power to make rules regulating the profession see s 31; and PARA 824 ante. The Act refers to rules made under s 30, but it is submitted that the reference should be a reference to rules made under s 31. As to the General Optical Council see PARA 813 et seq ante.

As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

5 For the meaning of 'penalty order' see PARA 846 ante.

6 Opticians Act 1989 s 17(4)(b).

7 For the meaning of 'disciplinary order' see PARA 846 ante.

8 Opticians Act 1989 s 17(4). As to the service of notification of a disciplinary order see PARA 852 post. As to appeals see PARA 866 post. As to the power of the Council for the Regulation of Health Care Professionals to refer to the court a disciplinary order made by the disciplinary committee under s 17, or a decision of the committee not to make such an order, see PARA 306 ante.

### **UPDATE**

#### **846-866 Jurisdiction**

Opticians Act 1989 ss 14-23 repealed: SI 2005/848. As to fitness to practise see now 1989 Act Pt 2A (ss 13A-13M); and PARA 846A. As to proceedings and appeals see now Pt 3A (ss 23A-23H); and PARA 855A.

For transitional provision see the Opticians Act 1989 (Transitional Provisions) Order 2005, SI 2005/1472.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7. OPTICIANS/(4) DISCIPLINE/(i) Jurisdiction/849. Disciplinary order for failure to make required arrangements.

#### **849. Disciplinary order for failure to make required arrangements.**

If it appears to the disciplinary committee<sup>1</sup> that: (1) a registered optician<sup>2</sup> or enrolled<sup>3</sup> body corporate is engaged in the fitting and supply of optical appliances<sup>4</sup>; and (2) the arrangements made by the optician or body corporate for carrying on his practice, or his or its business, are not such as to secure that the fitting and supply of optical appliances in the course of that practice or business are carried out by or under the supervision of: (a) an ophthalmic optician<sup>5</sup> registered<sup>6</sup> in the register of ophthalmic opticians engaged or proposing to engage both in the testing of sight<sup>7</sup> and in the fitting and supply of optical appliances<sup>8</sup>; or (b) a registered dispensing optician<sup>9</sup>, then the committee may make a disciplinary order<sup>10</sup> against the optician or body corporate<sup>11</sup>.

1 As to the disciplinary committee see PARAS 857-858 post.

2 For the meaning of 'registered optician' see PARA 839 note 4 ante.

3 For the meaning of 'enrolled' see PARA 842 note 1 ante. As to the enrolment of bodies corporate see PARAS 841-843 et seq ante.

4 Opticians Act 1989 s 17(5)(a). For the meaning of 'optical appliance' see PARA 804 note 2 ante. As to fitting and supply see PARAS 807-808 ante.

As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

5 For the meaning of 'ophthalmic optician' see PARA 804 note 2 ante.

6 For the meaning of 'registered' see PARA 838 note 2 ante.

7 As to the meaning of 'testing sight' see PARA 804 note 3 ante.

8 Opticians Act 1989 s 17(5)(b)(i). As to such register see PARA 838 ante.

9 Ibid s 17(5)(b)(ii). For the meaning of 'registered dispensing optician' see PARA 838 note 7 ante. As to the register of dispensing opticians see PARA 838 ante.

10 For the meaning of 'disciplinary order' see PARA 846 ante.

11 Opticians Act 1989 s 17(5). As to the service of notification of a disciplinary order see PARA 852 post. As to appeals see PARA 866 post. As to the power of the Council for the Regulation of Health Care Professionals to refer to the court a disciplinary order made by the disciplinary committee under the Opticians Act 1989 s 17, or a decision of the committee not to make such an order, see PARA 306 ante.

#### **UPDATE**

#### **846-866 Jurisdiction**

Opticians Act 1989 ss 14-23 repealed: SI 2005/848. As to fitness to practise see now 1989 Act Pt 2A (ss 13A-13M); and PARA 846A. As to proceedings and appeals see now Pt 3A (ss 23A-23H); and PARA 855A.

For transitional provision see the Opticians Act 1989 (Transitional Provisions) Order 2005, SI 2005/1472.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7. OPTICIANS/(4) DISCIPLINE/(i) Jurisdiction/850. Disciplinary order against body corporate on order against officer, and vice versa.

**850. Disciplinary order against body corporate on order against officer, and vice versa.**

Where: (1) a disciplinary order<sup>1</sup> is made against a director of an enrolled<sup>2</sup> body corporate<sup>3</sup>; or (2) a responsible officer<sup>4</sup> of an enrolled body corporate is convicted of an offence under the Opticians Act 1989<sup>5</sup>; or (3) a disciplinary order is made against a registered optician<sup>6</sup> employed by an enrolled body corporate and the act or omission constituting the ground on which the order was made was instigated or connived at by a responsible officer of the body corporate or, if the act or omission was a continuing act or omission, a responsible officer of the body corporate had or reasonably ought to have had knowledge of its continuance<sup>7</sup>, then the disciplinary committee<sup>8</sup> may make a disciplinary order against the body corporate<sup>9</sup>.

In a case where: (a) an enrolled body corporate is convicted of an offence under the Opticians Act 1989<sup>10</sup> and the offence was instigated or connived at by a responsible officer of the body corporate, or, if the offence was a continuing offence, a responsible officer of the body corporate had or reasonably ought to have had knowledge of its continuance<sup>11</sup>; or (b) a disciplinary order is made against an enrolled body corporate<sup>12</sup> and the act or omission constituting the ground on which the order was made was instigated or connived at by a responsible officer of the body corporate or, if the act or omission was a continuing one, a responsible officer of the body corporate had or reasonably ought to have had knowledge of its continuance<sup>13</sup>, then the disciplinary committee may make a disciplinary order against the responsible officer if he is a registered optician<sup>14</sup>.

The disciplinary committee must not take a case into consideration during any period within which proceedings by way of appeal may be brought which may result in the above provisions being rendered inapplicable in that case<sup>15</sup>, or while any such proceedings are pending<sup>16</sup>.

1 For the meaning of 'disciplinary order' see PARA 846 ante.

2 For the meaning of 'enrolled' see PARA 842 note 1 ante. As to the enrolment of bodies corporate see PARAS 841-843 et seq ante.

3 Opticians Act 1989 s 17(6)(a). As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

4 For the meaning of 'responsible officer' see PARA 812 note 1 ante.

5 Opticians Act 1989 s 17(6)(b).

6 For the meaning of 'registered optician' see PARA 839 note 4 ante.

7 Opticians Act 1989 s 17(6)(c).

8 As to the disciplinary committee see PARAS 857-858 post.

9 Opticians Act 1989 s 17(6). As to the service of notification of a disciplinary order see PARA 852 post. As to the power of the Council for the Regulation of Health Care Professionals to refer to the court a disciplinary order made by the disciplinary committee under s 17, or a decision of the committee not to make such an order, see PARA 306 ante.

10 Ibid s 17(7)(a)(i).

11 Ibid s 17(7)(a)(ii).

- 12 Ibid s 17(7)(b)(i).
- 13 Ibid s 17(7)(b)(ii).
- 14 Ibid s 17(7). See also note 9 supra.
- 15 Ibid s 17(8)(a). As to appeals against disciplinary proceedings see PARA 866 post.
- 16 Ibid s 17(8)(b).

## **UPDATE**

### **846-866 Jurisdiction**

Opticians Act 1989 ss 14-23 repealed: SI 2005/848. As to fitness to practise see now 1989 Act Pt 2A (ss 13A-13M); and PARA 846A. As to proceedings and appeals see now Pt 3A (ss 23A-23H); and PARA 855A.

For transitional provision see the Opticians Act 1989 (Transitional Provisions) Order 2005, SI 2005/1472.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7. OPTICIANS/(4) DISCIPLINE/(i) Jurisdiction/851. Direction where body corporate carries on business at several premises.

### **851. Direction where body corporate carries on business at several premises.**

Where it appears to the disciplinary committee<sup>1</sup> that a body corporate which carries on business as an ophthalmic or dispensing optician<sup>2</sup> at more than one set of premises is liable to have a disciplinary order<sup>3</sup> made against it<sup>4</sup> and the events giving rise to the liability were confined, or substantially confined, to a particular set of premises<sup>5</sup>, the disciplinary committee may, instead of making a disciplinary order against the body corporate, direct that it must not use the title of optician, ophthalmic optician, dispensing optician, registered optician<sup>6</sup>, enrolled optician or optometrist in connection with that set of premises<sup>8</sup>. Such a direction remains in force until revoked by the disciplinary committee on an application made to it in that behalf<sup>9</sup>. If at any time while such a direction is in force it subsequently appears to the committee that the body corporate has contravened the direction, then the committee may make a disciplinary order against the body corporate<sup>10</sup>.

1 As to the disciplinary committee see PARAS 857-858 post.

2 For the meaning of 'ophthalmic optician' see PARA 804 note 2 ante; and for the meaning of 'dispensing optician' see PARA 807 note 8 ante.

3 For the meaning of 'disciplinary order' see PARA 846 ante.

4 Opticians Act 1989 s 17(9)(a). As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

5 Opticians Act 1989 s 17(9)(b).

6 For the meaning of 'registered optician' see PARA 839 note 4 ante.

7 For the meaning of 'enrolled' see PARA 842 note 1 ante. As to the enrolment of bodies corporate see PARAS 841-843 et seq ante.

8 Opticians Act 1989 s 17(9). As to the service of notification of a direction see PARA 852 post. As to appeals against such directions see PARA 866 post. As to the power of the Council for the Regulation of Health Care Professionals to refer to the court a disciplinary order made by the disciplinary committee under s 17, or a decision of the committee not to make such an order, see PARA 306 ante.

9 Ibid s 17(10).

10 Ibid s 17(9). See also note 8 supra.

## **UPDATE**

### **846-866 Jurisdiction**

Opticians Act 1989 ss 14-23 repealed: SI 2005/848. As to fitness to practise see now 1989 Act Pt 2A (ss 13A-13M); and PARA 846A. As to proceedings and appeals see now Pt 3A (ss 23A-23H); and PARA 855A.

For transitional provision see the Opticians Act 1989 (Transitional Provisions) Order 2005, SI 2005/1472.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7.  
OPTICIANS/(4) DISCIPLINE/(i) Jurisdiction/852. Notification of disciplinary order or direction.

## **852. Notification of disciplinary order or direction.**

When the disciplinary committee<sup>1</sup> makes a disciplinary order<sup>2</sup> against an individual or body corporate<sup>3</sup>, or a direction that a body corporate must not use certain titles in respect of certain premises<sup>4</sup>, the registrar<sup>5</sup> must serve on that individual or body a notification of the order or direction<sup>6</sup>.

1 As to the disciplinary committee see PARAS 857-858 post.

2 For the meaning of 'disciplinary order' see PARA 846 ante.

3 Opticians Act 1989 s 17(11)(a). As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

4 Opticians Act 1989 s 17(11)(b). As to such directions see PARA 851 ante.

5 As to the registrar see PARA 822 ante.

6 Opticians Act 1989 s 17(11). Such a notification (or a notification under s 19: see PARA 854 post) which is required to be served on a person may be served by being delivered personally, or by being sent by post in a registered letter or by the recorded delivery service (s 20(1)); and a notification which is required to be served on a body corporate is duly served if it is served on the secretary or clerk of that body (s 20(3)). For these purposes, and for the purposes of the Interpretation Act 1978 s 7 (which defines 'service by post': see STATUTES vol 44(1) (Reissue) PARA 1388) in its application to this provision, a letter to a person other than a body corporate containing such a notification is deemed to be properly addressed if it is addressed to him at his address in the register or at his last known address if that address differs from his address in the register and it appears to the registrar that the notification is more likely to reach him at his last known address (s 20(2)); and the proper address of a person, in the case of a body corporate or the secretary or clerk of a body corporate, is its address in the list or the address of its registered or principal office if that address differs from its address in the list and it appears to the registrar that the notification is more likely to reach the body corporate or its secretary or clerk there (s 20(4)).

For the meaning of 'register' see PARA 838 note 2 ante; for the meaning of 'registered optician' see PARA 839 note 4 ante; for the meaning of 'enrolled' see PARA 842 note 1 ante; and for the meaning of 'list' see PARA 841 note 4 ante.

## **UPDATE**

### **846-866 Jurisdiction**

Opticians Act 1989 ss 14-23 repealed: SI 2005/848. As to fitness to practise see now 1989 Act Pt 2A (ss 13A-13M); and PARA 846A. As to proceedings and appeals see now Pt 3A (ss 23A-23H); and PARA 855A.

For transitional provision see the Opticians Act 1989 (Transitional Provisions) Order 2005, SI 2005/1472.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7.  
OPTICIANS/(4) DISCIPLINE/(i) Jurisdiction/853. Restoration to register or list.

### **853. Restoration to register or list.**

Where an erasure order<sup>1</sup> has been made against an individual or body corporate, the name of that individual or body corporate must not again be entered in any of the registers<sup>2</sup> or lists<sup>3</sup> unless, on application made to it in that behalf, the disciplinary committee<sup>4</sup> otherwise directs<sup>5</sup>. An application may not be made to the committee within ten months of the date of erasure<sup>6</sup>, or within ten months of the committee's decision on a previous such application<sup>7</sup>.

Subject to the provisions described above, and to the provisions regarding erasure on grounds of fraud or error<sup>8</sup>, the General Optical Council<sup>9</sup> may restore a name to a register or list on receipt of an application made on the appropriate form<sup>10</sup> accompanied by the appropriate fee<sup>11</sup>, and: (1) in the case of an individual whose name has not been included in the register at any time during the five years prior to the application, by evidence establishing to the Council's satisfaction his identity<sup>12</sup> and, where appropriate<sup>13</sup>, his good character<sup>14</sup>; and (2) in the case of a body corporate, by evidence establishing to the Council's satisfaction the continuance of entitlement to enrolment<sup>15</sup>.

1 For the meaning of 'erasure order' see PARA 846 ante.

2 For the meaning of 'register' see PARA 838 note 2 ante.

3 For the meaning of 'list' see PARA 841 note 4 ante.

4 As to the disciplinary committee see PARAS 857-858 post.

5 Opticians Act 1989 s 18(1). As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

6 Opticians Act 1989 s 18(2)(a).

7 Ibid s 18(2)(b).

8 See PARA 854 post.

9 As to the General Optical Council see PARA 813 et seq ante. As to the power of the Council for the Regulation of Health Care Professionals to refer to the court a decision to restore a person to a register or list see PARA 306 ante.

10 For the meaning of 'appropriate form' see PARA 843 note 8 ante.

11 General Optical Council (Registration and Enrolment Rules) Order of Council 1977, SI 1977/176, rr 18(a), 19(a). As to the appropriate fees see rr 21, 22, 26, 27, Appendix (amended by SI 2004/3459).

12 General Optical Council (Registration and Enrolment Rules) Order of Council 1977, SI 1977/176, r 18(b)(i).

13 Ie where his entitlement to registration is under the Opticians Act 1989 s 8(4)-(6) (formerly the Opticians Act 1958 s 3(2) (repealed)): see PARA 840 ante.

14 General Optical Council (Registration and Enrolment Rules) Order of Council 1977, SI 1977/176, r 18(b)(ii).

15 Ibid r 19(b). For the meaning of 'enrolment' see PARA 842 note 1 ante. As to the enrolment of bodies corporate see PARAS 841-843 et seq ante.

### **UPDATE**

### **846-866 Jurisdiction**

Opticians Act 1989 ss 14-23 repealed: SI 2005/848. As to fitness to practise see now 1989 Act Pt 2A (ss 13A-13M); and PARA 846A. As to proceedings and appeals see now Pt 3A (ss 23A-23H); and PARA 855A.

For transitional provision see the Opticians Act 1989 (Transitional Provisions) Order 2005, SI 2005/1472.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7.  
OPTICIANS/(4) DISCIPLINE/(i) Jurisdiction/854. Erasure on grounds of fraud or error.

#### **854. Erasure on grounds of fraud or error.**

If it is proved to the satisfaction of the disciplinary committee<sup>1</sup> that any entry in a register<sup>2</sup> or list<sup>3</sup> has been fraudulently or incorrectly made, the committee may, if it thinks fit, direct that the entry be erased<sup>4</sup>.

An individual may be registered<sup>5</sup> or a company enrolled<sup>6</sup> in pursuance of any provision of the Opticians Act 1989 notwithstanding that his or its name has previously been erased under this provision<sup>7</sup>. If, however, the name was erased on the ground of fraud, the individual or company may not be registered or enrolled unless application is made for that purpose to the disciplinary committee; and the committee may, if it thinks fit, direct on any such application that the individual or body corporate is not to be registered or enrolled, or is not to be registered or enrolled until the expiration of a specified period<sup>7</sup>.

1 As to the disciplinary committee see PARAS 857-858 post.

2 For the meaning of 'register' see PARA 838 note 2 ante.

3 For the meaning of 'list' see PARA 841 note 4 ante.

4 Opticians Act 1989 s 19(1). Where the committee directs that the name of an individual or body corporate be erased from the register or list under s 19, the registrar must serve on that individual or body a notification of the direction: s 19(3). As to service of such notification see s 20; and PARA 852 note 6 ante. The registrar must erase from the register or the list the name of any registered optician or enrolled body corporate in respect of which he receives a direction to that effect from the disciplinary committee under s 19, on the date upon which such direction takes effect in accordance with s 23 (see PARA 866 post): General Optical Council (Registration and Enrolment Rules) Order of Council 1977, SI 1977/176, r 17; and see the Interpretation Act 1978 s 17(2)(a). As to the registrar see PARA 822 ante. For the meaning of 'registered optician' see PARA 839 note 4 ante.

As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

5 For the meaning of 'registered' see PARA 838 note 2 ante.

6 For the meaning of 'enrolled' see PARA 842 note 1 ante. As to the enrolment of bodies corporate see PARAS 841-843 et seq ante.

7 Opticians Act 1989 s 19(2). The General Optical Council's general power to restore a name to a register or list is subject to the provisions of s 19 (formerly the Opticians Act 1958 s 13 (repealed)): see the General Optical Council (Registration and Enrolment Rules) Order of Council 1977, SI 1977/176, rr 18, 19; and PARA 853 ante.

8 Opticians Act 1989 s 19(2).

### **UPDATE**

#### **846-866 Jurisdiction**

Opticians Act 1989 ss 14-23 repealed: SI 2005/848. As to fitness to practise see now 1989 Act Pt 2A (ss 13A-13M); and PARA 846A. As to proceedings and appeals see now Pt 3A (ss 23A-23H); and PARA 855A.

For transitional provision see the Opticians Act 1989 (Transitional Provisions) Order 2005, SI 2005/1472.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7.  
OPTICIANS/(4) DISCIPLINE/(ii) The Investigating Committee/855. The investigating committee.

## **(ii) The Investigating Committee**

### **855. The investigating committee.**

The investigating committee is a committee established by the General Optical Council<sup>1</sup> for the preliminary investigation of cases<sup>2</sup> in which it is alleged that an individual or body corporate is liable to have made against him or it a disciplinary order<sup>3</sup> or a direction that an entry in a register or list be erased on grounds that it has been incorrectly or fraudulently made<sup>4</sup>. It is the function of the investigating committee to decide whether a disciplinary case ought to be referred to the disciplinary committee<sup>5</sup> to be dealt with by that committee<sup>6</sup>.

1 As to the General Optical Council see PARA 813 et seq ante. As to the power to appoint committees see PARA 830 ante. As to the exercise and regulation of the committee's powers and proceedings see PARA 823 text to notes 8-10 ante. As to the power of the Council to make payments to members of committees see PARA 823 ante.

2 A case to be investigated by the investigating committee is known as a 'disciplinary case': Opticians Act 1989 ss 4(2), 36(1).

3 For the meaning of 'disciplinary order' see PARA 846 ante. As to the grounds for the making of disciplinary orders see PARAS 846-851 ante.

4 Opticians Act 1989 s 4(1). As to such directions see s 19; and PARA 854 ante.

As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

5 As to the disciplinary committee see PARAS 857-858 post.

6 Opticians Act 1989 s 4(3).

## **UPDATE**

### **846-866 Jurisdiction**

Opticians Act 1989 ss 14-23 repealed: SI 2005/848. As to fitness to practise see now 1989 Act Pt 2A (ss 13A-13M); and PARA 846A. As to proceedings and appeals see now Pt 3A (ss 23A-23H); and PARA 855A.

For transitional provision see the Opticians Act 1989 (Transitional Provisions) Order 2005, SI 2005/1472.

### **855 The [Investigation Committee]**

TEXT AND NOTES--Investigating committee replaced by Investigation Committee: see PARA 833.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7.  
OPTICIANS/(4) DISCIPLINE/(ii) The Investigating Committee/855A. Proceedings and appeals.

### **855A. Proceedings and appeals.**

The General Optical Council<sup>1</sup> must make rules as to (1) the procedure to be followed and the rules of evidence to be observed by the Fitness to Practise Committee<sup>2</sup>, and the Registration Appeals Committee<sup>3</sup>; and (2) the procedure to be followed by the Investigation Committee<sup>4</sup>.

The Council must appoint persons to be legal advisers to give advice to the Fitness to Practise Committee, and the Registration Appeals Committee on questions of law arising in connection with any matter which the Committee is considering<sup>5</sup>. The Council must appoint persons to be clinical advisers, and may appoint persons to act as specialist advisers on issues on which, in the Council's opinion, specialist knowledge is required<sup>6</sup>.

Provision is made for appeals against registration decisions<sup>7</sup> and for appeals from the Registration Appeals Committee and the Fitness to Practise Committee<sup>8</sup>.

1 As to the functions and constitution of the General Optical Council, see PARA 813.

2 As to the Fitness to Practise Committee, see PARA 833.

3 Opticians Act 1989 s 23C(1)(a) (ss 23B-23H, Sch 1A added by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848; Opticians Act 1989 Sch 1A amended by SI 2007/3101). See further 1989 Act s 23C(2)-(10); the General Optical Council (Fitness to Practise) Rules 2005, SI 2005/1475 (see PARA 833); and the General Optical Council (Registration Appeals) Rules 2005, SI 2005/1477.

As to the Registration Appeals Committee, see PARA 833B.

4 1989 Act s 23C(1)(b).

5 Ibid s 23D(1).

6 Ibid s 23E(1).

7 See ibid s 23F, Sch 1A. As to the date a decision takes effect, see s 23H.

8 See ibid s 23G. As to the procedure of the Registration Appeals Committee and the Fitness to Practise Committee, see s 23B.

## **UPDATE**

### **846-866 Jurisdiction**

Opticians Act 1989 ss 14-23 repealed: SI 2005/848. As to fitness to practise see now 1989 Act Pt 2A (ss 13A-13M); and PARA 846A. As to proceedings and appeals see now Pt 3A (ss 23A-23H); and PARA 855A.

For transitional provision see the Opticians Act 1989 (Transitional Provisions) Order 2005, SI 2005/1472.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7. OPTICIANS/(4) DISCIPLINE/(ii) The Investigating Committee/856. Constitution of the committee.

### **856. Constitution of the committee.**

The General Optical Council<sup>1</sup> must make rules<sup>2</sup> as to the constitution of the investigating committee<sup>3</sup>.

The investigating committee consists of members appointed<sup>4</sup> by the General Optical Council from among its members<sup>5</sup>, being two members from among those nominated to be members of the General Optical Council by the Privy Council<sup>6</sup>; one from among the registered medical practitioners on the General Optical Council<sup>7</sup>; two from among those chosen to represent registered ophthalmic opticians<sup>8</sup> and those nominated by the College of Optometrists<sup>9</sup>; one from among those chosen to represent registered dispensing opticians<sup>10</sup> or the members nominated by the Association of British Dispensing Opticians<sup>11</sup>; and a further member<sup>12</sup>.

After consulting organisations appearing to it to represent the interests of a substantial number of bodies corporate carrying on business as ophthalmic opticians<sup>13</sup>, the General Optical Council must appoint a panel of persons capable of representing the interests of such bodies corporate<sup>14</sup>; and when a disciplinary case<sup>15</sup> arises involving an allegation against a body corporate carrying on business as ophthalmic opticians, or against a director or employee of such a body corporate, the committee must co-opt, as a member of the committee, a member of that panel<sup>16</sup>. Similarly, after consulting organisations appearing to it to represent a substantial number of bodies corporate carrying on business as dispensing opticians<sup>17</sup>, the Council must appoint a panel of persons capable of representing the interests of such bodies corporate<sup>18</sup>; and when a disciplinary case arises involving an allegation against a body corporate carrying on business as dispensing opticians, or against a director or an employee of such a body corporate, the committee must co-opt, as a member of the committee, a member of that panel<sup>19</sup>.

1 As to the General Optical Council see PARA 813 et seq ante.

2 As to the making of rules see PARA 825 ante.

3 Opticians Act 1989 s 4(4). Any such rules must include provision requiring the committee, on the occasion of a disciplinary case involving an allegation against a body corporate or against a director or employee of a body corporate, to co-opt as a member of the committee for that occasion a person selected by it from whichever of the following panels is appropriate:

14 (1) a panel of persons appointed by the Council as capable of representing the interests of bodies corporate carrying on business as ophthalmic opticians (s 4(4)(a)); and

15 (2) a panel of persons appointed by the Council as capable of representing the interests of bodies corporate carrying on business as dispensing opticians (s 4(4)(b)),

being, in either case, persons appointed after consultation with organisations appearing to the Council to represent the interests of a substantial number of the bodies concerned (s 4(4)). By virtue of the Interpretation Act 1978 s 17(2)(b), the General Optical Council (Investigating Committee Rules) Order of Council 1960, SI 1960/1935, take effect as if made under the Opticians Act 1989 s 4(4).

As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

4 Appointments to the committee are for a period of one year expiring on 31 December: General Optical Council (Investigating Committee Rules) Order of Council 1960, SI 1960/1935, r 6 (substituted by SI 1971/1528). A member of the committee, may at any time, by notice in writing addressed to the registrar of the Council, resign his office: General Optical Council (Investigating Committee Rules) Order of Council 1960, SI 1960/1935,

r 7. Where a casual vacancy occurs among the members of the committee, it must be filled by a person appointed by the Council as being a person having qualifications for membership of the committee similar to those of the member whose seat is vacant: r 8. A person appointed to fill a casual vacancy in the committee holds office until the date upon which the person whose vacancy he has filled would have regularly retired from membership of the committee: r 9.

5 Ibid r 3. Where a committee member ceases to be a Council member, he ceases to be a member of the committee: r 6 (as substituted: see note 4 supra).

6 Ibid r 3(a). However, the chairman of the Council may not be appointed to the committee: r 3(a). As to the nomination of members of the General Optical Council by the Privy Council see PARA 814 ante. As to the chairman of the General Optical Council see PARA 820 ante.

7 Ibid r 3(b). As to such members of the General Optical Council see PARA 817 ante. For the meaning of 'registered medical practitioner' see PARA 4 ante.

8 Ibid r 3(c) (r 3(c)-(e) substituted by SI 1984/1248). As to such members of the General Optical Council see PARA 815 ante. For the meaning of 'registered ophthalmic optician' see PARA 804 note 2 ante.

9 General Optical Council (Investigating Committee Rules) Order of Council 1960, SI 1960/1935, r 3(c) (as substituted: see note 8 supra). Rule 3(c) (as substituted) refers to members nominated by the British College of Ophthalmic Opticians (Optometrists). The College became the College of Optometrists and the Opticians Act 1989 now refers to the College of Optometrists: see s 1, Sch 1 para 1(d) (as substituted), Sch 1 para 4(a) (as amended); and PARA 816 ante.

10 General Optical Council (Investigating Committee Rules) Order of Council 1960, SI 1960/1935, r 3(d) (as substituted: see note 8 supra). As to such members of the General Optical Council see PARA 815 ante. For the meaning of 'registered dispensing optician' see PARA 838 note 7 ante.

11 Ibid r 3(d) (as substituted: see note 8 supra). Rule 3(d) (as substituted) refers to the members nominated by the Association of Dispensing Opticians and the Faculty of Dispensing Opticians. These organisations merged to form the Association of British Dispensing Opticians and the Opticians Act 1989 now refers to the Association of British Dispensing Opticians: see Sch 1 paras 1(d), 4(d) (both as substituted); and PARA 816 ante.

12 General Optical Council (Investigating Committee Rules) Order of Council 1960, SI 1960/1935, r 3(e) (as substituted: see note 8 supra). This member must be a member chosen under r 3(c) (as substituted) (see the text to notes 8-9 supra), or nominated by the Association of British Dispensing Opticians to serve as a member of the committee only on occasions when the member of the committee appointed under r 3(d) (as substituted) (see the text to notes 10-11 supra) has given notice to the registrar that he is of opinion that it would be improper for him to join the proceedings of the committee because he has a special acquaintance or connection with the disciplinary case coming before the committee: r 3(e) (as substituted). Rule 3(e) (as substituted) refers to the member nominated by the Association of Dispensing Opticians or the Faculty of Dispensing Opticians, but see note 11 supra. As to the registrar see PARA 822 ante.

13 For the meaning of 'ophthalmic optician' see PARA 804 note 2 ante.

14 General Optical Council (Investigating Committee Rules) Order of Council 1960, SI 1960/1935, r 4(a).

15 For the meaning of 'disciplinary case' see PARA 855 note 2 ante.

16 General Optical Council (Investigating Committee Rules) Order of Council 1960, SI 1960/1935, r 5(a).

17 For the meaning of 'dispensing optician' see PARA 807 note 8 ante.

18 General Optical Council (Investigating Committee Rules) Order of Council 1960, SI 1960/1935, r 4(b).

19 Ibid r 5(b).

## UPDATE

### 846-866 Jurisdiction

Opticians Act 1989 ss 14-23 repealed: SI 2005/848. As to fitness to practise see now 1989 Act Pt 2A (ss 13A-13M); and PARA 846A. As to proceedings and appeals see now Pt 3A (ss 23A-23H); and PARA 855A.



For transitional provision see the Opticians Act 1989 (Transitional Provisions) Order 2005, SI 2005/1472.

## **856 Constitution of the committee**

TEXT AND NOTES--Investigating committee replaced by Investigation Committee: see PARA 833.

The Investigation Committee<sup>1</sup> must be constituted as provided by rules made by the General Optical Council<sup>2</sup>. The Investigation Committee consists of nine members appointed<sup>3</sup> by the Council from among its members<sup>4</sup> and appointed so that (1) three are persons nominated by the Privy Council<sup>5</sup>, provided that the chairman of the Council may not be appointed a member of the committee; (2) three are persons chosen to represent registered ophthalmic opticians<sup>6</sup> or nominated by the College of Optometrists<sup>7</sup> or by the Association of British Dispensing Opticians<sup>8</sup>; (3) two are persons chosen to represent registered dispensing opticians<sup>9</sup> or engaged in the education or assessment of persons training as dispensing opticians nominated by the Association of British Dispensing Opticians<sup>10</sup>; and (4) one is a registered medical practitioner<sup>11</sup>. The quorum of the Investigation Committee is five and must include at least one member appointed under head (1) above, one member appointed under head (2) above, and one member appointed under head (3) above<sup>12</sup>. The Investigation Committee must elect a chairman<sup>13</sup>. The validity of any proceedings of the Investigation Committee is not affected by any defect in the appointment of a member<sup>14</sup>.

1 As to the Investigation Committee see PARA 833.

2 1989 Act s 4(3) (substituted by SI 2005/848). As to the rules made under the 1989 Act s 4(3), see the General Optical Council (Committee Constitution Rules) Order of Council 2005, SI 2005/1474.

3 Appointments to the committee expire on 31 December in each year: SI 2005/1474 r 30(1). A member of the committee may at any time, by notifying the Council, resign his office: r 30(3). Where a casual vacancy occurs among the members of the committee: (1) where the member of the committee whose office has become vacant was a member of the Council chosen to represent registered optometrists or registered dispensing opticians, the Council must fill the vacancy by appointing a member of the Council who was chosen to represent the same profession; (2) in any other case, the Council must fill the vacancy by appointing a person who became a member of the Council by virtue of the same provision as applied to his predecessor: r 31(1)(a), (c). A person appointed to fill a casual vacancy in the committee holds office until the date upon which the term of office of his predecessor would have expired: r 31(2).

4 Ibid r 9(1). Where a committee member ceases to be a Council member, he must cease to be a member of the committee: r 30(2).

5 Ie under the 1989 Act Sch 1 para 1(a).

6 Ie under ibid Sch 1 para 1(b).

7 Ie under ibid Sch 1 para 4(a).

8 Ie under ibid Sch 1 para 4(c).

9 Ie under ibid Sch 1 para 1(c).

10 Ie under ibid Sch 1 para 4(d).

11 SI 2005/1474 r 9(2). The reference to a registered medical practitioner is to such a practitioner referred to in the 1989 Act Sch 1 para 1(e).

12 SI 2005/1474 r 10.

13 Ibid r 32.

14 Ibid r 33.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7.  
OPTICIANS/(4) DISCIPLINE/(iii) The Disciplinary Committee/857. The disciplinary committee.

### **(iii) The Disciplinary Committee**

#### **857. The disciplinary committee.**

The disciplinary committee of the General Optical Council<sup>1</sup> is a committee established by the Council for the consideration and determination of disciplinary cases<sup>2</sup> referred to the committee by the investigating committee<sup>3</sup> and of any other cases of which the disciplinary committee has cognisance<sup>4</sup>.

1 As to the General Optical Council see PARA 813 et seq ante. As to the constitution of the disciplinary committee see PARA 858 post. As to the exercise and regulation of the committee's powers and proceedings see PARA 823 text to notes 8-9 ante.

2 For the meaning of 'disciplinary case' see PARA 855 note 2 ante.

3 Opticians Act 1989 s 5(1)(a). As to the investigating committee see PARAS 855-856 ante.

As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

4 Opticians Act 1989 s 5(1)(b). As to other cases of which the disciplinary committee has cognisance see PARAS 850-854 ante.

### **UPDATE**

#### **846-866 Jurisdiction**

Opticians Act 1989 ss 14-23 repealed: SI 2005/848. As to fitness to practise see now 1989 Act Pt 2A (ss 13A-13M); and PARA 846A. As to proceedings and appeals see now Pt 3A (ss 23A-23H); and PARA 855A.

For transitional provision see the Opticians Act 1989 (Transitional Provisions) Order 2005, SI 2005/1472.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7. OPTICIANS/(4) DISCIPLINE/(iii) The Disciplinary Committee/858. Constitution of the committee.

### **858. Constitution of the committee.**

The General Optical Council<sup>1</sup> must make rules<sup>2</sup> as to the constitution of the disciplinary committee<sup>3</sup>, the times and places of the meetings of the committee<sup>4</sup>, the committee's quorum and the mode of summoning members of the committee<sup>5</sup>. The rules must secure that a person, other than the chairman of the Council<sup>6</sup>, who has acted in relation to any disciplinary case<sup>7</sup> as a member of the investigating committee<sup>8</sup> does not act in relation to that case as a member of the disciplinary committee<sup>9</sup>.

The disciplinary committee consists of 20 members of the Council appointed by the Council<sup>10</sup>. Two members of the committee, additional to the chairman, must be appointed from among the members of the Council nominated by the Privy Council<sup>11</sup>; two members must be appointed from among the registered medical practitioner members of the Council<sup>12</sup>; four members must be appointed from among the members of the Council chosen to represent registered ophthalmic opticians<sup>13</sup> and the members nominated by the College of Optometrists<sup>14</sup>; three members must be appointed from among the members of the Council chosen to represent registered dispensing opticians<sup>15</sup> and the members nominated by the Association of British Dispensing Opticians<sup>16</sup>; and eight further members<sup>17</sup>. The quorum of the committee is three<sup>18</sup>, but a member who has not been present throughout the committee's deliberations preceding a decision may not take part in the determination and does not count towards the quorum<sup>19</sup>.

The committee must meet at least once in every year, on days and at times to be fixed by the chairman of the committee<sup>20</sup>. Before the date fixed for a meeting of the committee, the registrar<sup>21</sup> must inform every member of the committee of the date, time and place of the meeting, and send to every such member a programme of business for that meeting which must include particulars of the allegation against registered opticians<sup>22</sup> or enrolled<sup>23</sup> bodies corporate in every disciplinary case to be considered at the meeting<sup>24</sup>.

1 As to the General Optical Council see PARA 813 et seq ante.

2 As to the rules that have been made see the Disciplinary Committee (Constitution) Rules 1998, approved by the General Optical Council (Disciplinary Committee (Constitution) Rules) Order of Council 1998, SI 1998/1338. As to the making of rules see PARA 825 ante.

3 Opticians Act 1989 s 5(2)(a). As to the disciplinary committee see PARA 857 ante.

As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

4 Opticians Act 1989 s 5(2)(b).

5 Ibid s 5(2)(c).

6 As to the chairman of the Council see PARA 820 ante.

7 For the meaning of 'disciplinary case' see PARA 855 note 2 ante.

8 As to the investigating committee see PARAS 855-856 ante.

9 Opticians Act 1989 s 5(3).

10 General Optical Council (Disciplinary Committee (Constitution) Rules) Order of Council 1998, SI 1998/1338, r 3 (rr 3, 9 amended, and r 15 substituted, by SI 2004/259). Appointments to the committee are for a period of one year expiring on 31 December, provided that where a member ceases to be a member of the

Council he ceases also to be a member of the committee: General Optical Council (Disciplinary Committee (Constitution) Rules) Order of Council 1998, SI 1998/1338, r 10. A member of the committee may at any time, by notice in writing addressed to the registrar of the Council, resign his office: r 11. For the meaning of 'writing' see PARA 20 note 22 ante. Where a casual vacancy occurs among the members of the committee, it must be filled by a person appointed to the Council as being a person having the same qualifications for membership of the committee as those under which the person who formerly filled the vacancy was appointed: r 12. A person appointed to fill a casual vacancy holds office until the date upon which the member whose vacancy he has filled would have regularly retired: r 13.

11 Ibid r 5. The chairman of the committee must be appointed from among the members of the Council nominated by the Privy Council: r 4. As to such members see PARA 814 ante. If the chairman of the committee is absent when a disciplinary case is due for hearing by the committee, the committee must elect one of the members present to preside as acting chairman over the hearing of the case: r 16. As to the Privy Council generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

12 Ibid r 6. As to such members see PARA 817 ante. For the meaning of 'registered medical practitioner' see PARA 4 ante.

13 For the meaning of 'registered ophthalmic optician' see PARA 804 note 2 ante. As to such members see PARA 815 ante.

14 General Optical Council (Disciplinary Committee (Constitution) Rules) Order of Council 1998, SI 1998/1338, r 7. Rule 7 refers to members nominated by the British College of Optometrists but the Opticians Act 1989 now refers to the College of Optometrists: see s 1, Sch 1 para 1(d) (as substituted), Sch 1 para 4(a) (as amended); and PARA 816 ante. See also PARA 856 note 9 ante.

15 For the meaning of 'registered dispensing optician' see PARA 838 note 7 ante. As to such members see PARA 815 ante.

16 General Optical Council (Disciplinary Committee (Constitution) Rules) Order of Council 1998, SI 1998/1338, r 8. As to such members see PARA 816 ante.

17 Ibid r 9 (as amended: see note 10 supra). These members must be appointed from among any members of the Council eligible for appointment under rr 5-8 (see the text to notes 11-16 supra): r 9 (as so amended).

18 Ibid r 15(1) (as substituted: see note 10 supra). The quorum must include a member nominated by the Privy Council (r 15(1)(a) (as so substituted)); and in a disciplinary case: (1) involving a registered ophthalmic optician or an enrolled body corporate carrying on business as an ophthalmic optician, the quorum must include a registered ophthalmic optician (r 15(1)(b)(i) (as so substituted)); or (2) involving a registered dispensing optician or an enrolled body corporate carrying on business as a dispensing optician, the quorum must include a registered dispensing optician (r 15(1)(b)(ii) (as so substituted)).

19 Ibid r 15(2) (as substituted: see note 10 supra). No person, other than the chairman of the Council, who has acted in relation to any disciplinary case as a member of the investigating committee may act in relation to that case as a member of the disciplinary committee; and no person may act as a member of the disciplinary committee in a disciplinary case if he considers that his judgement may be impaired by his personal acquaintance with the respondent, or for some other special reason, but this does not exclude from acting any person who had acted as a member of the committee on the occasion of a previous disciplinary case against the respondent: r 14.

20 Ibid r 17. The committee meets at the offices of the Council unless the chairman of the committee directs that a meeting be held elsewhere in the United Kingdom, on the ground that this would be for the convenience of the committee or of parties and witnesses in disciplinary cases to be heard at the meeting, or would be desirable in the special circumstances of such cases: r 18. For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

21 As to the registrar see PARA 822 ante.

22 For the meaning of 'registered optician' see PARA 839 note 4 ante.

23 For the meaning of 'enrolled' see PARA 842 note 1 ante. As to the enrolment of bodies corporate see PARAS 841-843 et seq ante.

24 General Optical Council (Disciplinary Committee (Constitution) Rules) Order of Council 1998, SI 1998/1338, r 19.

## UPDATE

**846-866 Jurisdiction**

Opticians Act 1989 ss 14-23 repealed: SI 2005/848. As to fitness to practise see now 1989 Act Pt 2A (ss 13A-13M); and PARA 846A. As to proceedings and appeals see now Pt 3A (ss 23A-23H); and PARA 855A.

For transitional provision see the Opticians Act 1989 (Transitional Provisions) Order 2005, SI 2005/1472.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7. OPTICIANS/(4) DISCIPLINE/(iii) The Disciplinary Committee/859. Legal assessor.

### **859. Legal assessor.**

In all proceedings before the disciplinary committee<sup>1</sup> there must be an assessor to the committee for the purpose of advising it on questions of law arising in the proceedings<sup>2</sup>. The assessor must be a person who has a ten year general qualification<sup>3</sup>, or an advocate or solicitor in Scotland of at least ten years' standing<sup>4</sup>, or a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland of at least ten years' standing<sup>5</sup>. The power of appointing assessors is exercisable by the General Optical Council<sup>6</sup>, but if no assessor so appointed is available to act at any particular proceedings the disciplinary committee may appoint an assessor to act at those proceedings<sup>7</sup>. The Lord Chancellor may make rules as to the functions of assessors<sup>8</sup>.

It is the duty of the assessor to be present at all proceedings before the committee and to advise the committee on any questions of law and the admission of evidence arising in the proceedings which may be referred to him by the committee<sup>9</sup>. The assessor must inform the committee forthwith of any irregularity in the conduct of proceedings before the committee which may come to his knowledge and advise the committee of his own motion where it appears to him that, but for such advice, there is a possibility of a mistake of law being made<sup>10</sup>. The assessor's advice must be tendered to the committee in the presence of every party, or person representing a party, to the proceedings who appears<sup>11</sup> at the proceedings<sup>12</sup>. If on any occasion the committee does not accept the advice of the assessor, a record must be made of the question referred to him, of the advice given and of the refusal to accept it, together with the reasons for such refusal, and a copy of the record must be given to every party, or person representing a party, to the proceedings who appears thereat<sup>13</sup>.

1 As to the disciplinary committee see PARAS 857-858 ante.

2 See the Opticians Act 1989 s 22(1). As to cases on the duties of legal assessors see those cited in the notes to paras 155, 463 ante.

As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

3 Opticians Act 1989 s 22(1)(a) (s 22(1)(a)-(c) substituted by the Courts and Legal Services Act 1990 s 71(2), Sch 10 para 75). For the meaning of 'general qualification' see the Courts and Legal Services Act 1990 s 71; and LEGAL PROFESSIONS vol 65 (2008) PARA 742.

4 Opticians Act 1989 s 22(1)(b) (as substituted: see note 3 supra).

5 Ibid s 22(1)(c) (as substituted: see note 3 supra).

6 As to the General Optical Council see PARA 813 et seq ante.

7 Opticians Act 1989 s 22(2). Subject to the provisions of s 22 (as amended), an assessor may be appointed either generally or for any particular proceedings or class of proceedings, and holds and vacates office in accordance with the terms of the instrument under which he is appointed: s 22(4). Any remuneration paid by the Council to persons appointed to act as assessors must be at rates approved by the Privy Council: s 22(5). As to the exercise of powers of the Privy Council under the Opticians Act 1989 see PARA 835 ante. As to the Privy Council generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

8 Ibid s 22(3). In particular, such rules may contain, as appear to the Lord Chancellor expedient:

16 (1) provisions for securing that:

1. (a) where an assessor advises the committee on any question of law as to evidence, procedure or any other matters specified in the rules, he must do so in the presence of every party, or person representing a party, to the proceedings who appears at the proceedings or, if the advice is tendered after the committee has begun to deliberate as to its findings, that every such party or person must be informed what advice the assessor has tendered (s 22(3)(a)(i));

1

2. (b) every such party or person must be informed if in any case the committee do not accept the advice of the assessor on any such question (s 22(3)(a)(ii)); and

2

17 (2) incidental and supplementary provisions (s 22(3)(b)).

The powers of the Lord Chancellor to make such rules are exercisable by statutory instrument: s 34(5)(b). By virtue of the Interpretation Act 1978 s 17(2)(b), the General Optical Council Disciplinary Committee (Legal Assessor) Rules 1961, SI 1961/1239, take effect as if made under the Opticians Act 1989 s 22(3). As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

9 General Optical Council Disciplinary Committee (Legal Assessor) Rules 1961, SI 1961/1239, r 3. Legal assessors to disciplinary committees should be provided with a standard direction on professional misconduct: *Threlfall v General Optical Council* [2004] EWHC 2683 (Admin), [2004] All ER (D) 416 (Nov) at 61 per Stanley Burnton J.

10 General Optical Council Disciplinary Committee (Legal Assessor) Rules 1961, SI 1961/1239, r 4.

11 Copies of written advice made for the purposes of *ibid* rr 5, 6 (see the text to notes 12, 13 *infra*), are available on application to every party not appearing at the proceedings: r 7. For the meaning of 'written' see PARA 20 note 22 *ante*.

12 *Ibid* r 5. Where a question is referred by the committee to the assessor after it has begun to deliberate as to its findings and the committee considers that it would be prejudicial to the discharge of its duties for the advice to be tendered in the presence of the parties to the proceedings or their representatives, it may be tendered in their absence, in which case the assessor must, as soon as may be, personally inform the parties and representatives of the question which has been put to him by the committee and of his advice on it, and his advice must subsequently be put in writing and a copy of it must be given to every party or representative: r 5.

13 *Ibid* r 6. See also note 11 *supra*.

## UPDATE

### 846-866 Jurisdiction

Opticians Act 1989 ss 14-23 repealed: SI 2005/848. As to fitness to practise see now 1989 Act Pt 2A (ss 13A-13M); and PARA 846A. As to proceedings and appeals see now Pt 3A (ss 23A-23H); and PARA 855A.

For transitional provision see the Opticians Act 1989 (Transitional Provisions) Order 2005, SI 2005/1472.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7.  
OPTICIANS/(4) DISCIPLINE/(iii) The Disciplinary Committee/860. Rules as to procedure.

### **860. Rules as to procedure.**

The General Optical Council<sup>1</sup> must make rules<sup>2</sup> as to the procedure to be followed and the rules of evidence to be observed in proceedings before the disciplinary committee<sup>3</sup>, and in particular:

- 1005 (1) for securing that notice that the proceedings are to be brought is given, at such time and in such manner as may be specified in the rules, to the individual or body corporate alleged to be liable to have a disciplinary order<sup>4</sup> or a direction<sup>5</sup> made against him or it<sup>6</sup>;
- 1006 (2) for securing that any party to the proceedings is, if he so requires, entitled to be heard by the committee<sup>7</sup>;
- 1007 (3) for enabling any party to the proceedings to be represented by counsel or solicitor or, if the rules so provide and the party so elects, by a person of such other description as may be specified in the rules<sup>8</sup>;
- 1008 (4) for requiring proceedings before the committee to be held in public except in so far as may be provided by the rules<sup>9</sup>;
- 1009 (5) for requiring, in cases where it is alleged that a registered optician<sup>10</sup> has been guilty of serious professional misconduct<sup>11</sup>, that where the committee judges that the allegation has not been proved it must record a finding that the optician is not guilty of such conduct in respect of the matters to which the allegation relates<sup>12</sup>;
- 1010 (6) for requiring, in cases where it is alleged that a registered optician or enrolled<sup>13</sup> body corporate is liable to have a disciplinary order made against him or it<sup>14</sup>, that where the committee judges that the allegation has not been proved it must record a finding that the optician or body corporate is not guilty of the matters alleged<sup>15</sup>.

Before making such rules, the Council must consult those organisations representing the interests of opticians and bodies corporate carrying on business as opticians as appear to the Council requisite to be consulted<sup>16</sup>.

1 As to the General Optical Council see PARA 813 et seq ante.

2 As to the making of rules see PARA 825 ante.

3 Opticians Act 1989 s 21(4). As to the disciplinary committee see PARAS 857-858 ante. As respects proceedings for the restoration of names to the register or list, or for the revocation of a direction under s 17(9) (see PARA 851 ante), the Council has power to make rules with respect to all or any of the matters specified in s 21(4), but is not required to do so, and separate rules may be made as respects such proceedings: s 21(5). For the meaning of 'register' see PARA 838 note 2 ante; and for the meaning of 'list' see PARA 841 note 4 ante. By virtue of the Interpretation Act 1978 s 17(2)(b), the General Optical Council (Disciplinary Committee) (Procedure) Rules 1985, approved by the General Optical Council (Disciplinary Committee) (Procedure) Order of Council 1985, SI 1985/1580, take effect as if made under the Opticians Act 1989 s 21(4), (5). As to such rules see PARAS 862-865 post.

As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

4 For the meaning of 'disciplinary order' see PARA 846 ante.

5 ie under the Opticians Act 1989 s 19: see PARA 854 ante.

- 6 Ibid s 21(4)(a).
- 7 Ibid s 21(4)(b).
- 8 Ibid s 21(4)(c).
- 9 Ibid s 21(4)(d).
- 10 For the meaning of 'registered optician' see PARA 839 note 4 ante.
- 11 As to serious professional misconduct see PARA 846 note 5 ante.
- 12 Opticians Act 1989 s 21(4)(e).
- 13 For the meaning of 'enrolled' see PARA 842 note 1 ante. As to the enrolment of bodies corporate see PARAS 841-843 et seq ante.
- 14 Ie under the Opticians Act 1989 s 17(4), (5): see PARAS 848-849 ante.
- 15 Ibid s 21(4)(f).
- 16 Ibid s 21(6).

## **UPDATE**

### **846-866 Jurisdiction**

Opticians Act 1989 ss 14-23 repealed: SI 2005/848. As to fitness to practise see now 1989 Act Pt 2A (ss 13A-13M); and PARA 846A. As to proceedings and appeals see now Pt 3A (ss 23A-23H); and PARA 855A.

For transitional provision see the Opticians Act 1989 (Transitional Provisions) Order 2005, SI 2005/1472.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7. OPTICIANS/(4) DISCIPLINE/(iii) The Disciplinary Committee/861. Oaths and witness summonses.

### **861. Oaths and witness summonses.**

For the purpose of any proceedings before the disciplinary committee<sup>1</sup>, whether or not relating to disciplinary cases<sup>2</sup>, the committee may administer oaths<sup>3</sup>; and any party to the proceedings may require a witness to attend to give evidence or to produce documents<sup>4</sup>, but no person can be compelled to produce any document which he could not be compelled to produce on the trial of a claim<sup>5</sup>.

1 As to the disciplinary committee see PARAS 857-858 ante. As to such proceedings see PARAS 862-865 post.

2 For the meaning of 'disciplinary case' see PARA 855 note 2 ante.

3 Opticians Act 1989 s 21(1)(a). For the meaning of 'oath' see PARA 153 note 4 ante.

As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

4 As to witness summonses see CIVIL PROCEDURE vol 11 (2009) PARA 1004. The Supreme Court Act 1981 s 36 (as amended), which provides a special procedure for summoning witnesses so as to be in force throughout the United Kingdom (see CIVIL PROCEDURE vol 11 (2009) PARAS 1008, 1016), applies in relation to the proceedings as it applies in relation to causes or matters in the High Court: Opticians Act 1989 s 21(2). For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

5 Ibid s 21(1). As to the production of documents in civil proceedings see CIVIL PROCEDURE vol 11 (2009) PARA 538-583.

## **UPDATE**

### **846-866 Jurisdiction**

Opticians Act 1989 ss 14-23 repealed: SI 2005/848. As to fitness to practise see now 1989 Act Pt 2A (ss 13A-13M); and PARA 846A. As to proceedings and appeals see now Pt 3A (ss 23A-23H); and PARA 855A.

For transitional provision see the Opticians Act 1989 (Transitional Provisions) Order 2005, SI 2005/1472.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7.  
OPTICIANS/(4) DISCIPLINE/(iii) The Disciplinary Committee/862. Procedure: general provisions.

## **862. Procedure: general provisions.**

All proceedings before the disciplinary committee<sup>1</sup> must take place in the presence of all parties who appear in them, and must be held in public<sup>2</sup>, except that, where in the interests of justice it appears to the committee that the public should be excluded from any proceedings or part of them, the committee may direct that the public be so excluded; but such a direction does not apply to the announcement of any determination of the committee<sup>3</sup>. The committee may adjourn its proceedings from time to time as it thinks fit<sup>4</sup>. A shorthand writer must be appointed by the committee to take shorthand notes of its proceedings<sup>5</sup>.

Facts relevant to an inquiry<sup>6</sup> must be proved in accordance with the rules of criminal evidence<sup>7</sup>.

Where on any question the votes of the members of the committee are equal, the question is deemed to have been resolved in favour of the respondent or of the applicant<sup>8</sup>, as the case may be<sup>9</sup>.

1 As to the disciplinary committee see PARAS 857-858 ante.

2 General Optical Council (Disciplinary Committee) (Procedure) Order of Council 1985, SI 1985/1580, art 11(1). This provision does not apply to deliberations of the committee held in camera; and the committee may deliberate in camera (with or without the legal assessor) at any time and for any purpose during or after the hearing of any proceedings: arts 11(2), 12. 'The legal assessor' means an assessor appointed by the General Optical Council or the committee for the purposes of the Opticians Act 1989 s 22 (as amended) (see PARA 859 ante): General Optical Council (Disciplinary Committee) (Procedure) Order of Council 1985, SI 1985/1580, art 1(2).

As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

3 General Optical Council (Disciplinary Committee) (Procedure) Order of Council 1985, SI 1985/1580, art 11(3).

4 Ibid art 13.

5 Ibid art 17. The committee may dispense with a shorthand writer in proceedings relating to the restoration of names after erasure and revocation of directions (as to which see PARA 865 post); and any party to an inquiry must, on application to the solicitor and on payment of the proper charge on a scale fixed by the committee, be furnished by the solicitor with a transcript of the shorthand notes of any part of the inquiry at which the party was entitled to be present: art 17. 'The solicitor' means a solicitor nominated by the General Optical Council to act as its solicitor for the purposes of the General Optical Council (Disciplinary Committee) (Procedure) Order of Council 1985, SI 1985/1580, and in relation to an inquiry (see note 6 infra) includes counsel instructed by the solicitor to act on his behalf: art 1(2).

6 'Inquiry' means the proceedings at which the committee considers and determines any case to which the General Optical Council (Disciplinary Committee) (Procedure) Order of Council 1985, SI 1985/1580, applies: art 1(2).

7 Ibid art 14(1). The committee may dispense with the rules of criminal evidence if it decides: (1) in the interests of justice to receive documentary evidence of a fact which it is satisfied is sufficient (art 14(2)(i)); or (2) to admit oral or documentary evidence of the respondents character, conduct or reputation (art 14(2)(ii)). As to the criminal standard of proof see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1372.

8 Ie under ibid art 10: see PARA 865 post.

9 Ibid art 15.

## **UPDATE**

### **846-866 Jurisdiction**

Opticians Act 1989 ss 14-23 repealed: SI 2005/848. As to fitness to practise see now 1989 Act Pt 2A (ss 13A-13M); and PARA 846A. As to proceedings and appeals see now Pt 3A (ss 23A-23H); and PARA 855A.

For transitional provision see the Opticians Act 1989 (Transitional Provisions) Order 2005, SI 2005/1472.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7. OPTICIANS/(4) DISCIPLINE/(iii) The Disciplinary Committee/863. Procedure in disciplinary cases.

### **863. Procedure in disciplinary cases.**

As soon as may be after a disciplinary case<sup>1</sup> has been referred to the disciplinary committee<sup>2</sup>, the solicitor<sup>3</sup> must serve a notice of inquiry<sup>4</sup> in the prescribed form<sup>5</sup> upon the respondent<sup>6</sup>. The committee must not hold an inquiry unless a notice of inquiry has been served upon the respondent<sup>7</sup>. The chairman<sup>8</sup>, upon the application of a party to the inquiry, may postpone the inquiry<sup>9</sup>.

A respondent or complainant may appear either in person or be represented<sup>10</sup>. The charge or charges must be read in the presence of the respondent, and of the complainant if one appears<sup>11</sup>. If the respondent has appeared at the inquiry, the chairman must ask if all or any of the convictions or other facts alleged in the charge or charges are admitted<sup>12</sup>. The solicitor opens the case and may call witnesses and adduce evidence of any such convictions or other facts not admitted by the respondent and of any matter connected with the facts alleged which may be relevant<sup>13</sup>. The respondent may cross-examine any such witness and the witness may thereafter be re-examined<sup>14</sup>. The respondent may then submit that the evidence called by the solicitor does not establish the charge alleged<sup>15</sup>. If no such submission is made, or if any such submission is not upheld, the respondent may then adduce evidence and call witnesses with or without notice<sup>16</sup>, and the respondent may address the committee either before or after such evidence but not more than once save with the leave of the committee<sup>17</sup> so, however, that the respondent has the right to make a final speech to the committee whether or not he called witnesses<sup>18</sup>. The solicitor or the complainant may address the committee on any point of law raised by the respondent<sup>19</sup>; and, where the respondent adduces evidence, the solicitor or the complainant may address the committee on it and may adduce evidence in rebuttal; and any witnesses called by the respondent may be cross-examined and re-examined<sup>20</sup>. At any stage in any proceedings before it, the committee may cause any person to be called as a witness whether or not the parties consent; and if any such witness gives evidence against the respondent, the witness may be cross-examined and the respondent may adduce evidence in rebuttal<sup>21</sup>. Questions may be put to any witness by the committee through the chairman or by the legal assessor with the leave of the chairman<sup>22</sup>.

The committee then deliberates, and decides in relation to each charge which remains outstanding whether the facts alleged in such charge have been proved and in relation to any facts found by the committee to have been proved whether they are such as to substantiate such charge, and the chairman announces its findings<sup>23</sup>.

1 For the meaning of 'disciplinary case' see PARA 855 note 2 ante.

2 As to the disciplinary committee see PARAS 857-858 ante.

3 For the meaning of 'the solicitor' see PARA 862 note 5 ante.

4 For the meaning of 'inquiry' see PARA 862 note 6 ante.

5 The notice of inquiry must be as nearly as may be in the form set out in the General Optical Council (Disciplinary Committee) (Procedure) Order of Council 1985, SI 1985/1580, Appendix: art 2(1). The notice must state the charge or charges and specify in a case under the Opticians Act 1989 s 17 (see PARAS 846-852 ante) the alleged convictions or other facts relied on in relation to each charge and the provision under which any charge is brought; or in a case under s 19 (see PARA 854 ante), the nature of the fraud or mistake alleged: General Optical Council (Disciplinary Committee) (Procedure) Order of Council 1985, SI 1985/1580, art 2(1)(i), (ii). 'Conviction' means a conviction by any court in the United Kingdom of any criminal offence; and 'charge'

includes an allegation that an entry in the register or list has been fraudulently or incorrectly made: art 1(2). For the meaning of 'register' see PARA 838 note 2 ante; and for the meaning of 'list' see PARA 841 note 4 ante. The notice must also state the day, time and place at which the committee will hold an inquiry into these matters, and a copy of the General Optical Council (Disciplinary Committee) (Procedure) Rules 1985 must be enclosed; and a copy of the notice must be sent to the complainant: General Optical Council (Disciplinary Committee) (Procedure) Order of Council 1985, SI 1985/1580, art 2(1). 'The complainant' means a person or body by whom a complaint has been made to the General Optical Council in a case to which these provisions apply: r 1(2).

Where, before the inquiry opens, it appears to the chairman, or at any stage of the proceedings it appears to the committee, that a notice of inquiry is defective, he or it must cause the notice to be amended, unless it appears to him or it that the required amendment cannot be made without injustice, or, if he or it considers that the circumstances in which an amendment is made require it, he or it may direct that the amended notice be served on the respondent and that the inquiry be postponed: art 3(3). The solicitor must, as soon as may be, give to all parties notification of any decision to postpone or not to hold an inquiry, and inform them of any date fixed for the hearing of a postponed inquiry: art 3(4). 'Party' means the solicitor or the respondent: art 1(2).

As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

6 General Optical Council (Disciplinary Committee) (Procedure) Order of Council 1985, SI 1985/1580, art 2(1). The notice and copy of the rules must be sent by post in a registered letter or by the recorded delivery service addressed to the respondent in accordance with the provisions of the Opticians Act 1989 s 20 (see PARA 852 note 6 ante) as though it were a notification to which s 20 applies: General Optical Council (Disciplinary Committee) (Procedure) Order of Council 1985, SI 1985/1580, art 2(2). Nothing prevents one inquiry being held into charges against two or more respondents, and where such an inquiry is held the General Optical Council (Disciplinary Committee) (Procedure) Order of Council 1985, SI 1985/1580, applies with the necessary adaptations and subject to any directions given by the committee as to the order in which proceedings are to be taken by or in relation to the several respondents, so however that any of the rights of a respondent thereunder must be exercised separately by each of the respondents who desire to invoke that right: art 16. 'The respondent' means any person or body corporate whose name has been entered in a register or list and in respect of whom a case has been referred to the disciplinary committee for inquiry: art 1(2).

7 Ibid art 2(3). Except with the agreement of the respondent, the inquiry must not be held within 28 days after the date of posting of the notice of inquiry: art 2(4). Not less than 14 days before the date of the inquiry by the committee as stated in the notice of inquiry, any party to the inquiry may serve on any other the following information: his estimate of the likely length of the hearing; a statement of what, in his view, are the issues in the case; how many witnesses he is to call; whether, in his view, there are matters which can be agreed without the need to call evidence (and, if so, which matters those are); any points of law which he expects will arise at the hearing: art 2A(a)-(e) (art 2A added by SI 1998/1337). Subject to the General Optical Council (Disciplinary Committee) (Procedure) Order of Council 1985, SI 1985/1580, art 10(iii) (see PARA 865 note 11 post), upon application by the respondent, the solicitor must send him a copy of any statutory declaration, complaint, answer, admission, explanation or other similar document which the Council has received in connection with his case: art 4.

8 'The chairman' means the chairman or the acting chairman of the committee: ibid art 1(2). As to the appointment of the chairman and acting chairman see PARA 858 note 11 ante.

9 Ibid art 3(1). The chairman may refer a disciplinary case back to the investigating committee for further consideration either upon the application of a party to the inquiry or upon the emergence of fresh evidence justifying such a reference: art 3(2). As to the investigating committee see PARAS 855-856 ante. As to the duty of the solicitor to give notice of any decision to postpone or not to hold an inquiry see art 3(4); and note 5 supra.

10 Ibid art 5(1), (2). A respondent or complainant, if an individual, may appear either in person or be represented by counsel, by a solicitor, by any officer or member of an organisation of which he is a member, or by a member of his family: art 5(1). A respondent or complainant who is a body corporate or an unincorporated body of persons may be represented by its secretary (or other officer duly appointed for the purpose) or by counsel or by a solicitor: art 5(2). As to corporations and unincorporated associations see CORPORATIONS vol 9(2) (2006 Reissue) PARA 1101.

11 Ibid art 6(1). If the respondent does not appear at the inquiry but the committee nevertheless decides that the inquiry should proceed, the charge or charges must be read in his absence: art 6(1). As soon as the charge or charges have been read, the respondent may, if he so desires, object to the charge or charges, or to any part, in point of law, and the solicitor or the complainant may reply to any such objection; and, if any such objection is upheld, no further proceedings may be taken on a charge or on a part of a charge to which the objection relates: art 6(2). As to general provisions in relation to the committee's procedure see PARA 862 ante.

12 Ibid art 7(1).

13 Ibid art 7(2). As to the standard of proof see PARA 862 ante; and as to the committee's power to administer oaths, and witness summonses, see PARA 861 ante.

14 Ibid art 7(3).

15 Ibid art 7(4). The committee must consider and determine any such submission, and the chairman must thereupon announce its determination: art 7(4). See also the text to note 23 infra.

16 Ibid art 7(5). Any such witnesses may be cross-examined and re-examined: art 7(5)(i).

17 Ibid art 7(5)(ii).

18 Ibid art 7(5).

19 Ibid art 7(6).

20 Ibid art 7(7). The respondent has the right to address the committee upon such evidence in rebuttal: art 7(8).

21 Ibid art 7(9).

22 Ibid art 7(10). For the meaning of 'the legal assessor' see PARA 862 note 2 ante.

23 Ibid art 7(11). If the committee finds that any charge under the Opticians Act 1989 s 17 (see PARAS 846-852 ante) is not proved, a finding that the respondent is not guilty of the matters alleged must be recorded: General Optical Council (Disciplinary Committee) (Procedure) Order of Council 1985, SI 1985/1580, art 7(11). As to the disposal of cases see PARA 864 post. As to the position where the votes on the committee are equal on any decision see PARA 862 ante. The disciplinary committee must give adequate reasons for its decisions: *Threlfall v General Optical Council* [2004] EWHC 2683 (Admin), [2004] All ER (D) 416 (Nov).

## **UPDATE**

### **846-866 Jurisdiction**

Opticians Act 1989 ss 14-23 repealed: SI 2005/848. As to fitness to practise see now 1989 Act Pt 2A (ss 13A-13M); and PARA 846A. As to proceedings and appeals see now Pt 3A (ss 23A-23H); and PARA 855A.

For transitional provision see the Opticians Act 1989 (Transitional Provisions) Order 2005, SI 2005/1472.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7.  
OPTICIANS/(4) DISCIPLINE/(iii) The Disciplinary Committee/864. Disposal of disciplinary cases.

#### **864. Disposal of disciplinary cases.**

Where the disciplinary committee<sup>1</sup> finds that a disciplinary charge<sup>2</sup> is proved, the chairman<sup>3</sup> invites the solicitor<sup>4</sup> to adduce evidence of the circumstances leading up to the facts found proved and as to the character and antecedents of the respondent<sup>5</sup>. The respondent may then address the committee in mitigation and adduce any relevant evidence<sup>6</sup>. The committee must then deliberate and decide either to take no further action<sup>7</sup>, or to make a disciplinary order<sup>8</sup> or a direction<sup>9</sup> against the respondent<sup>10</sup>. Any such decision of the committee must be announced by the chairman in such terms as the committee may approve<sup>11</sup>.

If, in a case relating to a fraudulent or incorrect entry in a register or list<sup>12</sup>, the committee determines that an entry has been proved to its satisfaction to have been fraudulently or incorrectly made, it must make an order in writing<sup>13</sup>, signed by the chairman, that the entry having been proved to the satisfaction of the committee to have been fraudulently or incorrectly made, as the case may be, be erased from the register or list<sup>14</sup>. Where, in such a case, an inquiry<sup>15</sup> relates to two or more entries, the committee may consider the allegations in respect of those entries either separately or taken together, as the committee may think fit; and where an inquiry relates to an entry specifying two or more particulars, the committee may proceed in respect of so much of the entry as specifies each of those particulars as if it were a separate entry<sup>16</sup>.

1 As to the disciplinary committee see PARAS 857-858 ante.

2 I.e. a charge under the Opticians Act 1989 s 17: see PARAS 846-852 ante. As to the procedure of the committee in considering such cases see PARA 863 ante.

3 For the meaning of 'the chairman' see PARA 863 note 8 ante.

4 For the meaning of 'the solicitor' see PARA 862 note 5 ante.

5 General Optical Council (Disciplinary Committee) (Procedure) Order of Council 1985, SI 1985/1580, art 8(1). For the meaning of 'respondent' see PARA 863 note 6 ante. As to the committee's power to administer oaths, and witness summonses, see PARA 861 ante; and as to general provisions in relation to the committee's procedure see PARA 862 ante.

As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

6 General Optical Council (Disciplinary Committee) (Procedure) Order of Council 1985, SI 1985/1580, art 8(2).

7 Ibid art 8(3)(a). This provision is subject to the provisions of art 8(6) (see the text to note 11 infra): art 8(3)(a).

8 If the committee decides to make a disciplinary order, it must then decide to make any of the following: (1) an erasure order (ibid art 8(4)(a)); (2) a suspension order (art 8(4)(b)); (3) a penalty order (art 8(4)(c)); or (4) an erasure order or a suspension order together with a penalty order (art 8(4)(d)). If the committee decides: (a) to make a suspension order (whether or not it is to be made together with a penalty order), it must specify the period, not exceeding 12 months, during which the respondents registration or enrolment is suspended (art 8(5)(a)); (b) to make a penalty order (whether or not it is to be made together with an erasure order or a suspension order), it must specify the sum (not exceeding the maximum penalty) which the respondent must pay to General Optical Council (art 8(5)(b)(i)), and the period within which the sum specified is to be paid (art 8(5)(b)(ii)). For the meanings of 'disciplinary order', 'suspension order', 'penalty order' and 'erasure order' see PARA 846 ante; and as to the maximum penalty see PARA 846 note 15 ante. For the meaning of 'registration' see PARA 838 note 2 ante; and for the meaning of 'enrolment' see PARA 842 note 1 ante. As to the General Optical Council see PARA 813 et seq ante.

9 le in a case to which the Opticians Act 1989 s 17(9) applies: see PARA 851 ante.

10 General Optical Council (Disciplinary Committee) (Procedure) Order of Council 1985, SI 1985/1580, art 8(3)(b). As to the position where the votes on the committee are equal on any decision see PARA 862 ante. The disciplinary committee must give adequate reasons for its decisions: *Threlfall v General Optical Council* [2004] EWHC 2683 (Admin), [2004] All ER (D) 416 (Nov).

11 General Optical Council (Disciplinary Committee) (Procedure) Order of Council 1985, SI 1985/1580, art 8(6).

12 le a case under the Opticians Act 1989 s 19: see PARA 854 ante. As to the procedure of the committee in considering such cases see PARA 863 ante. For the meaning of 'register' see PARA 838 note 2 ante; and for the meaning of 'list' see PARA 841 note 4 ante.

13 For the meaning of 'writing' see PARA 20 note 22 ante.

14 General Optical Council (Disciplinary Committee) (Procedure) Order of Council 1985, SI 1985/1580, art 9(1). The chairman must announce the determination in terms indicating whether in the view of the committee the entry was made fraudulently or was made incorrectly but not fraudulently: art 9(1). See also note 10 supra.

15 For the meaning of 'inquiry' see PARA 862 note 6 ante.

16 General Optical Council (Disciplinary Committee) (Procedure) Order of Council 1985, SI 1985/1580, art 9(2).

## **UPDATE**

### **846-866 Jurisdiction**

Opticians Act 1989 ss 14-23 repealed: SI 2005/848. As to fitness to practise see now 1989 Act Pt 2A (ss 13A-13M); and PARA 846A. As to proceedings and appeals see now Pt 3A (ss 23A-23H); and PARA 855A.

For transitional provision see the Opticians Act 1989 (Transitional Provisions) Order 2005, SI 2005/1472.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7.  
OPTICIANS/(4) DISCIPLINE/(iii) The Disciplinary Committee/865. Procedure in other cases.

### **865. Procedure in other cases.**

Where an application is made:

- 1011 (1) by<sup>1</sup> a person or body whose name has been erased from a register or list<sup>2</sup> following an erasure order<sup>3</sup>; or
- 1012 (2) by<sup>4</sup> a person or body whose name has been erased from a register or list<sup>5</sup> on the ground of fraud<sup>6</sup>; or
- 1013 (3) by<sup>7</sup> a body corporate in respect of which a direction has been made by the disciplinary committee<sup>8</sup> prohibiting the use of certain titles in respect of specified premises<sup>9</sup>,

the committee must afford the applicant an opportunity of being heard by it and of adducing evidence<sup>10</sup>. The committee may require such evidence as it thinks necessary concerning the identity or character of the applicant, or his conduct since his name was erased from the register or list, and for this purpose may receive written or oral evidence<sup>11</sup>. Subject to the provisions described above and to the general provisions relating to proceedings before the committee<sup>12</sup>, the procedure of the committee in connection with the application is such as it may determine<sup>13</sup>.

1    Ie an application made in accordance with the Opticians Act 1989 s 18: see PARA 853 ante.

2    For the meaning of 'register' see PARA 838 note 2 ante; and for the meaning of 'list' see PARA 841 note 4 ante.

3    General Optical Council (Disciplinary Committee) (Procedure) Order of Council 1985, SI 1985/1580, art 10(a). For the meaning of 'erasure order' see PARA 846 ante.

As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

4    Ie an application made in accordance with the Opticians Act 1989 s 19(2): see PARA 854 ante.

5    Ie in pursuance of a direction by the disciplinary committee under *ibid* s 19(1): see PARA 854 ante.

6    General Optical Council (Disciplinary Committee) (Procedure) Order of Council 1985, SI 1985/1580, art 10(b).

7    Ie in accordance with the Opticians Act 1989 s 17(10): see PARA 851 ante.

8    Ie under *ibid* s 17(9): see PARA 851 ante. As to the disciplinary committee see PARAS 857-858 ante.

9    General Optical Council (Disciplinary Committee) (Procedure) Order of Council 1985, SI 1985/1580, art 10(c).

10   Ibid art 10(i). As to the committee's power to administer oaths, and witness summonses, see PARA 861 ante.

11   Ibid art 10(ii). Where the applicant has supplied to the registrar the name of any person to whom reference may be made confidentially as to his character or conduct, the committee may consider any information received from such person and need not disclose the same to the applicant: art 10(iii). As to the registrar see PARA 822 ante.

12   Ie the provisions of *ibid* Pt V (arts 11-17): see PARA 862 ante.

13 Ibid art 10(iv). The disciplinary committee must give adequate reasons for its decisions: *Threlfall v General Optical Council* [2004] EWHC 2683 (Admin), [2004] All ER (D) 416 (Nov).

## **UPDATE**

### **846-866 Jurisdiction**

Opticians Act 1989 ss 14-23 repealed: SI 2005/848. As to fitness to practise see now 1989 Act Pt 2A (ss 13A-13M); and PARA 846A. As to proceedings and appeals see now Pt 3A (ss 23A-23H); and PARA 855A.

For transitional provision see the Opticians Act 1989 (Transitional Provisions) Order 2005, SI 2005/1472.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/7. OPTICIANS/(4) DISCIPLINE/(iii) The Disciplinary Committee/866. Appeals; when orders and directions take effect.

### **866. Appeals; when orders and directions take effect.**

An individual or body corporate who is notified<sup>1</sup> that a disciplinary order<sup>2</sup> has been made against him<sup>3</sup> or that a direction has been given in respect of him<sup>4</sup> may, before the end of the period of 28 days beginning with the date on which notification was served<sup>5</sup>, appeal against that order or direction to the relevant court<sup>6</sup>. An individual or body corporate who is notified<sup>7</sup> that a direction has been given in respect of him<sup>8</sup> in relation to a fraudulent or incorrect entry in a register or list<sup>9</sup> may, before the end of the period of 28 days beginning with the date on which notification was served, appeal against that direction to a county court<sup>10</sup>.

On any such appeal<sup>11</sup>, the court may:

- 1014 (1) dismiss the appeal<sup>12</sup>;
- 1015 (2) allow the appeal and quash the order or direction appealed against<sup>13</sup>;
- 1016 (3) substitute for the order or direction appealed against any other order or direction which could have been made by the disciplinary committee<sup>14</sup>; or
- 1017 (4) remit the case to the disciplinary committee to dispose of the case in accordance with the directions of the court<sup>15</sup>,

and may make such order as to costs as it thinks fit<sup>16</sup>.

The General Optical Council<sup>17</sup> may appear as respondent on any such appeal, and for the purpose of any order as to costs in relation to any appeal the Council is deemed to be a party to the appeal, whether it appears on the hearing of the appeal or not<sup>18</sup>.

Where no appeal is brought against a disciplinary order<sup>19</sup> or a direction<sup>20</sup> or where an appeal is brought but withdrawn or struck out for want of prosecution<sup>21</sup>, the order or direction takes effect on the expiration of the time for appealing or, as the case may be, on the withdrawal or striking out of the appeal<sup>22</sup>. Subject to this, where an appeal is brought against any such order or direction, it takes effect if and when the appeal is dismissed and not otherwise<sup>23</sup>.

1    Ie under the Opticians Act 1989 s 17(11): see PARA 852 ante.

2    For the meaning of 'disciplinary order' see PARA 846 ante.

3    Ie under the Opticians Act 1989 s 17 (see PARAS 846-852 ante): s 23(1)(a) (s 23(1) substituted, and s 23(1A)-(1C) added by the National Health Service Reform and Health Care Professions Act 2002 s 32(1), (2)).

4    Ie under the Opticians Act 1989 s 17(9) (see PARA 851 ante): s 23(1)(b) (as substituted: see note 3 supra).

5    As to the service of notifications see PARA 852 ante.

6    Opticians Act 1989 s 23(1) (as substituted: see note 3 supra). 'The relevant court' in the case of an individual whose address in the register is in Scotland, or a body corporate whose registered office is in Scotland, means the Court of Session; in the case of an individual whose address in the register is in Northern Ireland, or a body corporate whose registered office is in Northern Ireland, means the High Court of Justice in Northern Ireland; and in the case of any other individual or body corporate, means the High Court of Justice in England and Wales: s 23(1A)(a)-(c) (as added: see note 3 supra). As to the registered office of a company see COMPANIES vol 14 (2009) PARA 129. As to the High Court of Justice in England and Wales see COURTS vol 10 (Reissue) PARA 602 et seq.

As to the prospective amendments made by the Opticians Act 1989 (Amendment) Order 2005, SI 2005/848, see PARA 803 note 8 ante.

7 le under the Opticians Act 1989 s 19(3): see PARA 854 note 4 ante.

8 le under ibid s 19: see PARA 854 ante.

9 For the meaning of 'register' see PARA 838 note 2 ante; and for the meaning of 'list' see PARA 841 note 4 ante.

10 Opticians Act 1989 s 23(1B) (as added: see note 3 supra). As to county courts see COURTS. If the person's address in the register or (as the case may be) the registered office is situated in Scotland, appeal may be made to the sheriff in whose sheriffdom the address in the register or (as the case may be) the registered office is situated: s 23(1B) (as so added).

11 As to appeals generally see CPR Pt 52. An appeal is by way of re-hearing: Practice Direction--Appeals PD52 para 22.3(1)(f), (2). An appeal is not limited to questions of law but also includes questions of fact. The court does not normally hear evidence afresh, but considers the appeal on the basis of the record of the evidence given to the committee. The court appreciates that the committee is better qualified to assess the reliability of the evidence of live witnesses where it was in issue, and evidence relating to professional practice and the gravity of any shortcomings, and therefore accords the decision of the committee an appropriate measure of respect, but no more. It remains, however, the position that an appellant must establish an error, of law or fact or of judgment, on the part of the committee: *Threlfall v General Optical Council* [2004] EWHC 2683 (Admin), [2004] All ER (D) 416 (Nov) at 21 per Stanley Burnton J. See also the cases cited in PARAS 188 note 14, 478 notes 5, 6 ante.

12 Opticians Act 1989 s 23(1C)(a) (as added: see note 3 supra).

13 Ibid s 23(1C)(b) (as added: see note 3 supra).

14 Ibid s 23(1C)(c) (as added: see note 3 supra). As to the disciplinary committee see PARAS 857-858 ante.

15 Ibid s 23(1C)(d) (as added: see note 3 supra).

16 Ibid s 23(1C) (as added: see note 3 supra). As to costs generally see CIVIL PROCEDURE vol 12 (2009) PARA 1729 et seq.

17 As to the General Optical Council see PARA 813 et seq ante.

18 Opticians Act 1989 s 23(2) (amended by the National Health Service Reform and Health Care Professions Act 2002 ss 32(1), (3), 37(1), Sch 8 para 17).

19 Opticians Act 1989 s 23(3)(a)(i).

20 le under either ibid s 17(9) or s 19: s 23(3)(a)(ii), (iii).

21 Ibid s 23(3)(b).

22 Ibid s 23(3). The registrar must erase from the register or the list the name of any registered optician or enrolled body corporate in respect of which he receives a direction to that effect from the disciplinary committee under s 17 (see PARA 846 note 11 ante) or s 19 (see PARA 854 note 4 ante), on the date upon which such direction takes effect in accordance with s 23: General Optical Council (Registration and Enrolment Rules) Order of Council 1977, SI 1977/176, r 17; and see the Interpretation Act 1978 s 17(2)(a). As to the registrar see PARA 822 ante. For the meaning of 'registered optician' see PARA 839 note 4 ante; and for the meaning of 'enrolled' see PARA 842 note 1 ante.

23 Opticians Act 1989 s 23(4). See also note 22 supra.

## UPDATE

### 846-866 Jurisdiction

Opticians Act 1989 ss 14-23 repealed: SI 2005/848. As to fitness to practise see now 1989 Act Pt 2A (ss 13A-13M); and PARA 846A. As to proceedings and appeals see now Pt 3A (ss 23A-23H); and PARA 855A.

For transitional provision see the Opticians Act 1989 (Transitional Provisions) Order 2005, SI 2005/1472.

**866 Appeals; when orders and directions take effect**

NOTE 22--SI 1977/176 replaced: General Optical Council (Registration Rules) Order of Council 2005, SI 2005/1478 (amended by SI 2007/3101, SI 2008/1940).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/8. DISPENSERS OF HEARING AIDS/(1) INTRODUCTION/867. In general.

## **8. DISPENSERS OF HEARING AIDS**

### **(1) INTRODUCTION**

#### **867. In general.**

The principal purpose of the Hearing Aid Council Act 1968<sup>1</sup> is to provide for the establishment of a Hearing Aid Council<sup>2</sup> to register persons engaged in the supply of hearing aids<sup>3</sup>, to advise on the training of persons engaged in such business<sup>4</sup>, and to regulate trade practices<sup>5</sup>.

1 As to the short title see the Hearing Aid Council Act 1968 s 15(1). This Act applies to Northern Ireland: see the Hearing Aid Council Act 1968 s 15(2) (amended by the Hearing Aid Council (Extension) Act 1975 s 2(3)); and the Hearing Aid Council (Extension) Act 1975 s 1. See also the Hearing Aid Council (Extension) Act 1975 s 2(4); and the Hearing Aid Council (Amendment) Act 1989 s 6(3).

2 As to the Council see PARA 868 et seq post.

3 As to registration see PARA 872 post. 'Hearing aid' means an instrument intended for use by a person suffering from impaired hearing to assist that person to hear better, but does not include any instrument or device designed for use by connecting conductors of electricity to equipment or apparatus provided for the purpose of affording means of telephonic communication: s 14. 'Supply' means supply by way of retail sale or by way of hire, but does not include a sale to a person acquiring for the purposes of trade: s 14.

4 As to such advice see PARA 869 post.

5 See the Hearing Aid Council Act 1968, long title. As to codes of practice see PARA 869 post. The Hearing Aid Council (Amendment) Act 1989 amends the principal statute by making further provision for the regulation, conduct and discipline of persons engaged in dispensing hearing aids, and amending the composition of the Hearing Aid Council: see the long title.

### **UPDATE**

#### **867-879 Dispensers of Hearing Aids**

As from a day to be appointed, which may not be before the Health Professions Council has assumed responsibility for the regulation of private hearing aid dispensers, the Hearing Aid Council is dissolved: see the Health and Social Care Act 2008 s 123(1), (3)-(6) (s 123(1) not yet in force). As from a day to be appointed, the Hearing Aid Council Act 1968 and the Hearing Aid Council (Extension) Act 1975 are revoked: Health and Social Care Act 2008 s 123(2) (not yet in force).



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/8. DISPENSERS OF HEARING AIDS/(2) THE HEARING AID COUNCIL/868. Constitution, members and officers.

## **(2) THE HEARING AID COUNCIL**

### **868. Constitution, members and officers.**

The Hearing Aid Council is a body corporate with perpetual succession and a common seal<sup>1</sup>, and consists of a chairman and 12 other members appointed by the Board of Trade<sup>2</sup>. When appointing persons as members of the Council, the Board must ensure that the members include: (1) four persons who are capable of representing the interests of persons registered under the Hearing Aid Council Act 1968<sup>3</sup> and who are either so registered themselves or are directors of, or participate in the management of, a body corporate which is so registered<sup>4</sup>; (2) four persons who are not eligible for appointment under head (1) above and who have specialised medical knowledge of deafness or audiological technical knowledge<sup>5</sup>; and (3) four persons who are not eligible for appointment under head (1) or head (2) above and who are capable of representing the interests of persons with impaired hearing<sup>6</sup>.

Members of the Council hold office for such period, not exceeding four years, as the Board of Trade may specify at the time of their appointment<sup>7</sup>. In determining the periods of office of members of the Council, other than the chairman,<sup>8</sup> the Board of Trade must seek to secure that one-third of the members of the Council cease to hold office each year<sup>9</sup>, and that, so far as is consistent with this consideration, all members of the Council are appointed for similar periods<sup>10</sup>. This does not preclude a member from being appointed for a second or subsequent term<sup>11</sup>. A member may resign by giving written notice to the registrar<sup>12</sup>. The powers of the Council and of any of its committees may be exercised notwithstanding any vacancy or any defect in the appointment of a member<sup>13</sup>. The Council may pay members of the Council or its committees such fees for attendance at meetings of the Council or its committees and such travelling and subsistence allowances while attending such meetings or while away on any other business of the Council as the Council, with the approval of the Board of Trade, may determine<sup>14</sup>. The quorum at meetings of the Council is seven<sup>15</sup>. The chairman has no vote except in the event of an equality of votes, when he has a single casting vote<sup>16</sup>.

The Council must appoint a registrar<sup>17</sup> and may appoint such other officers and servants as it determines<sup>18</sup>. It may pay its officers and servants such remuneration as it determines<sup>19</sup>, and may make provision for pensions and gratuities or superannuation for them<sup>20</sup>.

1 Hearing Aid Council Act 1968 s 1(1). As to the functions of the Hearing Aid Council see PARA 869 post.

2 Ibid s 1(7), Schedule para 1(1) (amended by the Hearing Aid Council (Amendment) Act 1989 s 5(1), (2)). The Board must not appoint as chairman a person who is in its opinion capable of representing any of the interests mentioned in the Hearing Aid Council Act 1968 Schedule para 1(3) (see the text and notes 3-6 infra): Schedule para 1(2). The functions of the Board of Trade are exercisable concurrently by the Secretary of State for Trade and Industry: see the Secretary of State for Trade and Industry Order 1970, SI 1970/1537, art 2(1); see also CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 505.

3 Ie registered under ibid s 2: see PARA 872 post.

4 Ibid Schedule para 1(3)(a) (amended by the Hearing Aid Council (Amendment) Act 1989 s 5(1), (3)).

5 Hearing Aid Council Act 1968 Schedule para 1(3)(b) (substituted by the Hearing Aid Council (Amendment) Act 1989 s 5(1), (4)).

6 Hearing Aid Council Act 1968 Schedule para 1(3)(c) (added by the Hearing Aid Council (Amendment) Act 1989 s 5(1), (4)).

- 7 Hearing Aid Council Act 1968 Schedule para 2(1).
- 8 Ibid Schedule para 2(2) (amended by the Hearing Aid Council (Amendment) Act 1989 s 5(1), (5)).
- 9 Hearing Aid Council Act 1968 Schedule para 2(2)(a).
- 10 Ibid Schedule para 2(2)(b).
- 11 Ibid Schedule para 2(3)(b).
- 12 Ibid Schedule para 2(3)(a). This is not precluded by Schedule para 2(1), (2) (see the text and notes 7-10 supra): Schedule para 2(3).
- 13 See ibid Schedule para 5.
- 14 Ibid Schedule para 7(b).
- 15 See ibid Schedule para 3.
- 16 Ibid Schedule para 4 proviso.
- 17 Ibid Schedule para 6.
- 18 Ibid Schedule para 7(a).
- 19 Ibid Schedule para 7(c).
- 20 See ibid Schedule para 7(d).

## **UPDATE**

### **867-879 Dispensers of Hearing Aids**

As from a day to be appointed, which may not be before the Health Professions Council has assumed responsibility for the regulation of private hearing aid dispensers, the Hearing Aid Council is dissolved: see the Health and Social Care Act 2008 s 123(1), (3)-(6) (s 123(1) not yet in force). As from a day to be appointed, the Hearing Aid Council Act 1968 and the Hearing Aid Council (Extension) Act 1975 are revoked: Health and Social Care Act 2008 s 123(2) (not yet in force).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/8. DISPENSERS OF HEARING AIDS/(2) THE HEARING AID COUNCIL/869. Functions of the Council.

### **869. Functions of the Council.**

The Hearing Aid Council<sup>1</sup> has the general function of securing adequate standards of competence and conduct among persons engaged in dispensing hearing aids<sup>2</sup> together with the additional functions assigned to it by or under the Hearing Aid Council Act 1968<sup>3</sup>. In furtherance of its general function, the Council must study the facilities available for training persons to act as dispensers of hearing aids<sup>4</sup>, keep those facilities under review, advise on methods for improving those facilities and publicise details of training and courses available<sup>5</sup>. It must also draw up standards of competence for dispensers of hearing aids and codes of trade practice for adoption by such dispensers and persons employing them<sup>6</sup>, and must review and, as appropriate, vary standards and codes from time to time<sup>7</sup>. It must publish, in such manner as it considers appropriate, any such code or standard and any variation of it<sup>8</sup>. The Council may receive and investigate complaints from members of the public<sup>9</sup>. It may also do anything which in its opinion is calculated to facilitate the proper discharge of its functions<sup>10</sup>. Its procedures in the discharge of its functions are such as it may from time to time determine<sup>11</sup>.

It has power to make rules with respect to the form and keeping of the registers<sup>12</sup>, the constitution of the investigating committee<sup>13</sup> and the disciplinary committee<sup>14</sup> and the procedure to be followed and rules of evidence to be observed in proceedings before the disciplinary committee<sup>15</sup>.

1 As to the constitution of the Hearing Aid Council see PARA 868 ante.

2 For the meaning of 'hearing aid' see PARA 867 note 3 ante.

3 Hearing Aid Council Act 1968 s 1(1).

4 For the meaning of 'dispenser of hearing aids' see PARA 871 note 1 post.

5 Hearing Aid Council Act 1968 s 1(2).

6 As to references to the employment of dispensers see PARA 871 note 7 post.

7 See the Hearing Aid Council Act 1968 s 1(3). The Council must submit to the Board of Trade, for its written approval, any such standard, code or variation, and, after notifying the Council of any proposed modification and considering its observations, the Board of Trade may make its approval conditional on modifications: see s 1(4). As to the Board of Trade see PARA 868 note 2 ante.

8 See *ibid* s 1(5).

9 *Ibid* s 1(6).

10 *Ibid* s 1(7), Schedule para 7.

11 *Ibid* Schedule para 4.

12 See *ibid* s 4; and PARA 872 post. Such rules require the approval of the Board of Trade: s 4 proviso (i).

13 See *ibid* s 5(3); and PARA 874 post. Such rules require the approval of the Lord Chancellor: s 5(3). As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

14 See *ibid* s 6(2), (3); and PARA 875 post. Such rules require the approval of the Lord Chancellor: s 6(4)).

15 See *ibid* s 10(4), (5) (as amended); and PARA 877 post. Such rules require the approval of the Lord Chancellor: s 10(6).

**UPDATE****867-879 Dispensers of Hearing Aids**

As from a day to be appointed, which may not be before the Health Professions Council has assumed responsibility for the regulation of private hearing aid dispensers, the Hearing Aid Council is dissolved: see the Health and Social Care Act 2008 s 123(1), (3)-(6) (s 123(1) not yet in force). As from a day to be appointed, the Hearing Aid Council Act 1968 and the Hearing Aid Council (Extension) Act 1975 are revoked: Health and Social Care Act 2008 s 123(2) (not yet in force).

**869 Functions of the Council**

NOTES 7, 8--See *R (on the application of Hidden Hearing Ltd) v Hearing Aid Council* [2009] EWHC 63 (Admin), (2009) 106 BMLR 110 (guidance note published by Council which included definition of 'dispensing' was sound).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/8. DISPENSERS OF HEARING AIDS/(2) THE HEARING AID COUNCIL/870. Expenses and accounts.

### **870. Expenses and accounts.**

The Hearing Aid Council<sup>1</sup>, after paying its expenses, may allocate any money received by it, whether by way of fees or otherwise, to purposes connected with education and research, or to other purposes applicable to the dispensing of hearing aids<sup>2</sup>, in such manner as it thinks fit<sup>3</sup>.

The Council must keep accounts of all sums received or paid by it; and, in the case of accounts in respect of a financial year ending after 31 March 2004, it must send a copy of the accounts to the Comptroller and Auditor General<sup>4</sup> as soon as reasonably practicable after the end of that year<sup>5</sup>. The accounts must be published as soon as may be after the Comptroller and Auditor General has examined, certified and reported on the accounts and laid a copy of those accounts and his report before each House of Parliament<sup>6</sup>.

1 As to the constitution of the Hearing Aid Council see PARA 868 ante.

2 For the meaning of 'hearing aid' see PARA 867 note 3 ante.

3 Hearing Aid Council Act 1968 s 12(1).

4 As to the Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 724-726.

5 See the Hearing Aid Council Act 1968 s 12(2)(b) (added by the Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2004, SI 2004/1715, art 1). As to accounts in respect of the financial year ending on 31 March 2004 see the Hearing Aid Council Act 1968 s 12(2)(a) (added by the Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2004, SI 2004/1715, art 1).

6 See the Hearing Aid Council Act 1968 s 12(2), (2A) (s 12(2) amended, and s 12(2A) added, by the Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2004, SI 2004/1715, art 1).

### **UPDATE**

#### **867-879 Dispensers of Hearing Aids**

As from a day to be appointed, which may not be before the Health Professions Council has assumed responsibility for the regulation of private hearing aid dispensers, the Hearing Aid Council is dissolved: see the Health and Social Care Act 2008 s 123(1), (3)-(6) (s 123(1) not yet in force). As from a day to be appointed, the Hearing Aid Council Act 1968 and the Hearing Aid Council (Extension) Act 1975 are revoked: Health and Social Care Act 2008 s 123(2) (not yet in force).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/8. DISPENSERS OF HEARING AIDS/(3) REGISTRATION/871. Offences by unregistered persons.

### **(3) REGISTRATION**

#### **871. Offences by unregistered persons.**

It is unlawful: (1) for any person to act as a dispenser of hearing aids<sup>1</sup> unless he is registered<sup>2</sup> as a dispenser of hearing aids<sup>3</sup> or is a person whose name has been notified to the registrar of the Hearing Aid Council<sup>4</sup> and who is undergoing full-time training with a view to being registered as a dispenser of hearing aids and who is acting under the supervision of a registered dispenser<sup>5</sup>; (2) for any person whose name is not for the time being entered in the register<sup>6</sup> to employ any person to act as a dispenser of hearing aids<sup>7</sup>; or (3) for any person whose name is entered in the register to employ a person to act as a dispenser of hearing aids unless that person is a person so registered<sup>8</sup> or is a person whose name has been notified to the registrar of the Council and who is undergoing full-time training with a view to being registered as a dispenser of hearing aids and who is acting under the supervision of a registered dispenser<sup>9</sup>.

A person who contravenes these provisions is guilty of an offence<sup>10</sup>.

1 'Dispenser of hearing aids' means an individual who conducts or seeks to conduct oral negotiations with a view to effecting the supply of a hearing aid, whether by him or another, to or for the use of a person with impaired hearing; and references to the dispensing of hearing aids or to acting as a dispenser of such aids are to be construed accordingly: Hearing Aid Council Act 1968 s 14. For the meanings of 'hearing aid' and 'supply' see PARA 867 note 3 ante.

2 He is registered under the Hearing Aid Council Act 1968. As to registration see PARA 872 post.

3 See *ibid* s 3(1)(a)(i).

4 As to the Council see PARA 868 et seq ante. As to the appointment of the registrar see PARA 868 ante.

5 See the Hearing Aid Council Act 1968 s 3(1)(a)(ii).

6 He is the register maintained pursuant to *ibid* s 2(1)(b): see PARA 872 post.

7 See *ibid* s 3(1)(b). 'Employer of dispensers' includes any person who enters into any arrangement with an individual by which that individual undertakes for reward or anticipation of reward to act as a dispenser with a view to promoting the supply of hearing aids by that person; and references to the employing of dispensers and their employment are to be construed accordingly: s 14.

8 See *ibid* s 3(1)(c)(i).

9 See *ibid* s 3(1)(c)(ii).

10 A person guilty of such an offence is punishable on summary conviction to a fine not exceeding level 4 on the standard scale: *ibid* s 3(2) (amended by the Hearing Aid Council (Amendment) Act 1989 s 1). For the meaning of 'standard scale' see PARA 185 note 11 ante.

### **UPDATE**

#### **867-879 Dispensers of Hearing Aids**

As from a day to be appointed, which may not be before the Health Professions Council has assumed responsibility for the regulation of private hearing aid dispensers, the Hearing Aid Council is dissolved: see the Health and Social Care Act 2008 s 123(1), (3)-

(6) (s 123(1) not yet in force). As from a day to be appointed, the Hearing Aid Council Act 1968 and the Hearing Aid Council (Extension) Act 1975 are revoked: Health and Social Care Act 2008 s 123(2) (not yet in force).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/8. DISPENSERS OF HEARING AIDS/(3) REGISTRATION/872. Registration of dispensers of hearing aids and persons employing them.

## **872. Registration of dispensers of hearing aids and persons employing them.**

The registrar appointed by the Hearing Aid Council<sup>1</sup> must establish and maintain a register of dispensers of hearing aids<sup>2</sup> and a register of persons employing such dispensers<sup>3</sup>. He must cause to be entered in the appropriate register the name and prescribed<sup>4</sup> particulars of every person qualified for registration who has applied in the prescribed manner and paid the appropriate fee<sup>5</sup>. The registers must be kept at the offices of the Council and be made available for public inspection at all reasonable times without charge<sup>6</sup>. Any individual other than a disqualified person<sup>7</sup> is qualified to be registered as a dispenser if during the period of two years immediately preceding 29 December 1969<sup>8</sup> he had acted as a dispenser of hearing aids for a period of, or periods totalling, at least six months<sup>9</sup>, or if he satisfies the standards of competence for the time being published<sup>10</sup> by the Council<sup>11</sup>. Any person other than: (1) a disqualified person or a person carrying on business in partnership with a disqualified person<sup>12</sup>; or (2) a body corporate which has among its directors one or more disqualified persons or in which a disqualified person has a controlling interest or in the management of which a disqualified person participates<sup>13</sup>, is qualified to be registered as an employer of dispensers of hearing aids if he employs or proposes to employ any person to dispense hearing aids<sup>14</sup>. Where an application for registration is refused or the registrar fails to enter the name of the applicant on the appropriate register, the applicant may appeal to the disciplinary committee<sup>15</sup> which has the power to direct that the applicant be registered and may, in the case of an application by a body corporate for registration on the register of persons employing dispensers of hearing aids<sup>16</sup>, direct that head (2) above is not to apply<sup>17</sup>.

The Council may make rules as to the form and keeping of the registers, and as to the making of entries, alterations and corrections in them, and as to the issue by the registrar of certificates of registration<sup>18</sup>. In particular, it may make rules as to the making of applications for registration and the evidence required in support of such applications<sup>19</sup>; the notification to the Council of any change in the particulars of any person registered<sup>20</sup>; the payment by persons whose names are entered in the registers of an annual retention fee<sup>21</sup>; the removal from the register of any person who, after prescribed notices and warnings, fails to supply information required to ensure that the registered particulars are correct or to show that he is not in contravention of any statutory provision, or who fails to pay the annual retention fee<sup>22</sup>; and the restoration to the register of the name of any person on the direction of the disciplinary committee<sup>23</sup>.

1 As to the Council see PARA 868 et seq ante. As to the appointment of the registrar see PARA 868 ante.

2 Hearing Aid Council Act 1968 s 2(1)(a). For the meaning of 'dispenser of hearing aids' see PARA 871 note 1 ante. For the meaning of 'hearing aid' see PARA 867 note 3 ante.

3 Ibid s 2(1)(b). As to the meaning of 'employer of dispensers' see PARA 871 note 7 ante.

4 'Prescribed' means prescribed by rules made by the Council under ibid s 4 (see the text and note 18 infra): s 14.

5 Ibid s 2(2). 'The appropriate fee' means £10 in the case of an application for registration as a dispenser and £1 in the case of an application for registration as an employer of dispensers, or such other amount as may be prescribed: see s 2(7). As to the power to prescribe other fees see the text and note 21 infra.

6 Ibid s 2(3).



7 'Disqualified person' means a person whose name has been directed under *ibid* s 7 to be removed from either of the registers and in respect of whom no direction for restoration has been given under s 8 (see *PARA* 879 post): s 2(7).

8 *Ie* the date of commencement of the Hearing Aid Council Act 1968: see s 15(3); and the Hearing Aid Council Act (Commencement) Order 1969, SI 1969/1598.

9 Hearing Aid Council Act 1968 s 2(4)(a).

10 *Ie* under *ibid* s 1(5): see *PARA* 869 ante.

11 *Ibid* s 2(4)(b).

12 *Ibid* s 2(5)(a).

13 *Ibid* s 2(5)(b).

14 *Ibid* s 2(5).

15 As to the disciplinary committee see *PARA* 875 post.

16 *Ie* under the Hearing Aid Council Act 1968 s 2(1)(b): see the text and note 3 *supra*.

17 *Ibid* s 2(6).

18 *Ibid* s 4. These rules are not made by statutory instrument and are not noted in this work. The Council must not make any rule under s 4 unless the terms of that rule have been approved in writing by the Board of Trade: s 4 proviso (i). As to the Board of Trade see *PARA* 868 note 2 ante.

19 *Ibid* s 4(a).

20 *Ibid* s 4(b).

21 *Ibid* s 4(c). The annual retention fee is £10 for dispensers and £1 for their employers (s 4(c)), but these fees, and the registration fees under s 2(7) (see note 5 *supra*), may be varied by rules (s 4(d)). Before making any rule under s 4(d), the Council must consult any organisations which appear to the Council to be representative of the interests of dispensers of hearing aids or their employers: s 4 proviso (ii).

22 *Ibid* s 4(e).

23 *Ibid* s 4(f). As to such a direction see *PARA* 879 post.

## UPDATE

### 867-879 Dispensers of Hearing Aids

As from a day to be appointed, which may not be before the Health Professions Council has assumed responsibility for the regulation of private hearing aid dispensers, the Hearing Aid Council is dissolved: see the Health and Social Care Act 2008 s 123(1), (3)-(6) (s 123(1) not yet in force). As from a day to be appointed, the Hearing Aid Council Act 1968 and the Hearing Aid Council (Extension) Act 1975 are revoked: Health and Social Care Act 2008 s 123(2) (not yet in force).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/8. DISPENSERS OF HEARING AIDS/(4) DISCIPLINE/873. Removal from the register.

## **(4) DISCIPLINE**

### **873. Removal from the register.**

If any person registered under the Hearing Aid Council Act 1968<sup>1</sup> is convicted by any court in the United Kingdom<sup>2</sup> of any criminal offence (not being an offence which, owing to its trivial nature or the circumstances under which it was committed, does not render him unfit to have his name on the register)<sup>3</sup>, or is judged by the disciplinary committee of the Hearing Aid Council<sup>4</sup> to have been guilty of serious misconduct in connection with the dispensing of hearing aids or the training of persons to act as dispensers of hearing aids<sup>5</sup>, or is judged by the committee to have contravened any code of trade practice published by the Council under the Act<sup>6</sup>, the committee may, if it thinks fit, impose one or more of the following penalties: (1) it may issue an admonition; (2) it may impose a monetary penalty; (3) it may direct that the registration of a person's name be suspended for such period as the committee thinks fit; or (4) it may direct that the name of that person be erased from the register<sup>7</sup>. If it appears to the committee that the arrangements made by any person registered as a person employing dispensers of hearing aids<sup>8</sup> for carrying on of business under the Act are not such as to secure that the dispensing of hearing aids is carried out by or under the supervision of a registered dispenser<sup>9</sup>, the committee may, if it thinks fit, impose on that person any one or more of the penalties listed above<sup>10</sup>.

Where a director of any body corporate registered as an employer of dispensers<sup>11</sup> is convicted of an offence under the Act<sup>12</sup>, or the committee is satisfied that a person whose name has been erased from and not yet restored to one or both of the registers<sup>13</sup> or a person on whom any other penalty mentioned above has been imposed<sup>14</sup> is a director of or is taking part in the management of or has a controlling interest in such a body corporate<sup>15</sup>, the committee may, if it thinks fit, impose on the body corporate any one or more of the penalties listed above<sup>16</sup>.

The committee may, if it thinks fit, direct that the name of any person entered in either of the registers be erased from the register if it is satisfied that he is carrying on business as a dispenser of hearing aids or employing a dispenser in partnership with a person whose name has been erased from and not yet restored to one of the registers<sup>17</sup>.

Where no appeal<sup>18</sup> is brought against a penalty, or where an appeal is brought but is withdrawn or struck out for want of prosecution, the penalty takes effect on the expiration of the time for appealing or, as the case may be, on the withdrawal or striking out<sup>19</sup>. Where an appeal is brought and proceeds to a conclusion, the penalty takes effect if and when the appeal is dismissed, and not otherwise<sup>20</sup>.

1    Ie registered in accordance with the Hearing Aid Council Act 1968 s 2: see PARA 872 ante.

2    For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

3    Hearing Aid Council Act 1968 s 7(1)(a).

4    As to the disciplinary committee see PARA 875 post. As to the Council see PARA 868 et seq ante.

5    Hearing Aid Council Act 1968 s 7(1)(b) (amended by the Hearing Aid Council (Amendment) Act 1989 s 2(1)). As to references to the dispensing of hearing aids see PARA 871 note 1 ante. For the meaning of 'hearing aid' see PARA 867 note 3 ante. 'Serious misconduct' must be in connection with the dispensing of hearing aids; accordingly, alleged cheating by registered dispensers in connection with the setting or preparation of examinations for students of the Hearing Aid Council does not fall within these provisions: *R v Hearing Aid*

*Disciplinary Committee, ex p Douglas, R v Hearing Aid Disciplinary Committee, ex p Brown* (1989) Times, 30 January, DC. As to misconduct generally see PARAS 143, 456 ante.

6 Hearing Aid Council Act 1968 s 7(1)(c) (added by the Hearing Aid Council (Amendment) Act 1989 s 2(1)). As to codes of practice see PARA 869 ante.

7 Hearing Aid Council Act 1968 s 7(1) (amended by the Hearing Aid Council (Amendment) Act 1989 s 3(2); and the Hearing Aid Council Monetary Penalty (Increase) Order 1993, SI 1993/3052, art 2). The penalty referred to in head (2) in the text is a penalty not exceeding £5000: see the Hearing Aid Council Act 1968 s 7(1) (as so amended). The Secretary of State has the power to increase the penalty by order made by statutory instrument, and any such order is subject to annulment in pursuance of a resolution of either House of Parliament: see s 7(6) (s 7(5)-(7) added by the Hearing Aid Council (Amendment) Act 1989 s 3(5)). As to the Secretary of State see PARA 5 ante. Failure to pay a penalty imposed under the Hearing Aid Council Act 1968 within a reasonable period of time is a ground for suspension or erasure from the register: s 7(7) (as so added). While the registration of a person's name is suspended, the Act takes effect as if the name had been erased from the register: s 7(5) (as so added).

8 Ie registered in accordance with *ibid* s 2(1)(b): see PARA 872 ante. As to the meaning of 'employer of dispensers' see PARA 871 note 7 ante.

9 Ie a person registered under *ibid* s 2(1)(a) as a dispenser of hearing aids: see PARA 872 ante.

10 *Ibid* s 7(2) (amended by the Hearing Aid Council (Amendment) Act 1989 s 3(3)).

11 Ie registered under the Hearing Aid Council Act 1968 s 2(1)(b): see PARA 872 ante.

12 *Ibid* s 7(3)(a).

13 Ie the registers maintained under *ibid* s 2: see PARA 872 ante.

14 Ie a penalty listed in *ibid* s 7(1) (as amended): see the text to note 7 *supra*.

15 *Ibid* s 7(3)(b) (amended by the Hearing Aid Council (Amendment) Act 1989 s 3(4)(a)).

16 Hearing Aid Council Act 1968 s 7(3) (amended by the Hearing Aid Council (Amendment) Act 1989 s 3(4)(b)).

17 Hearing Aid Council Act 1968 s 7(4).

18 As to appeals see PARA 878 post.

19 Hearing Aid Council Act 1968 s 9(3) (s 9(3), (4) amended by the Hearing Aid Council (Amendment) Act 1989 s 3(6)).

20 See the Hearing Aid Council Act 1968 s 9(4) (as amended: see note 19 *supra*).

## UPDATE

### 867-879 Dispensers of Hearing Aids

As from a day to be appointed, which may not be before the Health Professions Council has assumed responsibility for the regulation of private hearing aid dispensers, the Hearing Aid Council is dissolved: see the Health and Social Care Act 2008 s 123(1), (3)-(6) (s 123(1) not yet in force). As from a day to be appointed, the Hearing Aid Council Act 1968 and the Hearing Aid Council (Extension) Act 1975 are revoked: Health and Social Care Act 2008 s 123(2) (not yet in force).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/8. DISPENSERS OF HEARING AIDS/(4) DISCIPLINE/874. The investigating committee.

#### **874. The investigating committee.**

The investigating committee is established by the Hearing Aid Council<sup>1</sup> from among its members for the purpose of undertaking the preliminary investigation of disciplinary cases<sup>2</sup> and to decide whether a disciplinary case ought to be referred to the disciplinary committee<sup>3</sup> to be dealt with<sup>4</sup>. The investigating committee consists of three members of the Council nominated by the chairman of the Council and approved by the Council<sup>5</sup>. On vacating office as a member of the Council a person ceases to be a member of the investigating committee<sup>6</sup>. The quorum of the investigating committee is two<sup>7</sup>. At any meeting of the investigating committee such member as the investigating committee may choose is to be chairman<sup>8</sup>, and in the case of equality of votes in the investigating committee the chairman has a second and casting vote<sup>9</sup>. The validity of proceedings is not affected by a vacancy or by a defect in the appointment of a member<sup>10</sup>.

1 As to the Council see PARA 868 et seq ante. The Council has the power to make rules as to the constitution of the investigating committee, subject to the approval of the Lord Chancellor by statutory instrument: see the Hearing Aid Council Act 1968 ss 5(3), 13. The rules that have been made and approved are the Hearing Aid Council (Investigating and Disciplinary Committees) Rules 1991 which are set out in the Schedule to the Hearing Aid Council Investigating and Disciplinary Committee Rules Approval Instrument 1991, SI 1991/2770. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 'Disciplinary case' means a case in which it is alleged that a person is liable to be dealt with under the Hearing Aid Council Act 1968 s 7 (as amended) on any of the grounds specified in that provision (see PARA 873 ante): see s 5(1) (amended by the Hearing Aid Council (Amendment) Act 1989 s 3(1)).

3 As to the disciplinary committee see PARA 875 post.

4 See the Hearing Aid Council Act 1968 s 5(1), (2) (s 5(1) as amended: see note 2 supra); and the Hearing Aid Council Investigating and Disciplinary Committee Rules Approval Instrument 1991, SI 1991/2770, Schedule, Hearing Aid Council (Investigating and Disciplinary Committees) Rules 1991 r 3(1).

5 Ibid Schedule, Hearing Aid Council (Investigating and Disciplinary Committees) Rules 1991 r 3(2). One member must be a person qualified under the Hearing Aid Council Act 1968 Schedule para 1(3)(a), one must be qualified under Schedule para 1(3)(b) and one must be qualified under Schedule para 1(3)(c) (see PARA 868 ante): see the Hearing Aid Council Investigating and Disciplinary Committee Rules Approval Instrument 1991, SI 1991/2770, Schedule, Hearing Aid Council (Investigating and Disciplinary Committees) Rules 1991 r 3(2). A member may at any time by notice in writing addressed to the chairman of the Council resign his appointment: Schedule, Hearing Aid Council (Investigating and Disciplinary Committees) Rules 1991 r 3(8).

6 See ibid Schedule, Hearing Aid Council (Investigating and Disciplinary Committees) Rules 1991 r 3(5).

7 Ibid Schedule, Hearing Aid Council (Investigating and Disciplinary Committees) Rules 1991 r 3(6).

8 Ibid Schedule, Hearing Aid Council (Investigating and Disciplinary Committees) Rules 1991 r 3(3).

9 Ibid Schedule, Hearing Aid Council (Investigating and Disciplinary Committees) Rules 1991 r 3(7).

10 Ibid Schedule, Hearing Aid Council (Investigating and Disciplinary Committees) Rules 1991 r 3(4).

#### **UPDATE**

#### **874 The investigating committee**

NOTE 1--The Lord Chancellor's function under the 1968 Act s 5(3) is a protected function for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

### **867-879 Dispensers of Hearing Aids**

As from a day to be appointed, which may not be before the Health Professions Council has assumed responsibility for the regulation of private hearing aid dispensers, the Hearing Aid Council is dissolved: see the Health and Social Care Act 2008 s 123(1), (3)-(6) (s 123(1) not yet in force). As from a day to be appointed, the Hearing Aid Council Act 1968 and the Hearing Aid Council (Extension) Act 1975 are revoked: Health and Social Care Act 2008 s 123(2) (not yet in force).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/8. DISPENSERS OF HEARING AIDS/(4) DISCIPLINE/875. The disciplinary committee.

### **875. The disciplinary committee.**

The disciplinary committee is established by the Hearing Aid Council<sup>1</sup> from among its members to consider and determine disciplinary cases<sup>2</sup> referred to it by the investigating committee<sup>3</sup> and any other cases of which it has cognisance<sup>4</sup>. It consists of the person who is for the time being the chairman of the Council and nine other Council members<sup>5</sup>. On vacating office as a member of the Council a person ceases to be a disciplinary committee member<sup>6</sup>. A person (other than the chairman of the Council) who has acted in relation to any disciplinary case as a member of the investigating committee may not be nominated to act in relation to that case on the disciplinary committee<sup>7</sup>. The quorum of the disciplinary committee is five unless the respondent agrees to a smaller number, but in any event must not be less than three<sup>8</sup>. At any meeting of the disciplinary committee, the chairman of the Council, or, in his absence, a committee member chosen by the disciplinary committee, is to act as chairman<sup>9</sup>. The disciplinary committee meets at such intervals, times and places as the chairman of the Council determines<sup>10</sup>. The validity of proceedings is not affected by a vacancy or defect in the appointment of a member<sup>11</sup>.

1 As to the Council see PARA 868 et seq ante. The Council is to make rules as to the constitution of the Committee, the times and places of the meetings of the Committee (see the text and note 10 infra), the quorum (see the text and note 8 infra) and the mode of summoning its members (see note 10 infra): Hearing Aid Council Act 1968 s 6(2). Rules made under s 6 must be approved by the Lord Chancellor by statutory instrument: ss 6(4), 13. The rules that have been made and approved are the Hearing Aid Council (Investigating and Disciplinary Committees) Rules 1991 which are set out in the Schedule to the Hearing Aid Council Investigating and Disciplinary Committee Rules Approval Instrument 1991, SI 1991/2770. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 For the meaning of 'disciplinary case' see PARA 874 note 2 ante.

3 As to the investigating committee see PARA 874 ante.

4 See the Hearing Aid Council Act 1968 s 6(1); and the Hearing Aid Council Investigating and Disciplinary Committee Rules Approval Instrument 1991, SI 1991/2770, Schedule, Hearing Aid Council (Investigating and Disciplinary Committees) Rules 1991 r 4(1). For other cases of which the committee has cognisance see eg the Hearing Aid Council Act 1968 s 2(6) (directions as to registration: see PARA 872 ante), and s 8 (restoration to the registers: see PARA 879 post).

5 Hearing Aid Council Investigating and Disciplinary Committee Rules Approval Instrument 1991, SI 1991/2770, Schedule, Hearing Aid Council (Investigating and Disciplinary Committees) Rules 1991 r 4(2). A member may resign at any time by notice in writing addressed to the chairman of the Council: Schedule, Hearing Aid Council (Investigating and Disciplinary Committees) Rules 1991 r 4(7).

6 Ibid Schedule, Hearing Aid Council (Investigating and Disciplinary Committees) Rules 1991 r 4(5).

7 See the Hearing Aid Council Act 1968 s 6(3); and the Hearing Aid Council Investigating and Disciplinary Committee Rules Approval Instrument 1991, SI 1991/2770, Schedule, Hearing Aid Council (Investigating and Disciplinary Committees) Rules 1991 r 4(2) proviso.

8 Ibid Schedule, Hearing Aid Council (Investigating and Disciplinary Committees) Rules 1991 r 4(6).

9 Ibid Schedule, Hearing Aid Council (Investigating and Disciplinary Committees) Rules 1991 r 4(3).

10 Ibid Schedule, Hearing Aid Council (Investigating and Disciplinary Committees) Rules 1991 r 4(8). Not less than 21 days before the date fixed by the chairman of the Council for a meeting of the disciplinary committee, the registrar of the Council must send notice of the date, time and place of the meeting to every member of the committee, and not less than seven days before the date of the proposed meeting he must send to every member an agenda for that meeting which must include particulars of every disciplinary case due for

consideration: Schedule, Hearing Aid Council (Investigating and Disciplinary Committees) Rules 1991 r 4(9). As to the registrar of the Council see PARA 868 ante.

11 Schedule, Hearing Aid Council (Investigating and Disciplinary Committees) Rules 1991 r 4(4). This provision is subject to the proviso in Schedule, Hearing Aid Council (Investigating and Disciplinary Committees) Rules 1991 r 4(2) (see the text and note 7 *supra*).

## **UPDATE**

### **875 The disciplinary committee**

NOTE 1--The Lord Chancellor's function under the 1968 Act s 6(4) is a protected function for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

### **867-879 Dispensers of Hearing Aids**

As from a day to be appointed, which may not be before the Health Professions Council has assumed responsibility for the regulation of private hearing aid dispensers, the Hearing Aid Council is dissolved: see the Health and Social Care Act 2008 s 123(1), (3)-(6) (s 123(1) not yet in force). As from a day to be appointed, the Hearing Aid Council Act 1968 and the Hearing Aid Council (Extension) Act 1975 are revoked: Health and Social Care Act 2008 s 123(2) (not yet in force).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/8. DISPENSERS OF HEARING AIDS/(4) DISCIPLINE/876. Legal assessor.

### **876. Legal assessor.**

For the purpose of advising the disciplinary committee<sup>1</sup> on questions of law arising in proceedings before it, there must be in all such proceedings an assessor to the disciplinary committee<sup>2</sup>. The power of appointing an assessor is exercisable by the Hearing Aid Council<sup>3</sup>; but, if no assessor appointed by it is available to act at any particular proceedings, the disciplinary committee may appoint an assessor to act at those proceedings<sup>4</sup>.

The Lord Chancellor has the power to make rules as to the functions of assessors<sup>5</sup>. It is the assessor's duty: (1) to be present at all proceedings before the committee relating to the imposition of a penalty upon a person, the refusal or failure to register a person or the removal or restoration of a name from or to the register, and to advise on any questions of law and the admission of evidence arising in the proceedings referred to him by the committee<sup>6</sup>; (2) to inform the committee forthwith of any irregularity in the conduct of proceedings before the committee which may come to his knowledge and to advise it of his own motion where it appears to him that there is a possibility that a mistake of law will be made<sup>7</sup>. His advice must be tendered to the committee in the presence of every party, or person representing a party, who appears at the proceedings<sup>8</sup>. Advice to the committee whilst it is deliberating in private may, however, be tendered in private in a proper case, although the question posed to the assessor, and his advice on it, must be communicated to the parties as soon as may be<sup>9</sup>. If the committee does not accept his advice a record must be made of the question, the advice and the reasons for the refusal, and a copy must be given to each party appearing or his representative<sup>10</sup>.

1 As to the disciplinary committee see PARA 875 ante.

2 Hearing Aid Council Act 1968 s 11(1). The assessor must be a person who has a ten year general qualification within the meaning of the Courts and Legal Services Act 1990 s 71, an advocate or solicitor in Scotland of at least ten years' standing, or a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least ten years' standing: Hearing Aid Council Act 1968 s 11(1) (amended by the Courts and Legal Services Act 1990 s 71(2), Sch 10 para 29). See generally LEGAL PROFESSIONS vol 65 (2008) PARA 742 et seq. See also COURTS.

3 As to the Council see PARA 868 et seq ante.

4 Hearing Aid Council Act 1968 s 11(2). Subject to the provisions of s 11 (as amended), the assessor may be appointed either generally or for any particular proceedings or class of proceedings, and holds and vacates office according to the terms of the instrument of appointment: s 11(4).

Any remuneration paid to the assessor by the Council is to be at such rates as the Lord Chancellor approves: s 11(5). As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

5 Ibid s 11(3). Such rules may, in particular, contain provisions for securing:

18 (1) that where an assessor advises the disciplinary committee on any question of law as to evidence, procedure or any other matters specified in the rules, he is to do so in the presence of every party, or person representing a party, to the proceedings who appears thereat or, if the advice is tendered after the disciplinary committee has begun to deliberate as to its findings, that every such party or person as aforesaid is informed what advice the assessor has tendered;

19 (2) that every such party or person as aforesaid is informed if in any case the committee does not accept the advice of the assessor on any such question as aforesaid,

and such incidental and supplementary provisions, as appear to the Lord Chancellor expedient: s 11(3). The power to make rules conferred on the Lord Chancellor by s 11 is exercisable by statutory instrument: s 13. As to



the rules that have been made see the Hearing Aid Council (Disciplinary Proceedings) Legal Assessor Rules 1971, SI 1971/755.

6 Ibid r 3 (amended by SI 1991/1732).

7 Hearing Aid Council (Disciplinary Proceedings) Legal Assessor Rules 1971, SI 1971/755, r 4.

8 Ibid r 5. Copies must be available for parties who do not appear: r 7.

9 See ibid r 5 proviso. Copies must be available for parties who do not appear: r 7.

10 See ibid r 6. Copies must be available for parties who do not appear: r 7.

## **UPDATE**

### **867-879 Dispensers of Hearing Aids**

As from a day to be appointed, which may not be before the Health Professions Council has assumed responsibility for the regulation of private hearing aid dispensers, the Hearing Aid Council is dissolved: see the Health and Social Care Act 2008 s 123(1), (3)-(6) (s 123(1) not yet in force). As from a day to be appointed, the Hearing Aid Council Act 1968 and the Hearing Aid Council (Extension) Act 1975 are revoked: Health and Social Care Act 2008 s 123(2) (not yet in force).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/8. DISPENSERS OF HEARING AIDS/(4) DISCIPLINE/877. Procedure of the disciplinary committee.

### **877. Procedure of the disciplinary committee.**

The Hearing Aid Council<sup>1</sup> has the power to make rules, subject to the approval of the Lord Chancellor, which regulate the procedure to be followed and the rules of evidence to be observed in proceedings before the disciplinary committee<sup>2</sup>. In exercise of this power, the Hearing Aid Council Disciplinary Committee Rules 1991 have been made<sup>3</sup>.

Proceedings before the disciplinary committee are initiated by a notice of inquiry<sup>4</sup>. In a disciplinary case<sup>5</sup> the charge is read and put to the respondent<sup>6</sup>, the case against him is opened and oral or documentary evidence is adduced<sup>7</sup>. The respondent may submit that there is no case to answer<sup>8</sup> or may adduce evidence<sup>9</sup>, and addresses may be made to the committee<sup>10</sup>. The committee decides whether the charge is made out<sup>11</sup> and, after hearing, where appropriate, evidence of character and antecedents and any mitigation<sup>12</sup>, decides and announces what it is to do and sends notice to the respondent and other persons affected<sup>13</sup>. It may postpone judgment<sup>14</sup>.

Special procedures are prescribed where penalties are to be imposed<sup>15</sup> on a body corporate<sup>16</sup> and for applications for restoration to the register after erasure<sup>17</sup>. There are general provisions as to the hearing and adjournments<sup>18</sup>, postponement<sup>19</sup>, representation<sup>20</sup>, access to documents<sup>21</sup>, evidence<sup>22</sup>, the taking of a shorthand note<sup>23</sup>, the method of voting<sup>24</sup>, and the procedure where there is more than one respondent<sup>25</sup>. The disciplinary committee may administer oaths<sup>26</sup>, and any party may require a witness to attend to give evidence or to produce documents<sup>27</sup> but no person may be compelled to produce a document which he could not be compelled to produce on the trial of a claim<sup>28</sup>. The disciplinary committee may order any party to disciplinary proceedings to pay the whole or part of the costs of the proceedings<sup>29</sup>.

1 As to the Council see PARA 868 et seq ante.

2 See the Hearing Aid Council Act 1968 s 10(4), (6) (s 10(4) amended by the Hearing Aid Council (Amendment) Act 1989 ss 2(2), 3(7)(a), (b)). As to the disciplinary committee see PARA 875 ante. The power to make or approve rules conferred on the Lord Chancellor under the Hearing Aid Council Act 1968 s 10 (as amended) must be exercised by statutory instrument: s 13. If the Lord Chancellor proposes to approve rules subject to modifications he must seek and consider the Council's observations: s 10(6) proviso. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

Before making rules, the Council must consult organisations appearing to it to be representative of the interests of dispensers of hearing aids or of persons employing such dispensers, and such organisations as appear to the Council to be representative of the interests of persons with impaired hearing: see s 10(5) (amended by the Hearing Aid Council (Amendment) Act 1989 s 3(7)(c)). For the meaning of 'dispensers of hearing aids' see PARA 871 note 1 ante. As to the meaning of 'employing such dispensers' see PARA 871 note 7 ante.

3 The rules are set out in the Schedule to the Hearing Aid Council Investigating and Disciplinary Committee Rules Approval Instrument 1991, SI 1991/2770.

4 See the Hearing Aid Council Investigating and Disciplinary Committee Rules Approval Instrument 1991, SI 1991/2770, Schedule, Hearing Aid Council Disciplinary Committee (Procedure) Rules 1991 r 2.

5 For the meaning of 'disciplinary case' see PARA 874 note 2 ante.

6 See the Hearing Aid Council Investigating and Disciplinary Committee Rules Approval Instrument 1991, SI 1991/2770, Schedule, Hearing Aid Council Disciplinary Committee (Procedure) Rules 1991 rr 5, 6(1).

7 See *ibid* Schedule, Hearing Aid Council Disciplinary Committee (Procedure) Rules 1991 rr 6(2), 13(2).

8 See *ibid* Schedule, Hearing Aid Council Disciplinary Committee (Procedure) Rules 1991 r 6(3).

- 9 See *ibid* Schedule, Hearing Aid Council Disciplinary Committee (Procedure) Rules 1991 r 6(4). Where the respondent adduces evidence, evidence may be adduced in rebuttal: see Schedule, Hearing Aid Council Disciplinary Committee (Procedure) Rules 1991 r 6(5).
- 10 See *ibid* Schedule, Hearing Aid Council Disciplinary Committee (Procedure) Rules 1991 r 6(4), (5).
- 11 See *ibid* Schedule, Hearing Aid Council Disciplinary Committee (Procedure) Rules 1991 r 6(6).
- 12 See *ibid* Schedule, Hearing Aid Council Disciplinary Committee (Procedure) Rules 1991 r 7(1), (2).
- 13 See *ibid* Schedule, Hearing Aid Council Disciplinary Committee (Procedure) Rules 1991 r 7(3)-(8).
- 14 See *ibid* Schedule, Hearing Aid Council Disciplinary Committee (Procedure) Rules 1991 r 8.
- 15 *Ie* under the Hearing Aid Council Act 1968 s 7(3) (as amended): see PARA 873 ante.
- 16 See the Hearing Aid Council Investigating and Disciplinary Committee Rules Approval Instrument 1991, SI 1991/2770, Schedule, Hearing Aid Council Disciplinary Committee (Procedure) Rules 1991 rr 9, 10.
- 17 See *ibid* Schedule, Hearing Aid Council Disciplinary Committee (Procedure) Rules 1991 r 11; and PARA 879 post.
- 18 See *ibid* Schedule, Hearing Aid Council Disciplinary Committee (Procedure) Rules 1991 r 12.
- 19 See *ibid* Schedule, Hearing Aid Council Disciplinary Committee (Procedure) Rules 1991 r 3.
- 20 See *ibid* Schedule, Hearing Aid Council Disciplinary Committee (Procedure) Rules 1991 r 16.
- 21 See *ibid* Schedule, Hearing Aid Council Disciplinary Committee (Procedure) Rules 1991 r 4.
- 22 See *ibid* Schedule, Hearing Aid Council Disciplinary Committee (Procedure) Rules 1991 r 13.
- 23 See *ibid* Schedule, Hearing Aid Council Disciplinary Committee (Procedure) Rules 1991 r 17.
- 24 See *ibid* Schedule, Hearing Aid Council Disciplinary Committee (Procedure) Rules 1991 r 14.
- 25 See *ibid* Schedule, Hearing Aid Council Disciplinary Committee (Procedure) Rules 1991 r 15.
- 26 For the meaning of 'oath' see PARA 153 note 4 ante. As to oaths and affirmations see CIVIL PROCEDURE vol 11 (2009) PARA 1021 et seq.
- 27 The Hearing Aid Council Act 1968 refers to writs of subpoena ad testificandum and duces tecum, but these are now known as witness summonses: see CIVIL PROCEDURE vol 11 (2009) PARA 1004. The Supreme Court Act 1981 s 36 (see CIVIL PROCEDURE vol 11 (2009) PARA 1008), which provides a special procedure for the issue of such writs so as to be in force throughout the United Kingdom, applies to proceedings before the disciplinary committee as it applies to causes or matters in the High Court: Hearing Aid Council Act 1968 s 10(2) (amended by the Supreme Court Act 1981 s 152(1), Sch 5). For the meaning of 'United Kingdom' see PARA 1 note 3 ante.
- 28 See the Hearing Aid Council Act 1968 s 10(1).
- 29 *Ibid* s 10(3A) (added by the Hearing Aid Council (Amendment) Act 1989 s 4).

## UPDATE

### 877 Procedure of the disciplinary committee

NOTE 2--The Lord Chancellor's functions under the 1968 Act ss 10(6), 13 are protected functions for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

NOTE 27--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

### 867-879 Dispensers of Hearing Aids

As from a day to be appointed, which may not be before the Health Professions Council has assumed responsibility for the regulation of private hearing aid dispensers, the Hearing Aid Council is dissolved: see the Health and Social Care Act 2008 s 123(1), (3)-(6) (s 123(1) not yet in force). As from a day to be appointed, the Hearing Aid Council Act 1968 and the Hearing Aid Council (Extension) Act 1975 are revoked: Health and Social Care Act 2008 s 123(2) (not yet in force).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/8. DISPENSERS OF HEARING AIDS/(4) DISCIPLINE/878. Appeals.

### **878. Appeals.**

At any time within 28 days from the service of a notification that the disciplinary committee<sup>1</sup> has imposed a penalty<sup>2</sup> on a person, that person may appeal to the High Court<sup>3</sup>. The Hearing Aid Council<sup>4</sup> may appear as respondent, and for the purpose of enabling directions to be given as to the costs or expenses of any such appeal, is deemed to be a party whether or not it appears<sup>5</sup>.

1 As to the disciplinary committee see PARA 875 ante.

2 Ie under the Hearing Aid Council Act 1968 s 7 (as amended): see PARA 873 ante.

3 Ibid s 9(1) (amended by the Hearing Aid Council (Amendment) Act 1989 s 3(6)). The court will give due weight to the judgement of the Council particularly on professional matters and will only interfere with the penalties imposed by such decisions with care and circumspection. It is not the role of the court to substitute its view for that of the Council but to decide whether or not the penalty imposed can be said to be wrong: *Gill v Hearing Aid Council* [2004] EWHC 632 (Admin), [2004] All ER (D) 250 (Mar). See also the cases cited at paras 188 note 14, 478 notes 5, 6 ante.

4 As to the Hearing Aid Council see PARA 868 et seq ante.

5 Hearing Aid Council Act 1968 s 9(2).

### **UPDATE**

#### **867-879 Dispensers of Hearing Aids**

As from a day to be appointed, which may not be before the Health Professions Council has assumed responsibility for the regulation of private hearing aid dispensers, the Hearing Aid Council is dissolved: see the Health and Social Care Act 2008 s 123(1), (3)-(6) (s 123(1) not yet in force). As from a day to be appointed, the Hearing Aid Council Act 1968 and the Hearing Aid Council (Extension) Act 1975 are revoked: Health and Social Care Act 2008 s 123(2) (not yet in force).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/8. DISPENSERS OF HEARING AIDS/(4) DISCIPLINE/879. Restoration to the register.

### **879. Restoration to the register.**

Where a person's name has been erased from one of the registers<sup>1</sup> in pursuance of a direction of the disciplinary committee<sup>2</sup> or removed from one of the registers for failure to supply necessary information or to pay the annual retention fee<sup>3</sup>, the name may not again be entered in either register unless the disciplinary committee so directs<sup>4</sup>. Application for such a direction<sup>5</sup> may not be made to or considered by the disciplinary committee within ten months of the date of erasure<sup>6</sup> or within ten months of a previous application<sup>7</sup>.

1 As to the registers see PARA 872 ante. As to removal from a register see PARA 873 ante.

2 Ie under the Hearing Aid Council Act 1968 s 7 (as amended): see PARA 873 ante. As to the disciplinary committee see PARA 875 ante.

3 Ie under rules made pursuant to ibid s 4(e): see PARA 872 ante.

4 See ibid s 8(1).

5 As to the procedure on an application for such a direction see the Hearing Aid Council Investigation and Disciplinary Committee Rules Approval Instrument 1991, SI 1991/2770, Schedule, Hearing Aid Council Disciplinary Committee (Procedure) Rules 1991 r 11. As to these rules see PARA 877 ante.

6 Hearing Aid Council Act 1968 s 8(2)(a). As to when a penalty takes effect see s 9(3), (4) (as amended); and PARA 873 ante.

7 Ibid s 8(2)(b).

### **UPDATE**

#### **867-879 Dispensers of Hearing Aids**

As from a day to be appointed, which may not be before the Health Professions Council has assumed responsibility for the regulation of private hearing aid dispensers, the Hearing Aid Council is dissolved: see the Health and Social Care Act 2008 s 123(1), (3)-(6) (s 123(1) not yet in force). As from a day to be appointed, the Hearing Aid Council Act 1968 and the Hearing Aid Council (Extension) Act 1975 are revoked: Health and Social Care Act 2008 s 123(2) (not yet in force).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/9. PHARMACEUTICAL CHEMISTS AND PHARMACIES/(1) INTRODUCTION/880. In general.

## **9. PHARMACEUTICAL CHEMISTS AND PHARMACIES**

### **(1) INTRODUCTION**

#### **880. In general.**

The main statutory provisions relating to pharmaceutical chemists are to be found in the Pharmacy Act 1954 and Part IV of the Medicines Act 1968<sup>1</sup> and those relating to pharmacies<sup>2</sup> in Part IV of the Medicines Act 1968. The terms 'registered pharmaceutical chemist'<sup>3</sup> in the Pharmacy Act 1954 and 'pharmacist'<sup>4</sup> in the Medicines Act 1968 both refer to a person registered<sup>5</sup> in the register<sup>6</sup> of pharmaceutical chemists maintained by the Royal Pharmaceutical Society of Great Britain<sup>7</sup>. The organisation, membership and disciplinary powers of the Society are governed by the Pharmacy Act 1954.

There are special provisions as to pharmaceutical services under the national health service<sup>8</sup>.

1     I.e. the Medicines Act 1968 Pt IV (ss 69-84) (as amended). Her Majesty may by Order in Council make provision with respect to the regulation of pharmaceutical chemists: see the Health Act 1999 s 60, Sch 3; and PARA 887 post.

2     As to pharmacies see PARA 902 et seq post.

3     For the meaning of 'registered pharmaceutical chemist' see PARA 889 note 1 post.

4     For the meaning of 'pharmacist' see PARA 907 note 8 post.

5     For the meaning of 'registered' see PARA 888 note 6 post.

6     For the meaning of 'the register' see PARA 888 note 4 post.

7     As to the Society see PARA 881 et seq post.

8     See the National Health Service Act 1977 ss 41-43ZA (as amended); the Health and Social Care Act 2001 Pt 2 Chs 1, 2 (ss 28-44) (as amended); the National Health Service (Local Pharmaceutical Services and Pharmaceutical Services) Regulations 2002, SI 2002/888 (as amended); and HEALTH SERVICES vol 54 (2008) PARA 339 et seq. For other statutory provisions relevant to the practice of pharmacy see PARA 10 ante.

### **UPDATE**

#### **880-934 Pharmaceutical Chemists and Pharmacies**

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI

2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/9. PHARMACEUTICAL CHEMISTS AND PHARMACIES/(2) THE ROYAL PHARMACEUTICAL SOCIETY OF GREAT BRITAIN/(i) Constitution, Members and Officers/881. Origin and objects of the Society.

## **(2) THE ROYAL PHARMACEUTICAL SOCIETY OF GREAT BRITAIN**

### **(i) Constitution, Members and Officers**

#### **881. Origin and objects of the Society.**

The Royal Pharmaceutical Society of Great Britain was incorporated by Royal Charter of 18 February 1843, subsequently confirmed by statute<sup>1</sup>. In May 1988, the Queen agreed that the title 'Royal' should be granted to the Pharmaceutical Society of Great Britain. The only provisions of the 1843 charter which are still in force are those which incorporate the Society, and authorise it to have a common seal and to sue and be sued. With the foregoing exceptions, the charter of 1843 and all supplemental charters have now been replaced by the supplemental charter of 7 December 2004. The objects of the Society, as defined by the supplemental charter of 2004 are: (1) to advance knowledge of, and education in, pharmacy and its application thereby fostering good science and practice; (2) to safeguard, maintain the honour, and promote the interests of pharmacists in their exercise of the profession of pharmacy; (3) to promote and protect the wellbeing of the public through the regulation and professional leadership and development of the pharmacy profession and the regulation of other persons engaged in related activities; and (4) to maintain and develop the science and practice of pharmacy in its contribution to the health and wellbeing of the public<sup>2</sup>. The Society may also provide financial assistance for certain classes of persons, including members and former members of the Society, the dependants of such persons who have died, and students of the Society<sup>3</sup>.

<sup>1</sup> See the Pharmacy Act 1852 s 1 (repealed).

<sup>2</sup> These objects do not give the Society power, and it is not entitled: (1) to engage in the regulation of the hours of business of members, the wages and conditions of employment between masters and employee members of the Society, or the prices at which members may sell their goods; (2) to expend its funds in the formation of an industrial council committee for, among others, the above-named purposes; or (3) to insure its members generally against insurable risks: *Jenkin v Pharmaceutical Society of Great Britain* [1921] 1 Ch 392. Restrictions in restraint of trade unless reasonable in relation to the objects of the Society cannot be imposed by the Society on its members: *Pharmaceutical Society of Great Britain v Dickson* [1970] AC 403, [1968] 2 All ER 686, HL. Rules adopted by the Society in its code of ethics could constitute 'measures' within the meaning of the Treaty Establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) art 30, which prohibits quantitative restrictions on import between member states. Nevertheless, a rule adopted by the Society in its code of ethics which required that pharmacists should prescribe only those drugs specified by the prescribing doctor and not their therapeutic equivalents could be justified in the interests of public health: Joined Cases 266, 267/87: *R v Royal Pharmaceutical Society of Great Britain and Secretary of State for Social Services, ex p Association of Pharmaceutical Importers* [1990] 1 QB 534, [1989] 2 All ER 758, ECJ.

<sup>3</sup> The council of the Society may, out of the Society's property and any property for the time being comprised in the benevolent fund established under the charter, provide for such purposes as, subject to byelaws, the council determines relating to the relief of distressed persons of the classes mentioned: see the Pharmacy Act 1954 s 17 (prospectively amended by the Civil Partnership Act 2004 s 261(1), Sch 27 para 20). At the date at which this volume states the law no day had been appointed for the amendment of this provision to come into force. As to the council see PARA 882 post.

#### **UPDATE**

#### **880-934 Pharmaceutical Chemists and Pharmacies**

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI 2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).

### **881 Origin and objects of the Society**

NOTE 3--Day now appointed: SI 2005/3175.

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## **882. The council.**

The council of the Royal Pharmaceutical Society<sup>1</sup> controls, directs and manages the Society's policies and affairs and exercises all its powers and functions, except as to matters which, by the Society's supplemental charter of 7 December 2004 or by its byelaws<sup>2</sup>, require approval by special resolution at a general meeting of members<sup>3</sup>. As from 25 May 2005, the council consists of 30 persons, being 17 elected pharmacists, one pharmacist appointed by the universities awarding pharmacy degrees accredited by the Society, two elected pharmacy technicians and ten lay members appointed by the Privy Council<sup>4</sup>.

1 As to the Society see PARA 881 ante.

2 As to the Society's byelaws see PARA 885 post.

3 Supplemental Charter of 7 December 2004.

4 See the Supplemental Charter of 7 December 2004. Under the Pharmacy Act 1954, the Privy Council has power to appoint three persons to be members of the council to hold office for such period as the Privy Council determines: s 15(1), (2). The Privy Council may direct a special health authority to exercise its functions in relation to the appointment of members to the council: s 15(3), (4) (added by the Health and Social Care (Community Health and Standards) Act 2003 s 187(8), Sch 12 para 1). As to special health authorities see HEALTH SERVICES vol 54 (2008) PARA 136 et seq. As to the exercise of the powers of the Privy Council see PARA 886 post. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

Until 25 May 2005, the council consists of 24 persons, of whom 21 are members of the Society elected in accordance with its byelaws, and three are appointed by the Privy Council: see the Supplemental Charter of 7 December 2004.

## **UPDATE**

### **880-934 Pharmaceutical Chemists and Pharmacies**

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI 2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).

## **882 The council**

NOTE 4--1954 Act s 15(3), (4) repealed: Health Act 2006 Sch 9.

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### **883. Membership of the Society.**

The members of the Royal Pharmaceutical Society are those whose names are registered<sup>1</sup>, and those whose names cease to be registered cease to be members of the Society<sup>2</sup>.

Members of the Society were formerly divided into two classes, namely: (1) pharmaceutical chemists; and (2) chemists and druggists, but the register of chemists and druggists<sup>3</sup> was abolished by the Pharmacy Act 1953<sup>4</sup>, and provision was made both in that Act<sup>5</sup> and in the Pharmacy Act 1954<sup>6</sup> to enable those who were formerly chemists and druggists to register subject to certain conditions as pharmaceutical chemists<sup>7</sup>.

1 For the meaning of 'registered' see PARA 888 note 6 post. As to registration see PARA 888 post. As to the Society see PARA 881 ante.

2 Pharmacy Act 1954 s 14.

3 This register was established by the Pharmacy Act 1868 s 10 (repealed).

4 See the Pharmacy Act 1953 ss 1, 3, 9, Schs 1, 2 (repealed).

5 See *ibid* s 1(2), Sch 1 (repealed).

6 See the Pharmacy Act 1954 s 25(1), Sch 2 para 1 (repealed).

7 See *ibid* Sch 2 para 9 (repealed).

### **UPDATE**

#### **880-934 Pharmaceutical Chemists and Pharmacies**

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI 2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).

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#### **884. Registrar and other officers.**

The council of the Royal Pharmaceutical Society<sup>1</sup> must keep a fit and proper person appointed as registrar<sup>2</sup> for the purposes of the Pharmacy Act 1954, and it may appoint for those purposes a deputy registrar and such clerks and other subordinate officers as it thinks fit<sup>3</sup>. The council may pay suitable salaries to persons so appointed<sup>4</sup> and may terminate such appointments<sup>5</sup>.

1 As to the council see PARA 882 ante; and as to the Society see PARA 881 ante.

2 As to the registrar's duties see PARA 888 et seq post.

3 Pharmacy Act 1954 s 1(1).

4 Ibid s 1(2).

5 Ibid s 1(3).

#### **UPDATE**

#### **880-934 Pharmaceutical Chemists and Pharmacies**

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI 2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).

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## **(ii) Powers and Duties**

### **885. Byelaws.**

Power to make byelaws<sup>1</sup> is given to the council of the Royal Pharmaceutical Society<sup>2</sup> both by the Society's Supplemental Charter of 7 December 2004<sup>3</sup> and by the Pharmacy Act 1954<sup>4</sup>. Byelaws are invalid unless at least 60 days' notice of the intention to make them has been given by the council to members of the Society in the manner required by existing byelaws<sup>5</sup>. Byelaws do not come into operation until approved by the Privy Council<sup>6</sup>. Byelaws have been made under these powers<sup>7</sup>.

1 For the meaning of 'byelaws' in the Pharmacy Act 1954 see PARA 888 note 3 post.

2 As to the council see PARA 882 ante; and as to the Society see PARA 881 ante.

3 As to this charter see PARA 881 ante. The charter refers to regulations rather than byelaws. The council is authorised by the charter to make, amend, add to or revoke regulations for any purpose relating to the governance, management, affairs or functions of the council or of the Society.

4 The council may make such byelaws as it thinks necessary for the purpose of any provision in the Pharmacy Act 1954 referring to byelaws: s 16.

5 See the Supplemental Charter of 7 December 2004.

6 See the Pharmacy Act 1954 s 16; and the Supplemental Charter of 7 December 2004. As to the exercise of the powers of the Privy Council see PARA 886 post. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

7 Copies of the byelaws may be seen on application to the Royal Pharmaceutical Society of Great Britain, 1 Lambeth High Street, London SE1 7JN.

## **UPDATE**

### **880-934 Pharmaceutical Chemists and Pharmacies**

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI 2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).

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### **886. Exercise of powers conferred on the Privy Council.**

For the purpose of exercising the powers which are conferred on it by the Pharmacy Act 1954<sup>1</sup>, the quorum of the Privy Council is three<sup>2</sup>.

Any document which purports to be either an instrument of appointment or approval made by the Privy Council under the Pharmacy Act 1954 or any other instrument so made<sup>3</sup>, and to be signed by the clerk of the Privy Council or by any other person authorised by the Privy Council in that behalf<sup>4</sup>, is evidence of the fact that the instrument was so made, and of its terms<sup>5</sup>.

<sup>1</sup> The powers of approving the appointment of examiners and appointing persons to be present at examinations (see the Pharmacy Act 1954 s 3(1)(a), (3); and PARA 893 post), of approving the registration or restoration to the register of names in certain cases (see s 11(2); and PARA 933 post), of appointing additional council members (see s 15(1); and PARA 882 ante), of appointing the chairman of the statutory committee (see s 7, Sch 1 para 1; and PARA 917 post), of approving regulations for that committee (see Sch 1 para 5; and PARA 918 post), and of approving expenses paid to its members (see Sch 1 para 6; and PARA 919 post).

<sup>2</sup> Ibid s 22(1). As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

<sup>3</sup> Ibid s 22(2)(a).

<sup>4</sup> Ibid s 22(2)(b).

<sup>5</sup> Ibid s 22(2).

### **UPDATE**

#### **880-934 Pharmaceutical Chemists and Pharmacies**

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI 2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).

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### **(iii) External Regulation of the Profession**

#### **887. External regulation.**

The Royal Pharmaceutical Society of Great Britain<sup>1</sup> is subject to the oversight of the Council for the Regulation of Health Care Professionals<sup>2</sup> and must in the exercise of its functions co-operate with that Council<sup>3</sup>. Where it considers the decision to be unduly lenient, or that it should not have been made, and that it would be desirable for the protection of members of the public<sup>4</sup>, the Council for the Regulation of Health Care Professionals has powers to refer to the High Court a direction<sup>5</sup> of the statutory committee of the Royal Pharmaceutical Society of Great Britain<sup>6</sup>, a final decision of that committee not to make any such direction<sup>7</sup>, and a decision of the Society, one of its committees or officers, to restore a person to the register following removal from it following such a direction<sup>8</sup>.

Her Majesty may by Order in Council<sup>9</sup> make provision modifying the regulation of the pharmaceutical profession<sup>10</sup> so far as appears to be necessary or expedient for the purpose of securing or improving the regulation of the profession or the services which the profession provides or to which it contributes<sup>11</sup>, and modifying, as respects the Royal Pharmaceutical Society of Great Britain, the range of functions of that body in relation to which the Council for the Regulation of Health Care Professionals performs its functions<sup>12</sup>.

The provisions of the Competition Act 1998 prohibiting agreements which have as their object the prevention, restriction or distortion of competition within the United Kingdom apply to rules made by professional bodies<sup>13</sup>.

1 As to the Society see PARA 881 ante.

2 See the National Health Service Reform and Health Care Professions Act 2002 s 25(2), (3)(f); and PARA 303 ante. The Council may not do anything in relation to the functions of the Royal Pharmaceutical Society of Great Britain (or its council, or an officer or committee of the Society) unless those functions are: (1) conferred on the Society (or its council, or an officer or committee of the Society) by or by virtue of any provision of the Pharmacy Act 1954, other than s 17 (the benevolent fund: see PARA 881 note 3 ante); (2) conferred as mentioned in head (1) supra by, or by virtue of, an Order in Council under the Health Act 1999 s 60 (see the text to notes 9-12 infra); or (3) otherwise conferred as mentioned in head (1) supra and relate to the regulation of the profession regulated by the Pharmacy Act 1954: National Health Service Reform and Health Care Professions Act 2002 s 26(5)(a)-(c). As to the Council for the Regulation of Health Care Professionals, its duties and powers see PARA 294 et seq ante.

3 See *ibid* s 27(1); and PARA 304 ante. As to the power of the Council for the Regulation of Health Care Professionals to give directions requiring the Royal Pharmaceutical Society of Great Britain to make rules where it considers that it would be desirable to do so for the protection of members of the public see PARA 304 ante. As to the power of the Secretary of State to make provision in regulations about the investigation by the Council for the Regulation of Health Care Professionals of complaints made to it about the way in which the Royal Pharmaceutical Society of Great Britain has exercised any of its functions see PARA 305 ante. As to the Secretary of State see PARA 5 ante.

4 See the National Health Service Reform and Health Care Professions Act 2002 s 29; and PARA 306 ante.

5 *Ie* under the Pharmacy Act 1954 s 8 (control of registrations by statutory committee: see PARA 920 post) or the Medicines Act 1968 s 80 (power to disqualify and direct removal from register: see PARA 922 post).

6 See the National Health Service Reform and Health Care Professions Act 2002 s 29(1)(a); and PARA 306 ante. As to the statutory committee see PARA 917 et seq post.



- 7 See *ibid* s 29(2)(a); and PARA 306 ante.
- 8 See *ibid* s 29(2)(c); and PARA 306 ante.
- 9 As to Orders in Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 907.
- 10 Is the profession regulated by the Pharmacy Act 1954.
- 11 See the Health Act 1999 s 60(1)(a), (2)(a); and PARA 291 ante.
- 12 See *ibid* s 60(1)(e); and PARA 291 ante. As to the scope of such orders and the procedure for making them see PARAS 292-293 ante.
- 13 See the Competition Act 1998 Ch 1 (ss 1-11); and COMPETITION vol 47 (2009) PARA 116 et seq.

## **UPDATE**

### **880-934 Pharmaceutical Chemists and Pharmacies**

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI 2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).

### **887 External regulation**

TEXT AND NOTES--Council for the Regulation of Health Care Professionals renamed Council for Healthcare Regulatory Excellence: Health and Social Care Act 2008 s 113(1).

NOTE 2--2002 Act s 26(5)(a)-(c) amended: SI 2007/289.

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### **(3) REGISTRATION**

#### **(i) Registration of Pharmaceutical Chemists**

##### **A. THE REGISTER OF PHARMACEUTICAL CHEMISTS**

##### **888. The register and registration.**

It is the duty of the registrar<sup>1</sup> to maintain in accordance with the statutory provisions<sup>2</sup> and byelaws<sup>3</sup> the register of pharmaceutical chemists<sup>4</sup>, which must contain the names and addresses, and such other particulars, if any, as may be prescribed<sup>5</sup>, of all persons who are entitled to have their names registered<sup>6</sup>. He must cause to be prepared in the form prescribed for the time being, and to be printed, published and put on sale every year, a list, known as 'The Annual Register of Pharmaceutical Chemists', of all names which were on the register on the last day of the preceding year<sup>7</sup>.

1 'The registrar' means the registrar of the Royal Pharmaceutical Society of Great Britain appointed under the Pharmacy Act 1954 s 1 (see PARA 884 ante): s 24(1). As to the Society see PARA 881 et seq ante.

2 Ie the provisions of the Pharmacy Act 1954.

3 'Byelaws' means byelaws made by the council of the Royal Pharmaceutical Society: ibid s 24(1). As to byelaws see PARA 885 ante. As to the council see PARA 882 ante.

4 'The register' means the Register of Pharmaceutical Chemists established under the Pharmacy Act 1852 (repealed) and maintained under the Pharmacy Act 1954 s 2(1): ss 2(1), 24(1) (definition amended by the Statute Law (Repeals) Act 1993 s 1(1), Sch 1 Pt XII).

5 'Prescribed' means prescribed by byelaws (see note 3 supra): Pharmacy Act 1954 s 24(1).

6 Ibid s 2(1)(a). 'Registered' means registered in the register; and 'to register' and 'registration' must be construed accordingly: s 24(1).

7 Ibid s 2(1)(b).

### **UPDATE**

#### **880-934 Pharmaceutical Chemists and Pharmacies**

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI

2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).

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### **889. Fees for retention of names on the register.**

Every registered pharmaceutical chemist<sup>1</sup> must pay to the Royal Pharmaceutical Society<sup>2</sup> such fee as is prescribed<sup>3</sup> in respect of the retention of his name on the register<sup>4</sup> in any year<sup>5</sup>. Different fees may be prescribed for different classes of registered pharmaceutical chemists, and provision may be made by byelaws<sup>6</sup> for exempting particular classes of registered pharmaceutical chemists from liability to pay fees<sup>7</sup>.

1 'Registered pharmaceutical chemist' means a person whose name is registered: Pharmacy Act 1954 s 24(1). For the meaning of 'registered' see PARA 888 note 6 ante.

2 As to the Society see PARA 881 et seq ante.

3 For the meaning of 'prescribed' see PARA 888 note 5 ante.

4 For the meaning of 'the register' see PARA 888 note 4 ante.

5 Pharmacy Act 1954 s 2(3). In ss 2(3), 12(2), 'year' means a period of 12 months beginning on such date as is for the time being determined by the council of the Royal Pharmaceutical Society: s 24(1). As to the council see PARA 882 ante. As to removal from the register for non-payment of retention fees see s 12; and PARA 899 post.

6 For the meaning of 'byelaws' see PARA 888 note 3 ante.

7 Pharmacy Act 1954 s 2(3).

### **UPDATE**

#### **880-934 Pharmaceutical Chemists and Pharmacies**

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI 2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).

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### **890. Evidence of registration.**

Any document purporting to be a print of the Annual Register of Pharmaceutical Chemists<sup>1</sup> printed and published by authority of the registrar<sup>2</sup> in any year is, at any time before the publication of the Annual Register for the succeeding year, admissible in any proceedings as evidence that a person named in it is, and a person not named in it is not, a registered pharmaceutical chemist<sup>3</sup>. A certificate<sup>4</sup> that a person is registered as a pharmaceutical chemist is likewise admissible to prove that he is so registered<sup>5</sup>.

1 As to the Annual Register see PARA 888 ante.

2 For the meaning of 'the registrar' see PARA 888 note 1 ante.

3 Pharmacy Act 1954 s 6(1). For the meaning of 'registered pharmaceutical chemist' see PARA 889 note 1 ante.

4 The certificate must have been issued in accordance with *ibid* s 5 (as amended): see PARA 897 post.

5 *Ibid* s 6(2). For the meaning of 'registered' see PARA 888 note 6 ante.

### **UPDATE**

#### **880-934 Pharmaceutical Chemists and Pharmacies**

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI 2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).

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### **891. Falsifications by the registrar.**

If the registrar<sup>1</sup> wilfully makes or causes to be made any falsification in any matter relating to the register<sup>2</sup> or the annual register of Pharmaceutical Chemists<sup>3</sup> or any certificate of competence to practise as a pharmaceutical chemist<sup>4</sup>, he is guilty of an offence, and, in the case of a falsification relating to the Annual Register, he is liable to imprisonment for a term not exceeding 12 months<sup>5</sup>.

1 For the meaning of 'the registrar' see PARA 888 note 1 ante.

2 For the meaning of 'the register' see PARA 888 note 4 ante.

3 As to the Annual Register see PARA 888 ante.

4 I.e. a certificate granted under the Pharmacy Act 1954 s 3(5): see PARA 893 post.

5 Ibid s 18. This provision uses the word 'misdemeanour', but all distinctions between felonies and misdemeanours were abolished by the Criminal Law Act 1967 s 1(1): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 49. It appears that except in the one case stated in the text, the common law punishment is appropriate, i.e. a fine, either with or without imprisonment, at the discretion of the court: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1673.

## **UPDATE**

### **880-934 Pharmaceutical Chemists and Pharmacies**

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI 2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/9. PHARMACEUTICAL CHEMISTS AND PHARMACIES/ (3) REGISTRATION/(i) Registration of Pharmaceutical Chemists/B. QUALIFICATION AND REGISTRATION OF PHARMACEUTICAL CHEMISTS/892. Right to registration.

## **B. QUALIFICATION AND REGISTRATION OF PHARMACEUTICAL CHEMISTS**

### **892. Right to registration.**

Subject to the power of the statutory committee of the council of the Royal Pharmaceutical Society to direct otherwise in particular circumstances<sup>1</sup>, a person is entitled to have his name registered<sup>2</sup> if he satisfies the registrar<sup>3</sup>, or on appeal the council of the Society<sup>4</sup>, that he is qualified to have his name registered as having been granted, after examination, a certificate of competence to practise<sup>5</sup>, or as satisfying the statutory provisions relating to qualification by appropriate European diploma<sup>6</sup> or as satisfying the provisions of any byelaw relating to qualification<sup>7</sup>, and if he pays the prescribed fee<sup>8</sup> to the Society in respect of the registration<sup>9</sup>.

If a person who applies to have his name registered is a national of an EEA state<sup>10</sup> exercising an enforceable Community right or holding an appropriate European diploma<sup>11</sup>, the registrar, within the specified period<sup>12</sup>, must give the applicant notice of his decision on the application and, if he is not satisfied that the applicant is qualified to have his name registered<sup>13</sup>, of the reasons for his decision and of the applicant's right to appeal to the council against the decision<sup>14</sup>. If the appeal is dismissed by the council, the applicant has a right to appeal to a county court<sup>15</sup>.

1 See PARAS 920-921 post. As to the Society see PARA 881 et seq ante.

2 For the meaning of 'registered' see PARA 888 note 6 ante.

3 For the meaning of 'the registrar' see PARA 888 note 1 ante.

4 As to the council see PARA 882 ante.

5 Ie in accordance with the Pharmacy Act 1954 s 3. As to qualification by examination and the grant of such certificates see PARA 893 post.

6 Ie in accordance with *ibid* s 4A (as added and amended). As to qualifying by appropriate European diploma see PARA 896 post.

7 *Ibid* s 2(2)(a) (amended by the Pharmaceutical Qualifications (EEC Recognition) Order 1987, SI 1987/2202, art 2(1), (2)). As to qualification by virtue of a byelaw see PARA 894 post. For the meaning of 'byelaws' see PARA 888 note 3 ante.

8 Different fees may be prescribed in relation to registrations in pursuance of the Pharmacy Act 1954 s 3 (see PARA 893 post), or s 4A (as added and amended) (see PARA 896 post) or byelaws under s 4 (as amended) (see PARA 894 post): s 2(2) (as amended: see note 7 supra). For the meaning of 'prescribed' see PARA 888 note 5 ante.

9 *Ibid* s 2(2)(b).

10 'National', in relation to an EEA state, means the same as in the Community Treaties, but does not include a person who by virtue of the Treaty of Accession Protocol No 3 (Channel Islands and Isle of Man) art 2 is not to benefit from Community provisions relating to the free movement of persons and services: Pharmacy Act 1954 s 24(1) (definition added by the European Qualifications (Health Care Professions) Regulations 2003, SI 2003/3148, reg 8). For the meaning of 'the Community Treaties' see the Interpretation Act 1978 s 5, Sch 1; and the European Communities Act 1972 s 1(2). 'EEA state' means a member state, Norway, Liechtenstein, Iceland or Switzerland: Pharmacy Act 1954 s 24(1) (definition added by the European Qualifications (Health

Care Professions) Regulations 2003, SI 2003/3148, reg 8; and substituted by the European Qualifications (Health and Social Care Professions and Accession of New Member States) Regulations 2004, SI 2004/1947, reg 13).

11 le a person of the description mentioned in the Pharmacy Act 1954 s 4A(1A) (as added and amended): see PARA 896 note 3 post.

12 'The specified period' means: (1) the period of three months beginning with the date on which the registrar receives the application with full supporting documentation; or (2) such longer period as is permitted by the Pharmacists Recognition Directive art 12: Pharmacy Act 1954 s 2(2C) (s 2(2A)-(2C) added by the European Qualifications (Health Care Professions) Regulations 2003, SI 2003/3148, reg 8).

'The Pharmacists Recognition Directive' means EC Council Directive 85/433 (OJ L253, 24.9.85, p 37) concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications in pharmacy, including measures to facilitate the effective exercise of the right of establishment relating to certain activities in the field of pharmacy as amended by: (1) EC Council Directive 85/584 (OJ L372, 31.12.85, p 42) and EC Council Directive 90/658 (OJ L353, 17.12.90, p 73); (2) the Act annexed to the Treaty relating to the accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the European Union signed at Corfu on 24 June 1994 (OJ C241, 29.8.94, p 21), as adjusted by the Decision of the Council of the European Union of 1 January 1995 adjusting the instruments concerning the accession of new member states to the European Union (OJ L1, 1.1.95, p 1); (3) EC Council Directive 2001/19 (OJ L206, 31.7.2001, p 1); (4) the Swiss Agreement; and (5) the Act annexed to the Treaty relating to the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the Adjustments to the Treaties on which the European Union is founded signed at Athens on 16 April 2003 (OJ L236, 23.9.2003, p 33): Pharmacy Act 1954 s 24(1) (definition added by the European Qualifications (Health Care Professions) Regulations 2003, SI 2003/3148, reg 8; and amended by the European Qualifications (Health and Social Care Professions and Accession of New Member States) Regulations 2004, SI 2004/1947, reg 13).

'The Swiss Agreement' means the Agreement between the European Community and its member states, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, signed at Luxembourg on 21 June 1999: Pharmacy Act 1954 s 24(1) (definition added by the European Qualifications (Health Care Professions) Regulations 2003, SI 2003/3148, reg 8).

13 le as mentioned in the Pharmacy Act 1954 s 2(2)(a) (as amended): see the text to notes 5-7 supra.

14 Ibid s 2(2A) (as added: see note 12 supra). Failure to give the required notice within the specified period (see note 12 supra) is to be treated as a decision against which an applicant may appeal to the council: s 2(2B) (as so added).

15 A national of an EEA state who is exercising an enforceable Community right, or a person of the description mentioned in ibid s 4A(1A) (as added and amended) (see PARA 896 note 3 post), whose appeal under s 2(2) (as amended) or s 2(2B) (as added) is dismissed by the council may appeal to the relevant court: s 4B(1), (2) (s 4B added by the European Qualifications (Health Care Professions) Regulations 2003, SI 2003/3148, reg 8). On an appeal, the court may dismiss the appeal, allow the appeal and quash the decision appealed against, or remit the case to the council to dispose of the case in accordance with the court's directions; and it may make such order as to costs as it thinks fit: Pharmacy Act 1954 s 4B(3) (as so added).

## UPDATE

### 880-934 Pharmaceutical Chemists and Pharmacies

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI



2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).

## **892 Right to registration**

NOTE 10--As to the meaning of 'the Community Treaties' see EUROPEAN COMMUNITIES vol 51 PARA 1•22.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/9. PHARMACEUTICAL CHEMISTS AND PHARMACIES/ (3) REGISTRATION/(i) Registration of Pharmaceutical Chemists/B. QUALIFICATION AND REGISTRATION OF PHARMACEUTICAL CHEMISTS/893. Qualification by examination.

### **893. Qualification by examination.**

The council of the Royal Pharmaceutical Society<sup>1</sup> must appoint examiners to hold examinations of candidates wishing to qualify as pharmaceutical chemists<sup>2</sup>. The Society must permit any person appointed for the purpose by the Privy Council to be present throughout any such examination<sup>3</sup>.

The subjects at the examinations include, inter alia, pharmaceutical chemistry and such other subjects, excluding the theory and practice of medicine, surgery and midwifery, as are prescribed<sup>4</sup>. Byelaws<sup>5</sup> may provide: (1) for periods of time and courses of study in connection with the examinations and for dividing the examinations into two or more parts<sup>6</sup>; (2) that no person may be a candidate unless he satisfies the council that he has received such a general education as the council considers adequate for a registered pharmaceutical chemist<sup>7</sup>; and (3) that no certificate of competence to practise may be granted to any person in consequence of the examination unless he satisfies the council that he has received such practical training in the subjects of the examination as the council considers adequate<sup>8</sup>.

Subject to these provisions, the examiners may grant a certificate of competence to practise as a pharmaceutical chemist to any person who satisfies them at the examination that he is competent so to practise; and a person to whom such a certificate is granted is qualified to have his name registered<sup>9</sup>.

1 As to the council see PARA 882 ante; and as to the Society see PARA 881 et seq ante.

2 Pharmacy Act 1954 s 3(1). No appointment as examiner takes effect until it is approved by the Privy Council (s 3(1)(a)), and it must not continue in force for more than five years from the date on which it is made (s 3(1)(b)). Candidates must pay to the Society such examination fee as is prescribed: s 3(2). For the meaning of 'prescribed' see PARA 888 note 5 ante. As to the exercise of the powers of the Privy Council see PARA 886 ante. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

3 Ibid s 3(3).

4 See ibid s 3(4).

5 For the meaning of 'byelaws' see PARA 888 note 3 ante.

6 Pharmacy Act 1954 s 3(4)(a). It is not beyond the powers of the Royal Pharmaceutical Society to make a byelaw restricting the number of attempts permitted at the examination: *R (on the application of Mahmood) v Royal Pharmaceutical Society of Great Britain* [2001] EWCA Civ 1245, [2001] All ER (D) 462 (Jul).

7 Pharmacy Act 1954 s 3(4)(b). For the meaning of 'registered pharmaceutical chemist' see PARA 889 note 1 ante.

8 Ibid s 3(4)(c).

9 Ibid s 3(5). For the meaning of 'registered' see PARA 888 note 6 ante.

## **UPDATE**

### **880-934 Pharmaceutical Chemists and Pharmacies**

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI 2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/9. PHARMACEUTICAL CHEMISTS AND PHARMACIES/ (3) REGISTRATION/(i) Registration of Pharmaceutical Chemists/B. QUALIFICATION AND REGISTRATION OF PHARMACEUTICAL CHEMISTS/894. Qualification by degree, diploma etc.

#### **894. Qualification by degree, diploma etc.**

Byelaws<sup>1</sup> may provide that any person who satisfies prescribed<sup>2</sup> conditions as to character and otherwise and either holds or has held a degree in pharmacy granted by any university in the United Kingdom or a diploma in pharmacy granted outside the United Kingdom<sup>3</sup>, or has passed the examinations necessary for obtaining such a diploma, is qualified to have his name registered<sup>4</sup>, either without satisfying the requirements<sup>5</sup> as to qualification by examination<sup>6</sup>, or upon satisfying those requirements subject to such relaxations as are prescribed<sup>7</sup>. Byelaws may also provide that a person who is a qualified military dispenser or registered as a pharmaceutical chemist in Northern Ireland, and who satisfies the council of the Royal Pharmaceutical Society<sup>8</sup> that he has sufficient skill and knowledge to practise as a pharmaceutical chemist, is qualified to be registered without satisfying the requirements as to qualification by examination<sup>9</sup>.

Byelaws<sup>10</sup> must provide that in relation to a national of an EEA state<sup>11</sup> exercising an enforceable Community right, or holding an appropriate European diploma<sup>12</sup>, who holds or has held a diploma granted in respect of pharmacy in any place outside the United Kingdom (other than an appropriate European diploma), or has passed the examinations necessary for obtaining such a diploma, the registrar<sup>13</sup>, or on appeal the council, must take into account the following matters when deciding whether he is qualified to have his name registered: (1) if the diploma, or the passing of the examinations necessary for obtaining it, has been accepted by another EEA state as qualifying him to practise pharmacy in that state, that fact; and (2) all his qualifications, or knowledge or experience, in pharmacy, wherever acquired, which are relevant to the question of whether his name should be registered<sup>14</sup>.

1 For the meaning of 'byelaws' see PARA 888 note 3 ante. See also PARA 885 ante.

2 For the meaning of 'prescribed' see PARA 888 note 5 ante.

3 The references in the Pharmacy Act 1954 s 4(1) (as amended) to a diploma in pharmacy granted outside the United Kingdom do not include references to an appropriate European diploma by which a person is qualified by virtue of s 4A (as added and amended) (see PARA 895 post) to have his name registered: s 4(3) (added by the Pharmaceutical Qualifications (EEC Recognition) Order 1987, SI 1987/2202, art 2(1), (3); and amended by the European Qualifications (Health Care Professions) Regulations 2003, SI 2003/3148, reg 8). As to appropriate European diplomas see PARA 895 post. For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

4 Pharmacy Act 1954 s 4(1). This provision is subject to s 4(4) (as added) (see the text and notes 10-14 infra): s 4(1) (amended by the European Qualifications (Health Care Professions) Regulations 2003, SI 2003/3148, reg 8). For the meaning of 'registered' see PARA 888 note 6 ante.

5 I.e. the requirements of the Pharmacy Act 1954 s 3: see PARA 893 ante.

6 Ibid s 4(1)(a).

7 Ibid s 4(1)(b).

8 As to the council see PARA 882 ante. As to the Society see PARA 881 et seq ante.

9 Pharmacy Act 1954 s 4(2) (amended by the Statute Law (Repeals) Act 1989).

10 I.e. byelaws made under the Pharmacy Act 1954 s 4(1) (as amended): see the text to notes 1-4 supra.

11 For the meanings of 'national' and 'EEA state' see PARA 892 note 10 ante.

12 Is a person of the description mentioned in the Pharmacy Act 1954 s 4A(1A) (as added and amended): see PARA 896 note 3 post.

13 For the meaning of 'registrar' see PARA 888 note 1 ante.

14 Pharmacy Act 1954 s 4(4), (5) (added by the European Qualifications (Health Care Professions) Regulations 2003, SI 2003/3148, reg 8).

## **UPDATE**

### **880-934 Pharmaceutical Chemists and Pharmacies**

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI 2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).

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### **895. Appropriate European diplomas.**

The following diplomas are appropriate European diplomas, namely<sup>1</sup>:

- 1018 (1) any diploma specified in the Pharmacy Act 1954<sup>2</sup>;
- 1019 (2) any other diploma in pharmacy granted in an EEA state either before the implementation date or to a person who commenced the training of which the diploma is evidence before that date<sup>3</sup>;
- 1020 (3) any other diploma in pharmacy which was awarded by or which is evidence of training started in the former Czechoslovakia, the former Soviet Union, Yugoslavia<sup>4</sup>, or the former German Democratic Republic<sup>5</sup>; or
- 1021 (4) any diploma in pharmacy granted in an EEA state which does not fall within heads (1) to (3) above<sup>6</sup>.

Where it falls to the registrar<sup>7</sup> or the council<sup>8</sup> to determine in relation to any diploma whether any of the required conditions<sup>9</sup> is satisfied, satisfaction may be determined by production of the relevant certificate<sup>10</sup>.

1 Pharmacy Act 1954 s 4A(2) (s 4A added by the Pharmaceutical Qualifications (EEC Recognition) Order 1987, SI 1987/2202, art 2(4); and the Pharmacy Act 1954 s 4A(2) amended by the Pharmaceutical Qualifications (Recognition) Regulations 1996, SI 1996/1405, reg 2(3)).

2 Pharmacy Act 1954 s 4A(2)(a) (as added: see note 1 supra); and amended by the European Qualifications (Health Care Professions) Regulations 2003, SI 2003/3148, reg 8). The diplomas are specified in the Pharmacy Act 1954 Sch 1A (added by the Pharmaceutical Qualifications (EEC Recognition) Order 1987, SI 1987/2202, art 2(1), (4), (7); substituted by the European Qualifications (Health Care Professions) Regulations 2003, SI 2003/3148, reg 8, Sch 3; and amended by the European Qualifications (Health and Social Care Professions and Accession of New Member States) Regulations 2004, SI 2004/1947, reg 13) in relation to the following states: Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Switzerland.

A diploma granted in an EEA state before the implementation date or granted to a person who began the training of which the diploma is evidence before that date is not an appropriate European diploma for these purposes unless, in the case of a diploma specified in the Pharmacy Act 1954 Sch 1A (as added, substituted and amended) (except one falling within s 4A(3C) (as added) (see *infra*)), either: (1) the diploma is evidence of training that would have satisfied the requirements laid down by the Pharmacists Training Directive; or (2) the competent authorities of any EEA state have certified that the holder of the diploma has lawfully practised pharmacy for at least three consecutive years during the five years preceding the date of the certificate: Pharmacy Act 1954 s 4A(3)(a) (as added (see note 1 supra); and amended by the Pharmaceutical Qualifications (Recognition) Regulations 1996, SI 1996/1405, reg 2(4); and the European Qualifications (Health Care Professions) Regulations 2003, SI 2003/3148, reg 8). For the meaning of 'EEA state' see PARA 892 note 10 ante. 'The implementation date', in relation to an EEA state, means the date on which that state implemented the Pharmacists Training Directive: Pharmacy Act 1954 s 4A(6) (as added: see note 1 supra); and amended by the European Qualifications (Health Care Professions) Regulations 2003, SI 2003/3148, reg 8). An EEA state is to be regarded as having implemented the Pharmacists Training Directive on the date notified to the Commission of the European Communities as that on which it did so: Pharmacy Act 1954 s 4A(7) (as added: see note 1 supra); and amended by the European Qualifications (Health Care Professions) Regulations 2003, SI 2003/3148, reg 8). 'The Pharmacists Training Directive' means EC Council Directive 85/432 (OJ L253, 24.9.85, p 34) concerning the co-ordination of provisions laid down by law, regulation or administrative action in respect of certain activities in the field of pharmacy (as amended by EC Council Directive 2001/19 (OJ L206, 31.7.2001, p 1)); Pharmacy Act 1954 s 4A(6) (as added (see note 1 supra); and amended by the European Qualifications (Health Care Professions) Regulations 2003, SI 2003/3148, reg 8). 'Competent authorities', in relation to an EEA state, means

any authority or body designated by that EEA state in accordance with the Pharmacists Recognition Directive: Pharmacy Act 1954 s 4A(6) (as added (see note 1 supra); and amended by the European Qualifications (Health Care Professions) Regulations 2003, SI 2003/3148, reg 8). For the meaning of 'Pharmacists Recognition Directive' see PARA 892 note 12 ante.

A diploma specified in the Pharmacy Act 1954 Sch 1A (as added, substituted and amended) in respect of Italy which is not evidence of training which satisfies the requirements of the Pharmacists Training Directive and which was awarded in respect of training which began before 1 November 1993 (but not before 1 October 1987) and finished before 1 November 2003 is not an appropriate European diploma for these purposes unless the competent authorities of Italy have certified: (a) that the holder of the diploma has been effectively and lawfully engaged in Italy in one of the activities referred to in the Pharmacists Training Directive art 1(2); (b) that he was so engaged for at least three consecutive years during the five years preceding the date of the certificate; and (c) that the activity in question was at all relevant times regulated in Italy: Pharmacy Act 1954 s 4A(3C) (added by the European Qualifications (Health Care Professions) Regulations 2003, SI 2003/3148, reg 8).

3 Pharmacy Act 1954 s 4A(2)(b) (as added: see note 1 supra); and amended by the European Qualifications (Health Care Professions) Regulations 2003, SI 2003/3148, reg 8). A diploma granted in an EEA state before the implementation date or granted to a person who began the training of which the diploma is evidence before that date is not an appropriate European diploma for these purposes unless in the case of any diploma falling within the Pharmacy Act 1954 s 4A(2)(b) (as added and amended): (1) the diploma is evidence of training which would satisfy the requirements of the Pharmacists Training Directive art 2 and is treated by the competent authorities of the EEA state in which it was awarded as equivalent to a diploma specified in the Pharmacy Act 1954 Sch 1A (as added, substituted and amended); or (2) the competent authorities of any EEA state have certified that the holder of the diploma has lawfully practised pharmacy for at least three consecutive years during the five years preceding the date of the certificate: s 4A(3)(b) (as added: see note 1 supra); substituted by the Pharmaceutical Qualifications (Recognition) Regulations 1996, SI 1996/1405, reg 2(4); and amended by the European Qualifications (Health Care Professions) Regulations 2003, SI 2003/3148, reg 8).

4 Pharmacy Act 1954 s 4A(2)(ba) (s 4A as added: see note 1 supra); and s 4A(2)(ba) added by the European Qualifications (Health and Social Care Professions and Accession of New Member States) Regulations 2004, SI 2004/1947, reg 13). Training must have started before the dates specified in the Pharmacy Act 1954 s 4A(2)(ba), Table (as so added). A diploma such as is mentioned in s 4A(2)(ba) (as added) is not an appropriate European diploma for these purposes unless it is accompanied by: (1) a certificate from the competent authorities of the EEA state specified in the appropriate row of s 4A(2)(ba), Table col (c) (as added) that that diploma has, on its territory, the same legal validity as regards access to and the practice of pharmacy as the diploma specified in the Pharmacy Act 1954 Sch 1A (as added and amended) in respect of that EEA state; and (2) a certificate from those competent authorities stating that the holder of that diploma has effectively and lawfully been engaged in the practice of pharmacy in its territory for at least three consecutive years during the five years preceding the date of that certificate: s 4A(3ZA) (s 4A as so added; and s 4A(3ZA) added by the European Qualifications (Health and Social Care Professions and Accession of New Member States) Regulations 2004, SI 2004/1947, reg 13).

5 See the Pharmacy Act 1954 s 4A(2)(c) (s 4A as added: see note 1 supra); and s 4A(2)(c) added by the Pharmaceutical Qualifications (Recognition) Regulations 1996, SI 1996/1405, reg 2(3)). A diploma such as is mentioned in the Pharmacy Act 1954 s 4A(2)(c) (as added) is not an appropriate European diploma for these purposes unless: (1) it entitles its holder to practise pharmacy throughout the territory of Germany on the same conditions as those applying to the holder of a diploma specified in Sch 1A para 4(1) (as added); and (2) the competent authorities in Germany have certified that the holder of the diploma has lawfully practised pharmacy in Germany for at least three consecutive years during the five years preceding the date of the certificate: s 4A(3A) (added by the Pharmaceutical Qualifications (Recognition) Regulations 1996, SI 1996/1405, reg 2(5)). Note that the Pharmacy Act 1954 Sch 1A para 4(1) (as added) (see head (1) supra) no longer exists, following the substitution of Sch 1A (as added) by the European Qualifications (Health Care Professions) Regulations 2003, SI 2003/3148, reg 8, Sch 3.

6 Pharmacy Act 1954 s 4A(2)(d) (added by the European Qualifications (Health Care Professions) Regulations 2003, SI 2003/3148, reg 8; and amended by the European Qualifications (Health and Social Care Professions and Accession of New Member States) Regulations 2004, SI 2004/1947, reg 13). A diploma such as is mentioned in the Pharmacy Act 1954 s 4A(2)(d) (as added and amended) is not an appropriate European diploma for these purposes unless the competent authorities of the EEA state in which it was awarded have certified: (1) that the diploma is evidence of training which satisfies the requirements of the Pharmacists Training Directive art 2; and (2) that it is treated by the competent authorities of the EEA state in which it was awarded as equivalent to a diploma specified in respect of that state in the Pharmacy Act 1954 Sch 1A (as added, substituted and amended): s 4A(3B) (added by the European Qualifications (Health Care Professions) Regulations 2003, SI 2003/3148, reg 8).

7 For the meaning of 'the registrar' see PARA 888 note 1 ante.

8 As to the council see PARA 882 ante.

9 le any of the conditions specified in the Pharmacy Act 1954 s 4A(3), (3ZA), (3A), (3B) or (3C) (as added and amended): see notes 1-6 supra.

10 See *ibid* s 4A(4) (as added: see note 1 supra); and amended by the Pharmaceutical Qualifications (Recognition) Regulations 1996, SI 1996/1405, reg 2(6); the European Qualifications (Health Care Professions) Regulations 2003, SI 2003/3148, reg 8; and the European Qualifications (Health and Social Care Professions and Accession of New Member States) Regulations 2004, SI 2004/1947, reg 13). The satisfaction of the condition specified in the Pharmacy Act 1954 s 4A(3)(a)(i) (as added and amended) (see note 2 head (1) supra) may be established by the production of a certificate of the competent authorities of the EEA state in relation to which the diploma is specified in Sch 1A (as added, substituted and amended), or otherwise; the satisfaction of the condition specified in s 4A(3)(b)(i) (as added, substituted and amended) (see note 3 head (1) supra), or s 4A(3A)(a) (as added) (see note 5 head (1) supra), may be established by the production of a certificate of the competent authorities of the EEA state in which the diploma was awarded, or otherwise; and the satisfaction of the condition specified in s 4A(3)(a)(ii) (as added and amended) (see note 2 head (2) supra), s 4A(3)(b)(ii) (as added, substituted and amended) (see note 3 head (2) supra), s 4A(3ZA)(a), (b) (as added) (see note 4 heads (1), (2) supra), s 4A(3A)(b) (as added) (see note 5 head (2) supra), s 4A(3B)(a), (b) (as added) (see note 6 heads (1), (2) supra), s 4A(3C)(a), (b), (c) (as added) (see note 2 heads (a)-(c) supra), must be established by the production of the relevant certificate, and not otherwise: s 4A(4) (as so added and amended).

## **UPDATE**

### **880-934 Pharmaceutical Chemists and Pharmacies**

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI 2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/9. PHARMACEUTICAL CHEMISTS AND PHARMACIES/ (3) REGISTRATION/(i) Registration of Pharmaceutical Chemists/B. QUALIFICATION AND REGISTRATION OF PHARMACEUTICAL CHEMISTS/896. Qualification by appropriate European diploma.

### **896. Qualification by appropriate European diploma.**

A national of an EEA state<sup>1</sup> who holds an appropriate European diploma<sup>2</sup> and who satisfies any prescribed conditions as to character and physical and mental health is qualified to have his name registered<sup>3</sup>. Where a name is registered in respect of an appropriate European diploma, an indication to that effect must be entered in the register<sup>4</sup> against that name<sup>5</sup>.

1 For the meanings of 'national' and 'EEA state' see PARA 892 note 10 ante.

2 As to appropriate European diplomas see PARA 895 ante.

3 Pharmacy Act 1954 s 4A(1) (added by the Pharmaceutical Qualifications (EEC Recognition) Order 1987, SI 1987/2202, art 2(1), (4); and amended by the European Qualifications (Health Care Professions) Regulations 2003, SI 2003/3148, reg 8). For the meaning of 'registered' see PARA 888 note 6 ante. Any person who is not a national of an EEA state, but is, by virtue of a right conferred by EC Council Regulation 1612/68 on freedom of movement for workers within the Community (OJ L257, 19.10.68, p 2) art 11 or any other enforceable Community right, entitled to be treated, for the purposes of access to the profession of pharmacy, no less favourably than a national of such a state, is to be treated for the purposes of the Pharmacy Act 1954 s 4A(1) (as added and amended) as if he were such a national: s 4A(1A) (added by the Pharmaceutical Qualifications (Recognition) Regulations 1996, SI 1996/1405, reg 2; and amended by the European Qualifications (Health Care Professions) Regulations 2003, SI 2003/3148, reg 8).

4 For the meaning of 'the register' see PARA 888 note 4 ante.

5 Pharmacy Act 1954 s 4A(1) (as added and amended: see note 3 supra).

## **UPDATE**

### **880-934 Pharmaceutical Chemists and Pharmacies**

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI 2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).

### **896 Qualification by appropriate European diploma**

NOTE 2--The recognition of diplomas giving access to the profession of hospital pharmacist falls within the scope of EC Council Directive 89/48 (see PARA 627 NOTE 12) and member states must provide a system allowing for recognition under the

conditions therein laid down: Case C-39/07 *EC Commission v Spain* [2008] 2 CMLR 1547, ECJ.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/9. PHARMACEUTICAL CHEMISTS AND PHARMACIES/ (3) REGISTRATION/(i) Registration of Pharmaceutical Chemists/C. CERTIFICATES OF REGISTRATION/897. Right to certificate of registration.

### **C. CERTIFICATES OF REGISTRATION**

#### **897. Right to certificate of registration.**

On the demand of any registered pharmaceutical chemist<sup>1</sup>, the council of the Royal Pharmaceutical Society<sup>2</sup> must issue to him without fee a certificate of registration signed by the registrar<sup>3</sup> and countersigned by either the president of the Society or two members of the council<sup>4</sup>. The council is not obliged to issue a further certificate to a person to whom a certificate has already been issued unless that person satisfies the registrar that the original certificate, and any further certificate already issued to him, has been lost or destroyed<sup>5</sup> and unless he pays to the Society in respect of the further certificate such fee, if any, as is prescribed<sup>6</sup>.

Any certificate of registration issued to a registered pharmaceutical chemist by the council must reproduce any indication entered in the register<sup>7</sup> against that person's name<sup>8</sup>.

1 For the meaning of 'registered pharmaceutical chemist' see PARA 889 note 1 ante.

2 As to the council see PARA 882 ante. As to the Society see PARA 881 et seq ante.

3 For the meaning of 'the registrar' see PARA 888 note 1 ante.

4 Pharmacy Act 1954 s 5(1).

5 Ibid s 5(2)(a).

6 Ibid s 5(2)(b). For the meaning of 'prescribed' see PARA 888 note 5 ante.

7 For the meaning of 'the register' see PARA 888 note 4 ante.

8 Pharmacy Act 1954 s 5(3) (added by the Pharmaceutical Qualifications (EEC Recognition) Order 1987, SI 1987/2202, art 2(1), (5)). Indications are entered in pursuance of the Pharmacy Act 1954 s 4A(1) (as added and amended) (see PARA 896 ante) or s 4A(5)(a) (repealed): s 5(3) (as so added).

### **UPDATE**

#### **880-934 Pharmaceutical Chemists and Pharmacies**

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI 2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/9. PHARMACEUTICAL CHEMISTS AND PHARMACIES/ (3) REGISTRATION/(i) Registration of Pharmaceutical Chemists/C. CERTIFICATES OF REGISTRATION/898. Offences relating to certificates.

### **898. Offences relating to certificates.**

Any person who fraudulently exhibits any certificate purporting to be a certificate of membership<sup>1</sup> of the Royal Pharmaceutical Society is guilty of an offence<sup>2</sup>.

Any person who, with intent to deceive, either: (1) uses, or lends to or allows to be used by any other person, any certificate issued under the Pharmacy Acts<sup>3</sup>; or (2) makes or has in his possession any document so closely resembling such a certificate as to be calculated to deceive<sup>4</sup>, is liable on summary conviction, in respect of each offence, to a fine<sup>5</sup>.

If any person to whom a certificate of registration has been issued<sup>6</sup> ceases to be a registered pharmaceutical chemist<sup>7</sup>, he must, within 14 days of so ceasing, transmit the certificate to the registrar for cancellation, and, if he fails to do so, he is liable on summary conviction, in respect of each offence, to a fine<sup>8</sup>.

Proceedings in respect of these summary offences may be commenced at any time within 12 months after the date of the commission of the offence<sup>9</sup>.

1 It would appear that a certificate of membership is the same as a certificate of registration issued under the Pharmacy Act 1954 s 5 (as amended) (see PARA 897 ante), since it is provided by s 14 (see PARA 883 ante) that every person whose name is registered is, by virtue of the registration, a member of the Society. As to the Society see PARA 881 et seq ante.

2 Ibid s 20(1); Criminal Law Act 1967 s 1. See also PARA 891 note 5 ante.

3 Pharmacy Act 1954 s 20(2)(a) (amended by the Forgery and Counterfeiting Act 1981 s 30, Schedule Pt I). See the Forgery and Counterfeiting Act 1981 Pt I (ss 1-13); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 346 et seq. 'The Pharmacy Acts' means the Pharmacy Act 1954, the Medicines Act 1968 ss 77, 84(1) (as amended) and the Poisons Act 1972, and includes rules made under the Poisons Act 1972 s 7 (see MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 289); Pharmacy Act 1954 s 24(1) (definition substituted by the Poisons Act 1972 s 12(2); and amended by the Statute Law (Repeals) Act 1993 s1(1), Sch 1 Pt XII).

4 Pharmacy Act 1954 s 20(2)(b).

5 Ibid s 20(2) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). The penalty is a fine not exceeding level 3 on the standard scale and, in the case of a continuing offence, a further fine not exceeding £5 for every day subsequent to the day on which he is convicted of the offence during which the contravention continues: see the Pharmacy Act 1954 s 20(2) (as so amended). As to the standard scale see PARA 185 note 11 ante.

It is the duty of the Royal Pharmaceutical Society to take all reasonable steps, by means of inspections and otherwise, to enforce the provisions of s 20(2), (3) (as amended): Poisons Act 1972 s 9(1)(a).

6 Issued in pursuance of the Pharmacy Act 1954 s 5 (as amended): see PARA 897 ante.

7 For the meaning of 'registered pharmaceutical chemist' see PARA 889 note 1 ante.

8 Pharmacy Act 1954 s 20(3) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). The penalty is a fine not exceeding level 1 on the standard scale, and a further fine not exceeding £1 for every day subsequent to the day on which he is convicted of the offence during which the default continues: see the Pharmacy Act 1954 s 20(3) (as so amended). As to the duty of the Royal Pharmaceutical Society to enforce s 20(3) (as amended) see note 5 supra.

9 Ibid s 21 (amended by the Magistrates' Courts Act 1980 s 154, Sch 7 para 10; and the Statute Law (Repeals) Act 1993).

**UPDATE****880-934 Pharmaceutical Chemists and Pharmacies**

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI 2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).

**898 Offences relating to certificates**

NOTE 5--Poisons Act 1972 s 9(1)(a) amended: SI 2007/289.

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 PHARMACEUTICAL CHEMISTS AND PHARMACIES/ (3) REGISTRATION/(i) Registration of  
 Pharmaceutical Chemists/D. REMOVAL OF NAME AND CORRECTION OF THE REGISTER/899.  
 Removal from the register for not paying retention fee.

## ***D. REMOVAL OF NAME AND CORRECTION OF THE REGISTER***

### **899. Removal from the register for not paying retention fee.**

If any registered pharmaceutical chemist<sup>1</sup> on whom a demand has been made in the prescribed<sup>2</sup> manner for the payment of any fee payable by him<sup>3</sup> for the retention of his name on the register<sup>4</sup> fails to pay the fee within two months from the date of the demand, the council of the Royal Pharmaceutical Society<sup>5</sup> may direct the registrar<sup>6</sup> to remove the chemist's name from the register<sup>7</sup>.

The name of any person so removed must be restored to the register if, within the year<sup>8</sup> in which the fee is payable or within such longer period as the council allows, that person pays the fee to the Society together with any penalty which may be prescribed<sup>9</sup>. This provision is, however, subject to any current direction of the statutory committee<sup>10</sup> that by reason of crime or misconduct<sup>11</sup> the name is not to be restored to the register, or is not to be restored until the committee otherwise directs<sup>12</sup>. The restoration of a name under these provisions when the prescribed fees and penalties are paid, if the council so directs, has effect from the date of the removal of the name from the register<sup>13</sup>.

1 For the meaning of 'registered pharmaceutical chemist' see PARA 889 note 1 ante.

2 For the meaning of 'prescribed' see PARA 888 note 5 ante.

3 I.e. under the Pharmacy Act 1954 s 2(3): see PARA 889 ante.

4 For the meaning of 'the register' see PARA 888 note 4 ante.

5 As to the council see PARA 882 ante. As to the Society see PARA 881 et seq ante.

6 For the meaning of 'the registrar' see PARA 888 note 1 ante.

7 Pharmacy Act 1954 s 12(1).

8 For the meaning of 'year' see PARA 889 note 5 ante.

9 Pharmacy Act 1954 s 12(2).

10 As to the statutory committee see PARA 917 post. Such directions are made under ibid s 8(1)(iii): see PARA 920 et seq post.

11 As to misconduct see PARA 920 note 2 post.

12 Pharmacy Act 1954 s 12(2).

13 Ibid s 12(3).

## **UPDATE**

### **880-934 Pharmaceutical Chemists and Pharmacies**

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI 2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/9.  
 PHARMACEUTICAL CHEMISTS AND PHARMACIES/ (3) REGISTRATION/(i) Registration of  
 Pharmaceutical Chemists/D. REMOVAL OF NAME AND CORRECTION OF THE REGISTER/900.  
 Correction of the register.

## **900. Correction of the register.**

It is the duty of the registrar<sup>1</sup>:

- 1022 (1) to remove from the register<sup>2</sup> the name of any registered pharmaceutical chemist who has died<sup>3</sup>;
- 1023 (2) to remove from the register any entry which the council of the Royal Pharmaceutical Society<sup>4</sup>, by an order in writing, directs him to remove as being in its opinion an entry procured by fraud<sup>5</sup>;
- 1024 (3) to correct in accordance with the council's directions any entry in the register which the council, by an order in writing, directs him to correct as being in its opinion an entry incorrectly made<sup>6</sup>;
- 1025 (4) to make from time to time any necessary alterations in the registered particulars of registered pharmaceutical chemists<sup>7</sup>;
- 1026 (5) to make such alterations in the register as are necessary to give effect to any directions of the statutory committee<sup>8</sup> which have come into force, and which require that a name is to be removed from, or is or is not to be restored to, the register<sup>9</sup>;
- 1027 (6) to make such alterations in the register as are necessary to give effect to any order of the High Court<sup>10</sup> which has been made on appeal either from a direction of the statutory committee or from its refusal of an application<sup>11</sup> for restoration of a name to the register<sup>12</sup>.

Furthermore, if the registrar sends by registered post or by the recorded delivery service to any registered pharmaceutical chemist a letter addressed to him at his address on the register enquiring whether he has ceased to practise as a pharmaceutical chemist or has changed his address and receives no reply within six months from the date of posting the letter<sup>13</sup>, and upon the expiration of that period sends in the same manner a similar letter and receives no reply within three months from the date of posting the second letter<sup>14</sup>, the registrar may remove the name of that person from the register; but the council of the Society may direct the registrar to restore to the register any name thus removed<sup>15</sup>.

1 For the meaning of 'the registrar' see PARA 888 note 1 ante. The registrar has a further duty to enter a note on the register of any conditions or suspension orders made by the health committee in relation to registered pharmaceutical chemists whose ability to practise is seriously impaired as a result of their physical or mental conditions (see PARA 901 post): Pharmacy Act 1954 s 13H (prospectively added by the Pharmacists (Fitness to Practise) Act 1997 s 1, Schedule para 2). At the date at which this volume states the law no day had been appointed for the commencement of these provisions. For the meaning of 'registered pharmaceutical chemist' see PARA 889 note 1 ante.

2 For the meaning of 'the register' see PARA 888 note 4 ante.

3 Pharmacy Act 1954 s 13(1)(a). Every registrar of births and deaths must, on registering the death of a pharmaceutical chemist, send forthwith by post to the registrar of the Royal Pharmaceutical Society a copy certified under his hand of the entry relating to the death in the register of deaths: s 13(3). The cost of the certificate and of the postage is payable by the registrar of the Society to the registrar of births and deaths from whom it is received: s 13(3). As to the registration of deaths generally see REGISTRATION CONCERNING THE INDIVIDUAL vol 39(2) (Reissue) PARA 501 et seq. As to the Society see PARA 881 et seq ante.

- 4 As to the council see PARA 882 ante.
- 5 Pharmacy Act 1954 s 13(1)(b).
- 6 Ibid s 13(1)(c).
- 7 Ibid s 13(1)(d).
- 8 As to the statutory committee see PARA 917 post. As to the directions which it may give see ibid s 8 (as amended); and PARAS 920-921 post. As to the communication of any directions to the registrar see PARA 929 post.
- 9 Ibid s 11(3).
- 10 As to the jurisdiction of the High Court to hear appeals see ibid s 10; and PARA 933 post.
- 11 Ie an application under ibid s 8(2) (as amended): see PARA 920 post.
- 12 Ibid s 10(3).
- 13 Ibid s 13(4)(a); Recorded Delivery Service Act 1962 s 1(1).
- 14 Pharmacy Act 1954 s 13(4)(b); Recorded Delivery Service Act 1962 s 1(1).
- 15 Pharmacy Act 1954 s 13(2).

## **UPDATE**

### **880-934 Pharmaceutical Chemists and Pharmacies**

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI 2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/9.  
 PHARMACEUTICAL CHEMISTS AND PHARMACIES/ (3) REGISTRATION/(i) Registration of  
 Pharmaceutical Chemists/D. REMOVAL OF NAME AND CORRECTION OF THE REGISTER/901.  
 Imposition of practising conditions and suspension from the register.

### **901. Imposition of practising conditions and suspension from the register.**

As from a day to be appointed, the following provisions have effect.

A committee of the Royal Pharmaceutical Society is to be appointed, to be known as the health committee<sup>1</sup>. Where an allegation<sup>2</sup> is made or referred to the council<sup>3</sup> of the Royal Pharmaceutical Society it must: (1) notify the pharmaceutical chemist of the allegation and invite him to give it his observations before the end of the permitted period<sup>4</sup>; (2) take such steps as are reasonably practicable to obtain as much information as possible about the case; and (3) consider, in the light of the information which it has been able to obtain and any observations duly made to it by the pharmaceutical chemist, whether in its opinion there is a case to answer<sup>5</sup>. Where the council concludes that there is a case to answer, it must notify the pharmaceutical chemist of its conclusion, and refer the allegation, as formulated by it, to the health committee<sup>6</sup>. Where the council concludes that there is no case to answer, it must notify the pharmaceutical chemist of its conclusion<sup>7</sup>. The council may make regulations with respect to the procedure to be followed on an investigation under the provisions described above<sup>8</sup>.

The health committee must consider an allegation against a pharmaceutical chemist referred to it and if, having considered the allegation, the committee is satisfied that it is well founded, it must: (a) make an order imposing conditions with which the pharmaceutical chemist must comply while practising as a pharmaceutical chemist (a 'conditions of practice order'); or (b) make an order directing the registrar<sup>9</sup> to suspend the pharmaceutical chemist's registration for the period specified in the order (a 'suspension order')<sup>10</sup>.

The health committee may review a conditions of practice order or a suspension order made with respect to a pharmaceutical chemist at any time while the order has effect<sup>11</sup>. On a review, the committee may confirm, revoke or vary the order or replace the order with a suspension order or conditions of practice order as appropriate, or may vary the period or conditions of the order<sup>12</sup>.

In exercising any power to make, confirm, vary or revoke a conditions of practice order or a suspension order, the health committee must ensure that any conditions imposed on the pharmaceutical chemist are, or any period of suspension imposed on him is, the minimum which it considers necessary for the protection of members of the public<sup>13</sup>. Where the health committee makes a suspension order with respect to a pharmaceutical chemist, it may make an order directing the registrar to suspend the pharmaceutical chemist's registration with immediate effect (an 'interim suspension order')<sup>14</sup>. The council must make regulations as to the procedure to be followed on the consideration of an allegation against a pharmaceutical chemist<sup>15</sup> and on a review<sup>16</sup> of an order made with respect to a pharmaceutical chemist<sup>17</sup>.

Where a conditions of practice order is made, the registrar must enter in the register a note of the conditions imposed, and the period for which each condition is to have effect<sup>18</sup>. Where a suspension order is made, the registrar must enter in the register a note of the suspension, and the period of the suspension<sup>19</sup>. Where a conditions of practice order or a suspension order is revoked or varied on a review<sup>20</sup> or an appeal<sup>21</sup>, the registrar must delete, or make the necessary alterations to, any note entered in the register<sup>22</sup>. Where an interim suspension order is made, the registrar must enter in the register a note of the suspension<sup>23</sup>. A pharmaceutical chemist who is subject to a suspension order or an interim suspension order will be treated as if his name was not registered for certain purposes<sup>24</sup>.

A pharmaceutical chemist with respect to whom an appealable decision<sup>25</sup> is made by the health committee may appeal against the decision<sup>26</sup>.

1 Pharmacy Act 1954 s 13A(1) (ss 13A-13M, Schs 1B, 1C prospectively added by the Pharmacists (Fitness to Practise) Act 1997 s 1, Schedule paras 2, 4). At the date at which this volume states the law no such day had been appointed for the commencement of these provisions. As to the constitution and procedure of the health committee, the term of office, resignation and expenses of its members, and the appointment of legal assessors, see the Pharmacy Act 1954 s 13A(2), Sch 1B (as so added). As to the Society see PARA 881 et seq ante.

2 Ie an allegation to the effect that the ability of a registered pharmaceutical chemist to practise as a pharmaceutical chemist is seriously impaired because of his physical or mental condition: *ibid* s 13B(1) (as added: see note 1 supra). For the meaning of 'registered pharmaceutical chemist' see PARA 889 note 1 ante.

3 As to the council see PARA 882 ante.

4 'The permitted period' means the period of 28 days beginning with the day on which notice of the allegation is sent to the pharmaceutical chemist, or where the council considers that, were the allegation to be well founded, it would be necessary for members of the public to be protected without delay, such shorter period as may be specified by the council in regulations: Pharmacy Act 1954 s 13B(3) (as added: see note 1 supra).

5 *Ibid* s 13B(2) (as added: see note 1 supra).

6 *Ibid* s 13B(4) (as added: see note 1 supra).

7 *Ibid* s 13B(5) (as added: see note 1 supra).

8 *Ibid* s 13B(6) (as added: see note 1 supra). No regulations made under s 13B (as added), s 13G (as added) or s 13K (as added) are to come into operation until they are approved by the Privy Council by order made by statutory instrument; and any such statutory instrument is subject to annulment in pursuance of a resolution of either House of Parliament: s 13M (as added: see note 1 supra). As to the exercise of the powers of the Privy Council see PARA 886 ante. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

9 For the meaning of 'the registrar' see PARA 888 note 1 ante.

10 Pharmacy Act 1954 s 13C(1), (2) (as added: see note 1 supra). Any condition in a conditions of practice order has effect for the period specified in the order: s 13C(3) (as so added). The period specified in a conditions of practice order or a suspension order must not exceed three years: s 13C(4) (as so added). An order under s 13C (as added) has effect: (1) if there is no appeal against it under s 13J (as added) (see the text and notes 25-26 *infra*), when the period for making such an appeal expires; or (2) if there is an appeal against it under s 13J (as added), when the appeal is withdrawn or otherwise disposed of: s 13C(5) (as so added).

11 *Ibid* s 13D(1) (as added: see note 1 supra). The committee must review an order on the written application of the pharmaceutical chemist: s 13D(2) (as so added). The committee is not required to consider an application under s 13D(2) (as added) for a review of an order if: (1) the pharmaceutical chemist has made an earlier application under s 13D(2) (as added) for a review of the order; (2) the earlier application was made within the period of 12 months ending with the date on which the committee received the application; and (3) the order was not varied on the earlier review: s 13D(3) (as so added). On a review under s 13D(2) (as added), the committee may confirm, vary or revoke the order but may only vary the order by reducing the period specified or removing or altering any of the conditions: s 13D(7), (8) (as so added).

12 *Ibid* s 13D(4), (5), (6) (as added: see note 1 supra). The period specified in the order may not be extended by more than three years: s 13D(6) (as so added). If an order is revoked on a review without being replaced by another order, the revocation has immediate effect: s 13D(9) (as so added). Any other decision on a review under s 13D (as added) has effect: (1) if there is no appeal against it under s 13J (as added) (see the text and notes 25-26 *infra*), when the period for making such an appeal expires; or (2) if there is an appeal against it under s 13J (as added), when the appeal is withdrawn or otherwise disposed of: s 13D(10) (as so added).

13 *Ibid* s 13E (as added: see note 1 supra).

14 *Ibid* s 13F(1) (as added: see note 1 supra). The committee may only make an interim suspension order if it is satisfied that it is necessary to do so in order to protect members of the public: s 13F(2) (as so added). If there is no appeal against the suspension order under s 13J (as added) (see the text and notes 25-26 *infra*), an interim suspension order ceases to have effect when the period for making such an appeal expires: s 13F(3) (as so added). If there is an appeal against the suspension order under s 13J (as added), an interim suspension

order ceases to have effect: (1) when the appeal is withdrawn or otherwise disposed of; or (2) if sooner, at the end of the period of 12 weeks beginning with the day on which the interim suspension order is made: s 13F(4) (as so added).

15 le under ibid s 13C (as added): see the text and note 10 supra.

16 le under ibid s 13D (as added): see the text and notes 11-12 supra.

17 Ibid s 13G(1) (as added: see note 1 supra). The regulations, in particular, must include provision: (1) requiring the pharmaceutical chemist to be given notice of the allegation or review; (2) giving the pharmaceutical chemist an opportunity to put his case at a hearing; (3) entitling the pharmaceutical chemist to be legally represented at any hearing in respect of the allegation or review; (4) enabling such a hearing to be held in the absence of the pharmaceutical chemist if the requirements of regulations made by virtue of heads (1)-(3) supra have been met; (5) securing that such a hearing is held in private unless the pharmaceutical chemist requires the hearing or any part of it to be held in public, or the health committee considers that it is appropriate to hold the hearing or any part of it in public; (6) requiring the pharmaceutical chemist to be notified by the committee of its decision, its reasons for reaching that decision and of his right of appeal; (7) giving the committee power to require persons to attend and give evidence or to produce documents; (7) about the admissibility of evidence; and (8) enabling the committee to administer oaths: s 13G(2) (as so added). No person may be required by any regulations made under s 13G (as added) to give any evidence or produce any document or other material at a hearing in respect of the allegation or review which he could not be compelled to give or produce in civil proceedings in any court in the part of Great Britain in which the hearing takes place: s 13G(3) (as so added). As to the approval of regulations see note 8 supra. For the meaning of 'Great Britain' see PARA 1 note 3 ante. As to evidence see CIVIL PROCEDURE vol 11 (2009) PARA 749 et seq.

18 Ibid s 13H(1) (as added: see note 1 supra). See also PARA 900 ante.

19 Ibid s 13H(2) (as added: see note 1 supra).

20 le under ibid s 13D (as added): see the text and notes 11-12 supra.

21 le under ibid s 13J (as added): see the text and notes 25-26 infra.

22 Ibid s 13H(3) (as added: see note 1 supra).

23 Ibid s 13H(4) (as added: see note 1 supra). When an interim suspension order ceases to have effect, the registrar must delete the note entered in the register under s 13H(4) (as added): s 13H(5) (as so added).

24 Ibid s 13I(1) (as added: see note 1 supra). The pharmaceutical chemist will be treated as if his name is not registered for the purposes of: (1) ss 2, 5, 14, Sch 1B para 2(3), Sch 1C para 3(2) (ss 2, 5 as amended; Schs 1B, 1C prospectively added) (see notes 1 supra, 26 infra, and PARAS 888 et seq, 897 ante); (2) the Medicines Act 1968 ss 10, 23, 33, 52 (ss 10, 23 as amended) (see MEDICINAL PRODUCTS AND DRUGS); (3) the Misuse of Drugs Act 1971 s 7 (see MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 259); and (4) the Poisons Act 1972 (see MEDICINAL PRODUCTS AND DRUGS): Pharmacy Act 1954 s 13I(1) (as so added). For the purposes of s 13I (as added), a pharmaceutical chemist is subject to an order during the period for which the order has effect: s 13I(2) (as so added).

25 'Appealable decision' means: (1) a conditions of practice order; (2) a suspension order; (3) variation of an order on a review under ibid s 13D (as added) (see the text and notes 11-12 supra); or (4) replacement of an order with another order on such a review: s 13J(2) (as added: see note 1 supra).

26 Ibid s 13J(1) (as added: see note 1 supra). An appeal may not be made after the end of the period of 28 days beginning with the date on which notification of the decision is sent to the pharmaceutical chemist: s 13J(3) (as so added). An appeal under s 13J (as added) lies to an appeal tribunal established for the purpose of the appeal by the Privy Council: s 13J(4) (as so added). As to the constitution of the appeal tribunals, the panel of eligible members, term of office and registration of members, the appointment of clerks and expenses see s 13J(5), Sch 1C (as so added). As to the procedure on appeals see s 13K (as so added). Where an appeal is made under s 13J (as added) to an appeal tribunal, the tribunal may: (1) confirm a conditions of practice order or suspension order; (2) revoke such an order; (3) vary such an order; (4) replace a conditions of practice order with a suspension order; (5) replace a suspension order with a conditions of practice order; or (6) make a conditions of practice order with which the pharmaceutical chemist must comply if he resumes practice as a pharmaceutical chemist after the end of his period of suspension: s 13L(1), (2) (as so added). An order may be varied by: (a) extending or reducing the period specified in the order; or (b) in the case of a conditions of practice order, imposing additional conditions or removing or altering any of the existing conditions, but the period specified in the order may not be extended by more than three years: s 13L(3) (as so added). Section 13E (as added) (see the text to note 13 supra) applies to an appeal tribunal as it applies to the health committee: s 13L(4) (as so added). The appeal tribunal may award costs or expenses: s 13L(5) (as so added). Any decision of the appeal tribunal may be made by a majority of its members: s 13L(6) (as so added). A

decision of the tribunal on an appeal has effect when notification of it is sent to the pharmaceutical chemist: s 13L(7) (as so added).

## **UPDATE**

### **880-934 Pharmaceutical Chemists and Pharmacies**

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI 2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).

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PHARMACEUTICAL CHEMISTS AND PHARMACIES/ (3) REGISTRATION/ (ii) Registration of  
Premises/902. The register.

## **(ii) Registration of Premises**

### **902. The register.**

It is the duty of the registrar<sup>1</sup> to keep a register<sup>2</sup> in which, subject to the registration provisions<sup>3</sup> and on payment of the prescribed<sup>4</sup> fee<sup>5</sup>, he must make entry of any premises in respect of which an application for registration is made<sup>6</sup>. He must not, however, enter any premises in the register unless it is shown to his reasonable satisfaction either: (1) that at the time of the application the applicant is a person lawfully conducting a retail pharmacy business<sup>7</sup>; or (2) that, if the premises are so entered and the applicant begins to carry on such a business there, then as from the time when he begins to do so he will be a person lawfully carrying on such a business<sup>8</sup>.

A document purporting to be a certificate signed by the registrar and stating that on a specified date specified premises were, or were not, entered in the register is admissible in any proceedings as evidence of that fact<sup>9</sup>.

1 'The registrar' in relation to Great Britain means the person appointed under the Pharmacy Act 1954 s 1 as registrar for the purposes of that Act (see PARA 884 ante), and in relation to Northern Ireland means the person appointed as registrar under the Pharmacy (Northern Ireland) Order 1976, SI 1976/1213, art 9(1); Medicines Act 1968 s 69(3) (amended by the Pharmacy (Northern Ireland) Order 1976, SI 1976/1213, art 26(b), Sch 5 para 4). For the meaning of 'Great Britain' see PARA 1 note 3 ante.

2 For the purposes of the Medicines Act 1968 Pt IV (ss 69-84) (as amended), 'the register' means the register kept for the purposes of s 75 (as amended): s 75(1).

3 See subject to ibid s 75(2)-(8) (as amended): see the text and notes 4-8 infra; and PARA 904 post.

4 'Prescribed' means prescribed by regulations under the Medicines Act 1968: s 132(1). Regulations prescribing anything for the purposes of s 75 (as amended) or s 76 (as amended) must be made by the health ministers: s 76(6). 'The health ministers' means the Secretary of State concerned with health in England and the Department of Health and Social Services, Northern Ireland (acting under the direction of the Secretary of State), and, in the case of anything falling to be done by the health ministers, means those ministers acting jointly: s 1(1)(a) (amended by the Transfer of Functions (Medicines and Poisons) Order 1999, SI 1999/3142, art 5, Schedule para 1(1)). As to the Secretary of State see PARA 5 ante. In relation to ministerial arrangements in Northern Ireland see the Northern Ireland Act 1998; and CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to regulations generally see the Medicines Act 1968 s 129 (as amended); and MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 5.

5 See the Medicines (Pharmacies) (Applications for Registration and Fees) Regulations 1973, SI 1973/1822, reg 3(1) (substituted by SI 1980/1806; and amended by SI 2004/3197). Fees are applicable for the purposes of the Royal Pharmaceutical Society: Medicines Act 1968 s 76(8). As to the Society see PARA 881 et seq ante.

6 Ibid s 75(1).

7 Ibid s 75(7)(a). For the meaning of 'retail pharmacy business' see PARA 903 post.

8 Ibid s 75(7)(b).

9 Ibid s 76(7).

## **UPDATE**

### **880-934 Pharmaceutical Chemists and Pharmacies**

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI 2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).

## **902 The register**

NOTE 1--Definition of 'registrar' amended: SI 2007/289.

NOTE 4--1968 Act s 76(6) repealed: SI 2006/2407.

NOTE 5--SI 1973/1822 reg 3(1) further amended: SI 2009/3071.



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 PHARMACEUTICAL CHEMISTS AND PHARMACIES/ (3) REGISTRATION/ (ii) Registration of  
 Premises/903. Meanings of 'retail pharmacy business' and 'retail sale'.

### **903. Meanings of 'retail pharmacy business' and 'retail sale'.**

'Retail pharmacy business' means a business<sup>1</sup> (not being a professional practice carried on by a practitioner<sup>2</sup>) which consists of or includes the retail sale of medicinal products<sup>3</sup> other than medicinal products on a general sale list<sup>4</sup> (whether medicinal products on such a list are sold in the course of that business or not)<sup>5</sup>.

References to selling by retail or to retail sale are references to selling a substance<sup>6</sup> or article to a person as being a person who buys it otherwise than for the following purposes<sup>7</sup>, namely, the purposes of selling it or supplying it<sup>8</sup>, or administering<sup>9</sup> it or causing it to be administered to one or more human beings<sup>10</sup>, in the course of a business carried on by that person<sup>11</sup>.

1 For the purposes of the Medicines Act 1968 generally, although not in this particular context, 'business' includes a professional practice, and includes any activity carried on by a body of persons, whether corporate or unincorporate: s 132(1). The ministers may by order direct that specified provisions of that Act, in so far as they relate to things done by a person in the course of a business carried on by him, are to have effect, subject to exceptions and modifications specified in the order, as if in those provisions any reference to a business included a reference to an activity (other than a business) of a description so specified: s 106(1). Without prejudice to this, they may also direct that specified provisions of the Act, in so far as they relate to such things, are to have effect, subject to specified exceptions and modifications, as if, in specified circumstances, a business carried on by a person's employer were a business carried on by that person: s 106(2). At the date at which this volume states the law, no orders had been made under s 106.

'The ministers' means the Minister of Health and Social Services for Northern Ireland, the Minister of Agriculture for Northern Ireland, and the Secretary of State (see PARA 5 ante), and, in the case of anything falling to be done by the ministers, means all those ministers acting jointly: s 1(1) (amended by the Minister of Agriculture, Fisheries and Food (Dissolution) Order 2002, SI 2002/794, art 5, Sch 1 para 15, Sch 2).

2 'Practitioner' means a doctor, dentist, veterinary surgeon or veterinary practitioner: Medicines Act 1968 s 132(1). 'Doctor' means a registered medical practitioner within the meaning of the Interpretation Act 1978 Sch 1 (see PARA 4 ante); Medicines Act 1968 s 132(1) (definition substituted by the Medical Act 1983 s 56(1), Sch 5 para 5). See also PARA 3 ante. 'Dentist' means a person registered in the dentists register under the Dentists Act 1984 (see PARA 417 ante) or entered in the list of visiting EEA practitioners under Sch 4 (see PARA 431 ante); Medicines Act 1968 s 132(1) (definition amended by the Dentists Act 1984 s 54(1), Sch 5 para 2; and the Dental Qualifications (Recognition) Regulations 1996, SI 1996/1496, reg 7(a)). 'Veterinary surgeon' means a person registered in the register of veterinary surgeons (see ANIMALS vol 2 (2008) PARA 1133); and 'veterinary practitioner' means a person registered in the supplementary veterinary register (see ANIMALS vol 2 (2008) PARA 1134); Medicines Act 1968 s 132(1).

3 For the meaning of 'medicinal product' see *ibid* s 130 (amended by the Animal Health and Welfare Act 1984 ss 13(2), 16, Sch 1 para 3, Sch 2; the Medical Devices (Consequential Amendments--Medicines) Regulations 1994, SI 1994/3119, reg 2(a), (b); the Blood Safety and Quality Regulations 2005, SI 2005/50, reg 25(1)(c), (d)); and MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 7.

4 Any reference to a medicinal product on a general sale list is a reference to a medicinal product of a description, or falling within a class, specified in an order under the Medicines Act 1968 s 51 (see MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 133), which is for the time being in force: s 51(2).

5 *Ibid* s 132(1).

6 'Substance' means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour: *ibid* s 132(1).

7 *Ibid* s 131(3).

8 *Ibid* s 131(2)(a).

9 'Administer' means administer to a human being or (but not in this context) an animal, whether orally, by injection or by introduction into the body in any other way, or by external application, whether by direct contact with the body or not; and any reference to administering or feeding a substance or article is a reference to administering or feeding it either in its existing state or after it has been dissolved or dispersed in, or diluted or mixed with, some other substance used as a vehicle: *ibid* s 130(9) (amended by the Animal Health and Welfare Act 1984 Sch 1 para 3).

10 Medicines Act 1968 s 131(2)(b).

11 *Ibid* s 131(2).

## **UPDATE**

### **880-934 Pharmaceutical Chemists and Pharmacies**

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI 2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).

### **903 Meanings of 'retail pharmacy business' and 'retail sale'**

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 1--'The ministers' means the Secretary of State and the Minister of Health and Social Services for Northern Ireland, and, in the case of anything falling to be done by the ministers, means those ministers acting jointly: 1968 Act s 1(1) (amended by SI 2006/2407).

NOTE 9--Definition of 'administer' amended: SI 2006/2407.

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PHARMACEUTICAL CHEMISTS AND PHARMACIES/ (3) REGISTRATION/ (ii) Registration of  
Premises/904. Application for registration of premises.

#### **904. Application for registration of premises.**

An application for the registration of premises must be made in writing<sup>1</sup>, signed by or on behalf of the person carrying on or intending to carry on a retail pharmacy business in the premises<sup>2</sup> and containing specified particulars<sup>3</sup>, and must be given or sent to the registrar<sup>4</sup>.

On the making of any application, the registrar must notify the appropriate minister<sup>5</sup> and must not enter the premises in the register before the end of the period of two months from the date on which the application was made unless that minister consents<sup>6</sup>. If it appears to that minister that in a material respect the premises do not comply with the requirements of regulations<sup>7</sup> for the time being in force and accordingly he proposes to certify that the premises are unsuitable for registration, he must before the end of the period of two months from the date of the application serve<sup>8</sup> notice on the applicant, stating his proposals and reasons, and a copy of the notice on the registrar, who must not enter the premises in the register<sup>9</sup> except where he is required<sup>10</sup> to do so<sup>11</sup>. Before the appropriate minister decides whether to issue a certificate, the applicant has the right to be heard or make written representations if he gives notice to the appropriate minister within the time allowed<sup>12</sup> after the service of the minister's notice on him<sup>13</sup>.

Where the appropriate minister has served notice, and determines not to issue a certificate certifying that the premises are unsuitable for registration, he must notify the applicant and the registrar of his decision and the registrar must forthwith enter the premises in the register<sup>14</sup>. Where the minister has served notice and issues a certificate, he must transmit the certificate to the registrar and notify the applicant, and, if required by the applicant, inform him of the reasons for his decision<sup>15</sup>. The validity of any decision of the minister or anything done in pursuance of such a decision may not be questioned in any legal proceedings, except in certain circumstances<sup>16</sup>.

1 Medicines (Pharmacies) (Applications for Registration and Fees) Regulations 1973, SI 1973/1822, reg 2(1).

2 Ibid reg 2(2). For the meaning of 'retail pharmacy business' see PARA 903 ante.

3 Ibid reg 2(3). These include the name and private residential address of the applicant or, in the case of a partnership application, of the partners; any business name; the name of the pharmacist or pharmacists under whose personal control the business is to be carried on; the address of the premises; particulars of former owners of the business, if any; the date of commencement of business; and a brief description with a plan of the premises showing the areas where medicinal products are to be sold, supplied, prepared, dispensed or stored: see Schedule.

4 Medicines Act 1968 s 75(2); Medicines (Pharmacies) (Applications for Registration and Fees) Regulations 1973, SI 1973/1822, reg 2(1). A separate application must be made in respect of each of the premises to be registered: reg 2(4). For the meaning of 'the registrar' see PARA 902 note 1 ante.

5 'The appropriate minister', in relation to premises in England or Wales, means the Secretary of State: Medicines Act 1968 s 75(8)(a) (amended by virtue of the Secretary of State for Social Services Order 1968, SI 1968/1699, arts 2, 5(4)(a)). As to the Secretary of State see PARA 5 ante.

6 Medicines Act 1968 s 75(3).

7 I.e regulations made under ibid s 66: see MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 6.

8 Any notice or other document required or authorised by any provision of Medicines Act 1968 to be served on any person, or to be given or sent to any person, may be served, given or sent: (1) by delivering it to him (s 127(a)); or (2) by sending it by post to him at his usual or last known residence or place of business in the United Kingdom (s 127(b)); or (3) in the case of a body corporate, by delivering it to the secretary or clerk of the

body corporate at its registered or principal office or sending it by post to the secretary or clerk of that body corporate at that office (s 127(c)). As to references to service by post see PARA 20 note 22 ante. For the meaning of 'United Kingdom' see PARA 1 note 3 ante. As to the registered office of a company see COMPANIES vol 14 (2009) PARA 129.

9 For the meaning of 'the register' see PARA 902 note 2 ante.

10 In accordance with the Medicines Act 1968 s 75(6): see the text to notes 14-15 infra.

11 Ibid s 75(4).

12 'The time allowed' means the period of 28 days or such extended period as the appropriate minister allows: ibid s 75(8).

13 Ibid s 75(5). The hearing will be before a person appointed by the minister: s 75(5)(a). The procedure to be followed in connection with hearings by such persons is set out in the Medicines Act 1968 (Hearings by Persons Appointed) Rules 1986, SI 1986/1761. The minister must consider any written representations made: Medicines Act 1968 s 75(5)(b).

14 Ibid s 75(6)(a). This is subject to s 75(7) (see PARA 902 ante): s 75(6)(a).

15 Ibid s 75(6)(b).

16 Ibid s 107(1). If the applicant desires to question the validity of the decision on specified grounds he may, within three months of the service on him of notice of the decision, apply to the High Court: s 107(2). The grounds are: (1) that the decision is not within the powers of the Medicines Act 1968 (s 107(2)(a)); or (2) that any of the applicable requirements of the Act or of regulations made under it have not been complied with (s 107(2)(b)). On any application the High Court may: (a) by interim order suspend the operation of the decision to which the application relates until the final determination of the proceedings (s 107(3)(a)); (b) if satisfied that the decision is not within the powers of the Act, or that the interests of the person making the application have been substantially prejudiced by a failure to comply with any of the requirements mentioned in s 107(2)(b), quash the decision (s 107(3)(b)). Where a decision to grant a licence or certificate is quashed, any licence or certificate granted in pursuance of that decision is void, and any proceedings on the application for the grant of the licence or certificate may be continued as if no such decision had been made: s 107(4). As to the High Court of Justice in England and Wales see COURTS vol 10 (Reissue) PARA 602 et seq.

## UPDATE

### 880-934 Pharmaceutical Chemists and Pharmacies

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI 2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).

### 904 Application for registration of premises

NOTES 1-4--A registrar may, during an outbreak of pandemic influenza, (1) accept an application under the Medicines Act 1968 s 75, which is not accompanied by all of the particulars specified in SI 1973/1822 Schedule; and (2) determine that the fee otherwise payable in respect of registration of premises under reg 3(1) is to be waived in whole or in part: SI 1973/1822 reg 3A (added by SI 2009/2502).

NOTE 13--SI 1986/1761 amended: SI 2005/2745, SI 2006/2407, SI 2008/2683.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/9. PHARMACEUTICAL CHEMISTS AND PHARMACIES/ (3) REGISTRATION/ (ii) Registration of Premises/905. Retention fees.

### **905. Retention fees.**

Where premises have been entered in the register<sup>1</sup>, a further fee, called a 'retention fee'<sup>2</sup>, of the prescribed<sup>3</sup> amount is payable by the person carrying on a retail pharmacy business<sup>4</sup> at those premises in respect of each year<sup>5</sup> subsequent to that in which the premises were so entered<sup>6</sup>. If, on demand being made to him<sup>7</sup>, that person fails within two months to pay a retention fee, the council of the Royal Pharmaceutical Society may direct the registrar to remove the premises from the register<sup>8</sup>. However, if before the end of the year covered by the retention fee, or such longer period as the council allows, that person pays the fee, with any prescribed penalty<sup>9</sup>, the registrar must restore the premises to the register<sup>10</sup>, and, if the council so directs, the restoration is deemed to have had effect as from the date of removal<sup>11</sup>.

1 For the meaning of 'the register' see PARA 902 note 2 ante.

2 Medicines Act 1968 s 76(1). See the Medicines (Pharmacies) (Applications for Registration and Fees) Regulations 1973, SI 1973/1822, reg 3(2) (reg 3(2), (3) substituted by SI 1980/1806; and amended by SI 2004/3197). See also PARA 902 note 5 ante.

3 For the meaning of 'prescribed' see PARA 902 note 4 ante.

4 For the meaning of 'retail pharmacy business' see PARA 903 ante.

5 'Year' means a 12 month period beginning on such date as the council of the Royal Pharmaceutical Society may from time to time determine: Medicines Act 1968 s 74(3). As to the council see PARA 882 ante. As to the Society see PARA 881 et seq ante.

6 Ibid s 76(1).

7 The demand must be in writing and must be sent by the registrar by registered post or recorded delivery: Medicines (Pharmacies) (Applications for Registration and Fees) Regulations 1973, SI 1973/1822, reg 4. For the meaning of 'the registrar' see PARA 902 note 1 ante.

8 Medicines Act 1968 s 76(2).

9 See the Medicines (Pharmacies) (Applications for Registration and Fees) Regulations 1973, SI 1973/1822, reg 3(3) (as substituted and amended: see note 2 supra). See also PARA 902 note 5 ante.

10 Medicines Act 1968 s 76(2)(a).

11 Ibid s 76(2)(b).

## **UPDATE**

### **880-934 Pharmaceutical Chemists and Pharmacies**

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI

2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI 2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).

#### **905 Retention fees**

NOTE 2--SI 1973/1822 reg 3(2), (3) further amended: SI 2009/3071.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/9. PHARMACEUTICAL CHEMISTS AND PHARMACIES/ (3) REGISTRATION/ (ii) Registration of Premises/906. Change of ownership.

### **906. Change of ownership.**

Where a change occurs in the ownership of a retail pharmacy business<sup>1</sup> carried on at any registered premises on the death of the person or one of the partners carrying on the business, the registration becomes void at the end of the three month period from the date of the death<sup>2</sup>. Where such a change occurs in any other case, the registration becomes void at the end of the period of 28 days from the date on which the change occurs<sup>3</sup>.

Application for restoration of the premises to the register<sup>4</sup> may be made by the person who, in consequence of the change of ownership, has become the owner of the business<sup>5</sup>. The registrar<sup>6</sup> must restore the premises to the register on payment of any necessary fee<sup>7</sup> if it is shown to his reasonable satisfaction either: (1) that at the time of the application the applicant is a person lawfully conducting a retail pharmacy business<sup>8</sup>; or (2) that, if the premises are so restored and the applicant thereafter carries on such a business there, then as from the time when he begins to do so he will be a person lawfully conducting such a business<sup>9</sup>.

1 For the meaning of 'retail pharmacy business' see PARA 903 ante.

2 Medicines Act 1968 s 76(3)(a).

3 Ibid s 76(3)(b).

4 For the meaning of 'the register' see PARA 902 note 2 ante.

5 Medicines Act 1968 s 76(5).

6 For the meaning of 'the registrar' see PARA 902 note 1 ante.

7 Ie in a case where, if the registration had not become void, a retention fee (see PARA 905 ante) would have become payable, a fee equal to that fee: Medicines Act 1968 s 76(5). See also PARA 902 note 5 ante.

8 Ibid s 76(5)(a).

9 Ibid s 76(5)(b).

## **UPDATE**

### **880-934 Pharmaceutical Chemists and Pharmacies**

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI 2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).





Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/9. PHARMACEUTICAL CHEMISTS AND PHARMACIES/ (3) REGISTRATION/ (ii) Registration of Premises/907. Annual return of premises.

### **907. Annual return of premises.**

Every person who carries on a retail pharmacy business<sup>1</sup> must, each January, send to the registrar<sup>2</sup> a list of all premises at which his business, so far as it consists of the retail sale<sup>3</sup> of medicinal products<sup>4</sup>, is carried on<sup>5</sup>, and, in the case of any premises where medicinal products, other than medicinal products on a general sale list<sup>6</sup>, are sold by retail, or are supplied in circumstances corresponding to retail sale<sup>7</sup>, the name of the pharmacist<sup>8</sup> under whose personal control the business, so far as concerns the retail sale or supply of medicinal products at those premises, is carried on<sup>9</sup>. Any person who contravenes this provision is guilty of an offence and is liable on summary conviction to a fine<sup>10</sup>.

1 For the meaning of 'retail pharmacy business' see PARA 903 ante.

2 For the meaning of 'the registrar' see PARA 902 note 1 ante.

3 For the meaning of 'retail sale' see PARA 903 ante.

4 For the meaning of 'medicinal product' see PARA 903 note 3 ante.

5 Medicines Act 1968 s 77(a).

6 As to references to medicinal products on a general sale list see PARA 903 note 4 ante.

7 Any reference to supplying anything in circumstances corresponding to retail sale is a reference to supplying it, otherwise than by way of sale, to a person as being a person who receives it for a purpose other than that of: (1) selling it or supplying it; or (2) administering it (see PARA 903 note 9 ante) or causing it to be administered to one or more human beings in the course of a business carried on by that person: Medicines Act 1968 s 131(4). For the meaning of 'business' see PARA 903 note 1 ante.

8 For the purposes of the Medicines Act 1968, 'pharmacist', in relation to Great Britain, means a person registered in the register of pharmaceutical chemists established under the Pharmacy Act 1852 (repealed) and maintained under the Pharmacy Act 1954 s 2(1) (see PARA 888 ante); Medicines Act 1968 s 132(1). It thus has the same meaning as 'registered pharmaceutical chemist' in the Pharmacy Act 1954 (see PARA 889 note 1 ante). For the meaning of 'Great Britain' see PARA 1 note 3 ante.

9 Medicines Act 1968 s 77(b).

10 Ibid s 84(1) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). The penalty is a fine not exceeding level 3 on the standard scale: see the Medicines Act 1968 s 84(1) (as so amended). As to the standard scale see PARA 185 note 11 ante. As to enforcement see PARA 916 post.

## **UPDATE**

### **880-934 Pharmaceutical Chemists and Pharmacies**

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI

2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI 2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).

### **907 Annual return of premises**

NOTE 8--Definition of 'pharmacist' amended: SI 2007/289.

TEXT AND NOTE 9--1968 Act s 77(b) and the 'and' immediately preceding it repealed: Health Act 2006 s 30(2), Sch 9 (in force 1 October 2009: SI 2008/2714).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/9. PHARMACEUTICAL CHEMISTS AND PHARMACIES/ (3) REGISTRATION/ (ii) Registration of Premises/908. Separate premises.

### **908. Separate premises.**

Separate or distinct parts of a building are to be taken to be separate premises for the purposes of the application of the provisions concerning pharmacies<sup>1</sup> to a business<sup>2</sup> which: (1) is or is to be carried on in one or more such separate or distinct parts (but not the whole) of a building, whether it is or is to be also carried on elsewhere or not<sup>3</sup>; or (2) so far as concerns the retail sale<sup>4</sup> of medicinal products<sup>5</sup>, or the supply of such products in circumstances corresponding to retail sale<sup>6</sup>, is or is to be carried on in one or more such separate or distinct parts (but not the whole) of a building, whether it is or is to be also carried on elsewhere or not<sup>7</sup>. Exceptions or modifications may be made by order<sup>8</sup>.

1    Ie the Medicines Act 1968 Pt IV (ss 69-84) (as amended): see PARA 902 et seq ante.

2    For the meaning of 'business' see PARA 903 note 1 ante.

3    Medicines Act 1968 s 69(2)(a).

4    For the meaning of 'retail sale' see PARA 903 ante.

5    For the meaning of 'medicinal product' see PARA 903 note 3 ante.

6    As to references to supplying anything in circumstances corresponding to retail sale see PARA 907 note 7 ante.

7    Medicines Act 1968 s 69(2)(b).

8    See *ibid* s 73(3); and PARA 909 note 16 post.

### **UPDATE**

#### **880-934 Pharmaceutical Chemists and Pharmacies**

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI 2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/9. PHARMACEUTICAL CHEMISTS AND PHARMACIES/(4) LAWFUL CONDUCT OF BUSINESS; USE OF TITLES/909. Lawful conduct of business.

## **(4) LAWFUL CONDUCT OF BUSINESS; USE OF TITLES**

### **909. Lawful conduct of business.**

Subject to any exceptions or modifications made by order<sup>1</sup>, a person carrying on a retail pharmacy business<sup>2</sup> is taken to be a person lawfully conducting such a business if, not being disqualified<sup>3</sup> for doing so: (1) he (or, if the business is carried on by a partnership, each of the partners) is a pharmacist<sup>4</sup> and certain conditions<sup>5</sup> are fulfilled in relation to the business<sup>6</sup>; (2) that person is a body corporate and certain other conditions<sup>7</sup> are so fulfilled<sup>8</sup>; or (3) he is a representative<sup>9</sup> of a pharmacist and certain other conditions<sup>10</sup> are fulfilled in relation to him and to the business and a specified period<sup>11</sup> has not expired<sup>12</sup>.

The health ministers<sup>13</sup> by order<sup>14</sup> may add to, revoke or vary any of the appropriate statutory provisions<sup>15</sup> so as either: (a) to modify, or provide new conditions in substitution for, the conditions referred to in heads (1) to (3) above<sup>16</sup>; or (b) for the purposes of any of those heads, to provide alternative conditions, compliance with which is to have the like effect as compliance with the conditions referred to in that head<sup>17</sup>. Any provision made by such an order may be made either generally or in relation to any particular circumstances specified in it<sup>18</sup>.

1 See the Medicines Act 1968 s 73(3); and note 16 infra.

2 For the meaning of 'retail pharmacy business' see PARA 903 ante.

3 Ie disqualified by virtue of the Medicines Act 1968 s 80 (as amended): see PARA 922 post.

4 For the meaning of 'pharmacist' see PARA 907 note 8 ante.

5 Ie the conditions specified in the Medicines Act 1968 s 70(1), (2) (s 70(1) as amended): see PARAS 910-911 post.

6 Ibid s 69(1)(a).

7 Ie the conditions specified in ibid s 71(1), (2) (s 71(1) as amended): see PARA 912 post.

8 Ibid s 69(1)(b).

9 For the meaning of 'representative' see ibid s 72(4) (as amended); and PARA 913 note 1 post.

10 Ie the conditions specified in ibid s 72(2): see PARA 913 post.

11 Ie the period specified in ibid s 72(3): see PARA 913 post.

12 Ibid s 69(1)(c). As from a day to be appointed, a person carrying on a retail pharmacy business is not to be taken to be a person lawfully conducting such a business if: (1) in any case, the business is under the personal control of a pharmacist who is subject to a suspension order or an interim suspension order; or (2) in the case of a body corporate, the business is under the management of a superintendent who is subject to such an order: s 69(1A) (s 69(1A), (1B) prospectively added by the Pharmacists (Fitness to Practise) Act 1997 s 1, Schedule para 5). For the purposes of the Medicines Act 1968 s 69(1A) (as added), a person is subject to an order during the period for which the order has effect; and 'suspension order' and 'interim suspension order' have the same meanings as in the Pharmacy Act 1954 (see PARA 901 ante): Medicines Act 1968 s 69(1B) (as so added). At the date at which this volume states the law no day had been appointed for the commencement of these provisions.

13 For the meaning of 'the health ministers' see PARA 902 note 4 ante.

14 No such order may be made unless a draft has been laid before Parliament and approved by a resolution of each House of Parliament: Medicines Act 1968 s 73(5).

15 *Ibid* ss 70-72 (as amended): see PARAS 910-913 post.

16 *Ibid* s 73(1)(a). Any order made under s 73 may direct that s 69(1) (as amended) (see the text and notes 2-12 *supra*) or s 69(2) (see PARA 908 *ante*) is to have effect subject to such exceptions or modifications as appear to the health ministers to be necessary or expedient in consequence of the provision made by the order in accordance with s 73(1): s 73(3). Where such an order is in force, any reference to s 69 (as amended) in any other enactment as amended by the Medicines Act 1968 is to be construed as a reference to s 69 (as amended) as modified by the order: s 73(4). At the date at which this volume states the law, no such order had been made.

17 *Ibid* s 73(1)(b). See also note 16 *supra*.

18 *Ibid* s 73(2). See also note 16 *supra*.

## **UPDATE**

### **880-934 Pharmaceutical Chemists and Pharmacies**

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI 2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).

### **909 Lawful conduct of business**

NOTE 4--See Medicines Act 1968 s 69(1ZA) (amended by SI 2007/3101).

TEXT AND NOTES 13, 16--References to 'the health ministers' are now references to 'the ministers': 1968 Act s 73(1), (3) (amended by the Veterinary Medicines Regulations 2006, SI 2006/2407).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/9. PHARMACEUTICAL CHEMISTS AND PHARMACIES/(4) LAWFUL CONDUCT OF BUSINESS; USE OF TITLES/910. Business carried on by individual pharmacist.

### **910. Business carried on by individual pharmacist.**

Where a retail pharmacy business<sup>1</sup> is carried on by an individual pharmacist<sup>2</sup>, the conditions to be fulfilled<sup>3</sup> in order that the business may be lawfully conducted are that, at all premises where the business is carried on and medicinal products<sup>4</sup>, other than medicinal products on a general sale list<sup>5</sup>, are sold by retail<sup>6</sup>: (1) the business, so far as concerns the retail sale there of medicinal products (whether on a general sale list or not), or the supply there of such products in circumstances corresponding to retail sale<sup>7</sup>, is under the personal control<sup>8</sup> of the person carrying on that business or that of another pharmacist<sup>9</sup>; and (2) his name and certificate of registration<sup>10</sup>, or those of the other pharmacist, as the case may be, are conspicuously exhibited<sup>11</sup>.

1 For the meaning of 'retail pharmacy business' see PARA 903 ante.

2 For the meaning of 'pharmacist' see PARA 907 note 8 ante.

3 The conditions referred to in the Medicines Act 1968 s 69(1)(a): see PARA 909 head (1) ante.

4 For the meaning of 'medicinal product' see PARA 903 note 3 ante.

5 As to references to medicinal products on a general sale list see PARA 903 note 4 ante.

6 As to references to sale by retail see PARA 903 ante.

7 As to references to supplying anything in circumstances corresponding to retail sale see PARA 907 note 7 ante.

8 Where the premises where the business is carried on have been registered pharmacies for less than three years, the personal control must be of persons other than those who are pharmacists by virtue of the Pharmacy Act 1954 s 4A (as added and amended) (qualification by European diploma) or any corresponding provisions applying to Northern Ireland: Medicines Act 1968 s 70(1) (amended by the Pharmaceutical Qualifications (EEC Recognition) Order 1987, SI 1987/2202, art 3(1); and the Pharmaceutical Qualifications (EEC Recognition) Regulations 1987, SI 1987/457, reg 3). 'Registered pharmacy' means premises for the time being entered in the register required to be kept under the Medicines Act 1968 s 75 (see PARA 902 ante): ss 74(1), 132(1) (s 74(1) amended by the Statute Law (Repeals) Act 1993). As to qualification by European diploma see PARA 896 ante.

9 Medicines Act 1968 s 70(1)(a). As to the exercise of personal control by a pharmacist in the case of a self-service shop see *Pharmaceutical Society of Great Britain v Boots Cash Chemists (Southern) Ltd* [1953] 1 QB 401, [1953] 1 All ER 482, CA.

10 'Certificate of registration' in relation to Great Britain means a certificate of registration under the Pharmacy Act 1954 (see PARA 897 ante) or, in relation to Northern Ireland, means a certificate of registration within the meaning of the Pharmacy (Northern Ireland) Order 1976, SI 1976/1213: Medicines Act 1968 s 70(3) (amended by the Pharmacy (Northern Ireland) Order 1976, SI 1976/1213, art 26(b), Sch 5 para 5). For the meaning of 'Great Britain' see PARA 1 note 3 ante.

11 Medicines Act 1968 s 70(1)(b).

## **UPDATE**

### **880-934 Pharmaceutical Chemists and Pharmacies**

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI 2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).

### **910 Business carried on by individual pharmacist**

TEXT AND NOTES--As from 1 October 2009, Medicines Act 1968 s 70 substituted by Health Act 2006 s 27(1); SI 2008/2714.

The conditions referred to in the 1968 Act s 69(1)(a) are that s 70(2) and (3) are both satisfied as respects each of the premises where the retail pharmacy business is carried on and medicinal products, other than medicinal products on a general sale list, are sold by retail: s 70(1). The 1968 Act s 70(2) is satisfied if a responsible pharmacist who satisfies the requirements of s 70(4) and (5) is in charge of the business at those premises, so far as concerns (1) the retail sale at those premises of medicinal products (whether they are on a general sale list or not), and (2) the supply at those premises of such products in circumstances corresponding to retail sale: s 70(2). Section 70(3) is satisfied if a notice is conspicuously displayed at those premises stating (a) the name of the responsible pharmacist for the time being, (b) the number of his registration under the Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289, and (c) the fact that he is for the time being in charge of the business at those premises: 1968 Act s 70(3) (amended by SI 2007/289). The responsible pharmacist must be (i) the person carrying on the business, or (ii) if the business is carried on by a partnership, one of the partners, or (iii) another pharmacist: 1968 Act s 70(4)). In relation to premises in Great Britain that have been registered pharmacies for less than three years, the responsible pharmacist may not be a person who is a pharmacist by virtue of SI 2007/289: 1968 Act s 70(5) (amended by SI 2007/289). As to the responsible pharmacist see PARA 910A.



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### **910A. The responsible pharmacist.**

The following provisions come into force on 1 October 2009: SI 2008/2714.

It is the duty of the responsible pharmacist<sup>1</sup> to secure the safe and effective running of the pharmacy business at the premises in question so far as concerns (1) the retail sale at those premises of medicinal products (whether they are on a general sale list or not), and (2) the supply at those premises of such products in circumstances corresponding to retail sale<sup>2</sup>. A person may not be the responsible pharmacist in respect of more than one set of premises at the same time, except in circumstances specified by the health ministers in regulations, and then only if such conditions as may be so specified are complied with<sup>3</sup>. The responsible pharmacist must establish (if they are not already established), maintain and keep under review procedures designed to secure the safe and effective running of the business as mentioned above<sup>4</sup>. The responsible pharmacist must make a record (which must be available at the premises) of (a) who the responsible pharmacist is in relation to the premises on any day and at any time, and (b) such other matters as the health ministers specify in regulations<sup>5</sup>. It is the duty of the person carrying on the business to secure that (i) the record is properly maintained, and (ii) it is preserved for at least as long as is specified in regulations made by the health ministers<sup>6</sup>. The health ministers may make further provision in regulations in relation to the responsible pharmacist<sup>7</sup>.

Supplementary provision is made<sup>8</sup>.

1     Ie the responsible pharmacist mentioned in the Medicines Act 1968 ss 70, 71 and 72 (see PARA 910, PARAS 912, 913).

2     Ibid s 72A(1) (added by Health Act 2006 s 30(1)).

3     1968 Act s 72A(2) .

4     Ie as mentioned in ibid s 72A(1): s 72A(3).

5     Ibid s 72A(4). See further NOTE 6. See the Medicines (Pharmacies) (Responsible Pharmacist) Regulations 2008, SI 2008/2789, which provide (1) that the maximum period for which the responsible pharmacist may be absent from the premises is two hours during the pharmacy's business hours (see reg 3); 'premises' means the premises from which the pharmacy business is carried on; 'pharmacy business' means the business in respect of which the responsible pharmacist has a duty under the Medicines Act 1968 s 72A(1) (SI 2008/2789 reg 2); (2) the matters which must be covered by pharmacy procedures (see reg 4); 'pharmacy procedures' means the procedures referred to in the Medicines Act 1968 s 72A(3) (SI 2008/2789 reg 4(5)); and (3) the particulars which must be included in the pharmacy record (see reg 5); 'pharmacy record' means the record referred to in the Medicines Act 1968 s 72A(4) (SI 2008/2789 reg 5(5)).

6     1968 Act s 72A(5).

A person who fails to comply with either of the following will be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale (1) s 72A(4), (2) s 72A(5): s 84(A1) (added by Health Act 2006 s 30(3)). As to the standard scale see PARA 185.

7     1968 Act s 72A(6). The regulations may, in particular, make further provision about the matters mentioned in s 72A(1)-(4), and make provision about (1) the qualifications and experience which a person must have if he is to be a responsible pharmacist, (2) the responsible pharmacist's absence from the premises, (3) the supervision by the responsible pharmacist, when he is not present on the premises, of relevant activities there, (4) circumstances in which the responsible pharmacist may supervise relevant activities at a pharmacy of which he is not the responsible pharmacist, (5) the form in which the procedures referred to in s 72A(3) are to be recorded and matters which must be covered by them, (6) the form in which the record referred to in s 72A(4)

is to be kept and particulars which must be included in it: s 72A(7). In heads (3) and (4), 'relevant activities' means things mentioned in s 10 and transactions mentioned in s 52(1)(c): s 72A(8).

8 See *ibid* s 72B (added by Health Act 2006 s 30(1); and amended by SI 2007/289). See also 1968 Act s 108(6A)-(6D) (enforcement); and PARA 916.

## **UPDATE**

### **880-934 Pharmaceutical Chemists and Pharmacies**

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI 2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).

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PHARMACEUTICAL CHEMISTS AND PHARMACIES/(4) LAWFUL CONDUCT OF BUSINESS; USE OF  
TITLES/911. Business carried on by partners.

### **911. Business carried on by partners.**

Where a retail pharmacy business<sup>1</sup> is carried on by a partnership, the conditions to be fulfilled<sup>2</sup> in order that the business may be lawfully conducted are that, at all premises where the business is carried on and medicinal products<sup>3</sup>, other than medicinal products on a general sale list<sup>4</sup>, are sold by retail<sup>5</sup>: (1) the business, so far as concerns the retail sale there of medicinal products (whether on a general sale list or not), or the supply there of such products in circumstances corresponding to retail sale<sup>6</sup>, is under the personal control<sup>7</sup> of one or more of the partners carrying on that business or that of another pharmacist<sup>8</sup>; and (2) the name and certificate of registration<sup>9</sup> of the partner, or, if more than one, of each partner, exercising personal control there, or those of the other pharmacist, as the case may be, are conspicuously exhibited<sup>10</sup>.

1 For the meaning of 'retail pharmacy business' see PARA 903 ante.

2 I.e. the conditions referred to in the Medicines Act 1968 s 69(1)(a): see PARA 909 head (1) ante.

3 For the meaning of 'medicinal product' see PARA 903 note 3 ante.

4 As to references to medicinal products on a general sale list see PARA 903 note 4 ante.

5 As to references to sale by retail see PARA 903 ante.

6 As to references to supplying anything in circumstances corresponding to retail sale see PARA 907 note 7 ante.

7 Where the premises where the business is carried on have been registered pharmacies for less than three years, the personal control must be of persons other than those who are pharmacists by virtue of the Pharmacy Act 1954 s 4A (as added and amended) (qualification by European diploma) or any corresponding provisions applying to Northern Ireland: Medicines Act 1968 s 70(1) (amended by the Pharmaceutical Qualifications (EEC Recognition) Order 1987, SI 1987/2202, art 3(1); and the Pharmaceutical Qualifications (EEC Recognition) Regulations (Northern Ireland) 1987, SI 1987/457, reg 3); applied with modifications by the Medicines Act 1968 s 70(2). For the meaning of 'registered pharmacy' see PARA 910 note 8 ante. For the meaning of 'pharmacist' see PARA 907 note 8 ante. As to qualification by European diploma see PARA 896 ante. For the meaning of 'Great Britain' see PARA 1 note 3 ante.

8 Ibid s 70(1)(a), (2)(a).

9 For the meaning of 'certificate of registration' see PARA 910 note 10 ante.

10 Medicines Act 1968 s 70(1)(b), (2)(b).

## **UPDATE**

### **880-934 Pharmaceutical Chemists and Pharmacies**

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of

Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI 2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).

### **911 Business carried on by partners**

TEXT AND NOTES--As from 1 October 2009 (see SI 2008/2714) the Medicines Act 1968 s 70 is substituted; see PARA 910.

NOTE 8--Medicines Act 1968 s 70(2)(a) amended: SI 2007/3101.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/9. PHARMACEUTICAL CHEMISTS AND PHARMACIES/(4) LAWFUL CONDUCT OF BUSINESS; USE OF TITLES/912. Business carried on by body corporate.

## **912. Business carried on by body corporate.**

Where a retail pharmacy business<sup>1</sup> is carried on by a body corporate, the conditions to be fulfilled<sup>2</sup> in order that the business may be lawfully conducted are: (1) that the business, so far as concerns the keeping, preparing and dispensing of medicinal products<sup>3</sup>, other than medicinal products on a general sale list<sup>4</sup>, is under the management of a superintendent who satisfies certain conditions<sup>5</sup>; and (2) that at all premises where the business is carried on and where medicinal products, other than medicinal products on a general sale list, are sold by retail<sup>6</sup>: (a) the business, so far as concerns the retail sale there of medicinal products, whether on a general sale list or not, or the supply there of such products in circumstances corresponding to retail sale<sup>7</sup>, if it is not under the superintendent's personal control<sup>8</sup>, is carried on, subject to the superintendent's directions, under the personal control of a manager or assistant who is a pharmacist<sup>9</sup>; and (b) the name and certificate of registration<sup>10</sup> of the person under whose personal control the business is so carried on are conspicuously exhibited<sup>11</sup>.

1 For the meaning of 'retail pharmacy business' see PARA 903 ante.

2 I.e. the conditions referred to in the Medicines Act 1968 s 69(1)(b): see PARA 909 head (2) ante. The body corporate must not have been disqualified: see s 80(1); and PARA 922 post.

3 For the meaning of 'medicinal product' see PARA 903 note 3 ante.

4 As to references to medicinal products on a general sale list see PARA 903 note 4 ante.

5 Medicines Act 1968 s 71(1) (amended by the Pharmaceutical Qualifications (EEC Recognition) Order 1987, SI 1987/2202, art 3(2)). The conditions are that: (1) he is a pharmacist; (2) a statement, signed by him and on behalf of the body corporate, specifying his name and stating whether he is a member of the body's board, has been sent to the registrar; and (3) he does not act in a similar capacity for any other body corporate: Medicines Act 1968 s 71(2). For the meaning of 'pharmacist' see PARA 907 note 8 ante; and for the meaning of 'registrar' see PARA 902 note 1 ante.

6 As to references to sale by retail see PARA 903 ante.

7 As to references to supplying anything in circumstances corresponding to retail sale see PARA 907 note 7 ante.

8 Where the premises where the business is carried on have been registered pharmacies for less than three years, the personal control whether of the superintendent or a manager or assistant must be of persons other than those who are pharmacists by virtue of the Pharmacy Act 1954 s 4A (as added and amended) (qualification by European diploma) or any corresponding provisions applying to Northern Ireland: Medicines Act 1968 s 71(1) (amended by the Pharmaceutical Qualifications (EEC Recognition) Order 1987, SI 1987/2202, art 3(2); and the Pharmaceutical Qualifications (EEC Recognition) Regulations (Northern Ireland) 1987, SI 1987/457, reg 3). For the meaning of 'registered pharmacy' see PARA 910 note 8 ante. As to qualification by European diploma see PARA 896 ante.

9 Medicines Act 1968 s 71(1)(a).

10 For the meaning of 'certificate of registration' see PARA 910 note 10 ante.

11 Medicines Act 1968 s 71(1)(b).

## **UPDATE**

### **880-934 Pharmaceutical Chemists and Pharmacies**

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI 2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).

## **912 Business carried on by body corporate**

TEXT AND NOTES--As from 1 October 2009 (see SI 2008/2714) 1968 Act s 71 substituted.

The conditions referred to in the Medicines Act 1968 s 69(1)(b) are (1) that the retail pharmacy business, so far as concerns the keeping, preparing and dispensing of medicinal products other than medicinal products on a general sale list, is under the management of a superintendent in respect of whom the requirements specified in s 71(6) are fulfilled, and (2) that s 71(2) and (3) are both satisfied as respects each of the premises where the business is carried on and medicinal products, other than medicinal products on a general sale list, are sold by retail: s 71(1) (substituted by Health Act 2006 s 28(1)). The Medicines Act 1968 s 71(2) is satisfied if a responsible pharmacist who satisfies the requirements of s 71(4) and (5) is in charge of the business at the premises mentioned in head (2), so far as concerns (a) the retail sale at those premises of medicinal products (whether they are on a general sale list or not), and (b) the supply at those premises of such products in circumstances corresponding to retail sale: s 71(2) (as substituted). Section 71(3) is satisfied if a notice is conspicuously displayed at those premises stating (i) the name of the responsible pharmacist for the time being, (ii) the number of his registration under the Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289, and (iii) the fact that he is for the time being in charge of the business at those premises: 1968 Act s 71(3) (as substituted; and amended by SI 2007/289). The responsible pharmacist must be (A) the superintendent mentioned in head (1), or (B) a manager or assistant subject to the directions of the superintendent and who is a pharmacist: 1968 Act s 71(4) (as substituted). In relation to premises in Great Britain that have been registered pharmacies for less than three years, the responsible pharmacist may not be a person who is a pharmacist by virtue of SI 2007/289: 1968 Act s 71(5) (as substituted; and amended by SI 2007/289). The requirements referred to in head (1) in relation to a superintendent are that (aa) he is a pharmacist, (bb) a statement in writing signed by him, and signed on behalf of the body corporate, specifying his name and stating whether he is a member of the board of that body or not, has been sent to the registrar, and (cc) he does not act in a similar capacity for any other body corporate: s 71(6) (as substituted). As to the responsible pharmacist see PARA 910A.

NOTE 5--See the Medicines Act 1968 s 71(3) (added by SI 2007/3101).

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### **913. Business carried on by pharmacist's representative.**

Special provisions apply where a representative<sup>1</sup> of a pharmacist<sup>2</sup> who carries on a retail pharmacy business<sup>3</sup> carries on the pharmacist's business after: (1) the pharmacist dies<sup>4</sup>; (2) the pharmacist is adjudged bankrupt or enters into a composition or scheme or deed of arrangement with his creditors<sup>5</sup>; or (3) a receiver is appointed<sup>6</sup> for the pharmacist under the mental health legislation<sup>7</sup>.

In these circumstances, the conditions to be fulfilled<sup>8</sup> in order that the representative may lawfully conduct the business are that: (a) the names and addresses of the representative and of the pharmacist have been notified to the registrar<sup>9</sup>; and (b) at all premises at which the business is carried on and medicinal products<sup>10</sup>, other than medicinal products on a general sale list<sup>11</sup>, are sold by retail<sup>12</sup>, the business, so far as concerns the retail sale there of medicinal products (whether on a general sale list or not) or the supply there of such products in circumstances corresponding to retail sale<sup>13</sup>, is under the personal control of a pharmacist<sup>14</sup> whose name and certificate of registration<sup>15</sup> are conspicuously exhibited<sup>16</sup>.

Further, the following period<sup>17</sup> must not have expired<sup>18</sup>: (i) where the pharmacist has died, the period of five years from the date of his death<sup>19</sup>; (ii) where he has been adjudged bankrupt, the period of three years from the adjudication<sup>20</sup>; (iii) where he has entered into a composition, scheme or deed of arrangement, the period of three years from the date on which the trustee appointed under it becomes entitled to carry on the business<sup>21</sup>; and (iv) where a receiver has been appointed for him, the period of three years from the date of the appointment<sup>22</sup>. On the application of the pharmacist's representative, the statutory committee<sup>23</sup> may, having regard to all the circumstances of the case, extend the period<sup>24</sup>.

1 'Representative' means: (1) in relation to a pharmacist (see note 2 *infra*) who has died, his executor or administrator and, in respect of a three month period from his death, if he has died leaving no executor entitled and willing to carry on the business, includes any person beneficially interested in his estate; (2) in a case falling within head (2) in the text, the trustee in bankruptcy or any trustee appointed under the composition, scheme or deed; and (3) in a case falling within head (3) in the text, the receiver: Medicines Act 1968 s 72(4). In head (2) *supra*, the reference to a trustee appointed under a composition, scheme or deed of arrangement includes a reference to the supervisor of a voluntary arrangement proposed for the purposes of, and approved under, the Insolvency Act 1986 Pt VIII (ss 252-263G) (as amended) (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 81 *et seq*) or the Insolvency (Northern Ireland) Order 1989, SI 1989/2402, Pt VIII Ch II: Medicines Act 1968 s 72(4) (amended by the Insolvency Act 1985 s 235, Sch 8 para 15; and the Insolvency Act 1986 s 439(2), Sch 14).

2 For the meaning of 'pharmacist' see PARA 907 note 8 *ante*.

3 For the meaning of 'retail pharmacy business' see PARA 903 *ante*.

4 Medicines Act 1968 s 72(1)(a).

5 *Ibid* s 72(1)(b). See generally BANKRUPTCY AND INDIVIDUAL INSOLVENCY.

6 *Ie* under the Mental Health Act 1983 Pt VII (ss 93-113) (as amended): see MENTAL HEALTH vol 30(2) (Reissue) PARA 704 *et seq*.

7 Medicines Act 1968 s 72(1)(c). Section 72(1)(c) refers to the Mental Health Act 1959 Pt VIII, but this has been repealed: see now the Mental Health Act 1983; note 6 *supra*; and MENTAL HEALTH.

8 *Ie* the conditions referred to in the Medicines Act 1968 s 69(1)(c): see PARA 909 head (3) *ante*.

- 9 Ibid s 72(2). For the meaning of 'the registrar' see PARA 902 note 1 ante. The representative must not have been disqualified: see s 80(4); and PARA 922 post.
- 10 For the meaning of 'medicinal product' see PARA 903 note 3 ante.
- 11 As to references to medicinal products on a general sale list see PARA 903 note 4 ante.
- 12 As to references to sale by retail see PARA 903 ante.
- 13 As to references to supplying anything in circumstances corresponding to retail sale see PARA 907 note 7 ante.
- 14 Medicines Act 1968 s 72(2)(a).
- 15 For the meaning of 'certificate of registration' see PARA 910 note 10 ante.
- 16 Medicines Act 1968 s 72(2)(b).
- 17 This is the period referred to in PARA 909 head (3) ante.
- 18 See the Medicines Act 1968 s 69(1)(c); and PARA 909 head 3 ante.
- 19 Ibid s 72(3)(a).
- 20 Ibid s 72(3)(b).
- 21 Ibid s 72(3)(c).
- 22 Ibid s 72(3)(d).
- 23 Ie the statutory committee of the Royal Pharmaceutical Society of Great Britain: see PARA 917 post. As to the Society see PARA 881 et seq ante.
- 24 Medicines Act 1968 s 72(3).

## UPDATE

### 880-934 Pharmaceutical Chemists and Pharmacies

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI 2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).

### 913 Business carried on by pharmacist's representative

TEXT AND NOTES--1968 Act s 72 further amended: Mental Capacity Act 2005 Sch 6 para 14; SI 2007/289.

TEXT AND NOTES 8-16--As from 1 October 2009 (see SI 2008/2714) 1968 Act s 72(2) substituted.

The conditions referred to in the 1968 Act s 69(1)(c) are (1) that the name and address of the representative, and the name of the pharmacist whose representative he is,



have been notified to the registrar, and (2) that s 72(2A) and (2B) are both satisfied as respects each of the premises at which the business is carried on and medicinal products, other than medicinal products on a general sale list, are sold by retail: s 72(2) (substituted by Health Act 2006 s 29). The 1968 Act s 72(2A) is satisfied if a responsible pharmacist is in charge of the business at the premises mentioned in head (2), so far as concerns (a) the retail sale at those premises of medicinal products (whether they are on a general sale list or not), and (b) the supply at those premises of such products in circumstances corresponding to retail sale: s 72(2A) (as added by Health Act 2006 s 29). The 1968 Act s 72(2B) is satisfied if a notice is conspicuously displayed at those premises stating (i) the name of the responsible pharmacist for the time being, (ii) the number of his registration under the Pharmacy Act 1954, and (iii) the fact that he is for the time being in charge of the business at those premises: 1968 Act s 72(2B) (as so added). As to the responsible pharmacist see PARA 910A.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/9. PHARMACEUTICAL CHEMISTS AND PHARMACIES/(4) LAWFUL CONDUCT OF BUSINESS; USE OF TITLES/914. Right to deal with medical products, poisons and dangerous drugs.

#### **914. Right to deal with medical products, poisons and dangerous drugs.**

There are provisions in the Medicines Act 1968<sup>1</sup> and the Poisons Act 1972<sup>2</sup> governing the right of persons lawfully conducting a retail pharmacy business<sup>3</sup>, including pharmacists<sup>4</sup>, to deal with, respectively, medicinal products<sup>5</sup> not on a general sale list<sup>6</sup> and non-medicinal poisons<sup>7</sup> included in Part I or Part II of the Poisons List<sup>8</sup>. There are also provisions<sup>9</sup> as to dealing with medicinal products on a general sale list at a registered pharmacy<sup>10</sup>. There are exemptions, in respect of things done by or under the supervision of a pharmacist in a registered pharmacy, hospital or health centre, from the restrictions on dealings with medicinal products imposed by the licensing provisions of the Medicines Act 1968<sup>11</sup> and also exemptions for pharmacists and for persons lawfully conducting retail pharmacy businesses from the restrictions imposed by the Misuse of Drugs Act 1971<sup>12</sup>.

1 See the Medicines Act 1968 s 52; and MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 134.

2 See the Poisons Act 1972 s 3; and MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 293 et seq.

3 As to persons lawfully conducting a retail pharmacy business see PARA 909 et seq ante. For the meaning of 'retail pharmacy business' see PARA 903 ante.

4 For the meaning of 'pharmacist' see PARA 907 note 8 ante.

5 For the meaning of 'medicinal product' see PARA 903 note 3 ante.

6 As to medicinal products on a general sale list see PARA 903 note 4 ante.

7 For the meaning of 'non-medicinal poison' see the Poisons Act 1972 s 11(1); and MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 287.

8 As to Pts I, II of the Poisons List see MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARAS 286-288.

9 See the Medicines Act 1968 s 53; and MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 135.

10 For the meaning of 'registered pharmacy' see PARA 910 note 8 ante.

11 See the Medicines Act 1968 s 10 (as amended); the Medicines (Retail Pharmacists - Exemptions from Licensing Requirements) Order 1971, SI 1971/1445; and MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 51.

12 See the Misuse of Drugs Act 1971 s 7; the Misuse of Drugs Regulations 2001, SI 2001/3998, regs 8-10, Schs 2-5 (regs 8-10, Schs 2, 4 as amended); and MEDICINAL PRODUCTS AND DRUGS.

#### **UPDATE**

#### **880-934 Pharmaceutical Chemists and Pharmacies**

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of

Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI 2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/9. PHARMACEUTICAL CHEMISTS AND PHARMACIES/(4) LAWFUL CONDUCT OF BUSINESS; USE OF TITLES/915. Restrictions on the use of titles etc.

### **915. Restrictions on the use of titles etc.**

No person may take or use any of the titles 'chemist and druggist', 'druggist', 'dispensing chemist' and 'dispensing druggist'<sup>1</sup> or take or use the title 'chemist' in connection with the sale of any goods by retail<sup>2</sup> or the supply of any goods in circumstances corresponding to retail sale<sup>3</sup> unless the following conditions are fulfilled<sup>4</sup>: (1) in the case of an individual, that he is a person lawfully conducting a retail pharmacy business<sup>5</sup>, either alone or as a member of a partnership<sup>6</sup>, and that he does not take or use the title in question in connection with any premises at which any goods are sold by retail, or are supplied in circumstances corresponding to retail sale, unless those premises are a registered pharmacy<sup>7</sup>; (2) in the case of a body corporate, that the body is a person lawfully conducting such a business<sup>8</sup>, that the title in question is not taken or used by that body in connection with any premises at which any goods are sold by retail, or are supplied in circumstances corresponding to retail sale, unless those premises are a registered pharmacy, and that the pharmacist<sup>9</sup> who, in relation to that business, is the superintendent is a member of the board of the body corporate<sup>10</sup>.

No person may, in connection with a business<sup>11</sup> carried on by him which consists of or includes the retail sale of any goods, or the supply of any goods in circumstances corresponding to retail sale, use the description 'pharmacy' except in respect of a registered pharmacy or in respect of the pharmaceutical department of a hospital<sup>12</sup> or a health centre<sup>13</sup>.

No person who is not a pharmacist may take or use the titles 'pharmaceutical chemist', 'pharmaceutist', 'pharmacist', 'member of the Pharmaceutical Society' or 'Fellow of the Pharmaceutical Society'<sup>14</sup>, and no person may take or use any of those titles in connection with a business carried on, whether by him or by some other person, at any premises which consists of or includes the retail sale of any goods, or the supply of any goods in circumstances corresponding to retail sale, unless those premises are a registered pharmacy or a hospital or a health centre<sup>15</sup>.

No person may, in connection with any business<sup>16</sup>, use any title<sup>17</sup>, description or emblem likely to suggest that he possesses any qualification with respect to the sale, manufacture or assembly of medicinal products<sup>18</sup> which he does not in fact possess<sup>19</sup>, or that any person employed in the business possesses any such qualification which that person does not in fact possess<sup>20</sup>.

Any person who contravenes any of these provisions is guilty of an offence and liable on summary conviction to a fine<sup>21</sup>.

1 Medicines Act 1968 s 78(2)(a). The term 'druggist' is not defined in the Medicines Act 1968.

2 As to references to sale by retail see PARA 903 ante.

3 Medicines Act 1968 s 78(2)(b). As to references to supplying goods in circumstances corresponding to retail sale see PARA 907 note 7 ante.

4 Ibid s 78(2) (s 78(2), (4), (5), (6) amended by the Statute Law (Repeals) Act 1993). This is subject to the Medicines Act 1968 s 79: s 78(1). The health ministers may by order provide that any of the restrictions imposed by s 78 (as amended) are to cease to have effect or are to have effect subject to such exceptions as may be specified in the order: s 79(1). For the meaning of 'the health ministers' see PARA 902 note 4 ante. Without prejudice to s 79(1), regulations made by those ministers may impose further restrictions or requirements as to the use of titles, descriptions and emblems: s 79(2). Before making any such order or regulations, the ministers must consult the council of the Royal Pharmaceutical Society: s 79(3). As to the

council see PARA 882 ante. As to the Society see PARA 881 et seq ante. Regulations made under s 79 have no effect unless a draft has been laid before Parliament and approved by a resolution of each House of Parliament: s 79(4). A person who contravenes any such regulations is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 84(2) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 185 note 11 ante.

5 For the meaning of 'retail pharmacy business' see PARA 903 ante.

6 As to individuals or partners lawfully conducting such a business see PARAS 909-911 ante.

7 Medicines Act 1968 s 78(3)(a). For the meaning of 'registered pharmacy' see PARA 910 note 8 ante.

8 As to bodies corporate lawfully conducting such a business see PARAS 909, 912 ante.

9 For the meaning of 'pharmacist' see PARA 907 note 8 ante.

10 Medicines Act 1968 s 78(3)(b).

11 For the meaning of 'business' see PARA 903 note 1 ante.

12 'Hospital' includes a clinic, nursing home or similar institution: Medicines Act 1968 s 132(1).

13 Ibid s 78(4) (as amended: see note 4 supra). 'Health centre' means a health centre maintained under the National Health Service Act 1977 s 2 or s 3: Medicines Act 1968 s 132(1) (amended by the National Health Service Act 1977 s 129 (a), Sch 15 para 50).

14 Medicines Act 1968 s 78(5)(a). Where a person is lawfully conducting a retail pharmacy business as a representative of a pharmacist (see PARA 913 ante) in the circumstances specified in s 69(1)(c) (see PARA 909 head 3 ante), the provisions of s 78(5)-(7) (as amended) do not have effect so as to prevent the representative from using titles, descriptions and emblems which the pharmacist could have used: s 78(8).

15 Ibid s 78(5)(b). See also note 14 supra.

16 For the purposes of ibid s 78(6) (as amended), the use of the description 'pharmacy' in connection with a business carried on at any premises is to be taken to be likely to suggest that the person (where not a body corporate) carrying on the business is a pharmacist and that any other person under whose personal control the business (so far as concerns the retail sale of medicinal products or their supply in circumstances corresponding to retail sale) is carried on there is also a pharmacist: s 78(7).

17 As to the use of the title 'chemist' see *Denerley v Spink* [1947] KB 768, [1947] 1 All ER 835.

18 For the meaning of 'medicinal product' see PARA 903 note 3 ante.

19 Medicines Act 1968 s 78(6)(a). See also notes 14, 16 supra.

20 Ibid s 78(6)(b). See also notes 14, 16 supra.

21 Ibid s 84(2) (as amended: see note 4 supra). The penalty is a fine not exceeding level 3 on the standard scale: see s 84(2) (as so amended). As to enforcement see PARA 916 post.

## UPDATE

### 880-934 Pharmaceutical Chemists and Pharmacies

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI

2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).

### **915 Restrictions on the use of titles etc**

NOTE 4--References to 'the health ministers' are now references to 'the ministers': 1968 Act s 79(1)-(3) (amended by the Veterinary Medicines Regulations 2006, SI 2006/2407).

NOTE 13--Definition of 'health centre' in 1968 Act s 132(1) further amended: National Health Service (Consequential Provisions) Act 2006 Sch 1 para 45.

TEXT AND NOTES 14, 15--1968 Act s 78(5) amended: SI 2007/289.

NOTE 16--1968 Act s 78(7) amended: Health Act 2006 s 27(2) (in force 1 October 2009: SI 2008/2714).

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## **916. Enforcement.**

It is the duty of the appropriate minister<sup>1</sup> to enforce or to secure the enforcement of the provisions of the Medicines Act 1968 and any regulations and orders made under it<sup>2</sup>. The Royal Pharmaceutical Society<sup>3</sup> is under a duty, concurrently with the appropriate minister, to enforce the provisions of the Act which relate to the making of an annual return of premises to the registrar<sup>4</sup> and the unlawful use of titles, descriptions or emblems<sup>5</sup>, in their application to England and Wales<sup>6</sup>.

1 'The appropriate minister' is the Secretary of State: see the Medicines Act 1968 s 108(11)(b) (amended by the Secretary of State for Social Services Order 1968, SI 1968/1699, arts 2, 5(4)). In relation to Wales the functions of the appropriate minister are transferred to the National Assembly for Wales: National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1. As to the Secretary of State see PARA 5 ante. As to the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

2 Ibid s 108(1). See MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 168.

3 As to the Society see PARA 881 et seq ante.

4 Ie the Medicines Act 1968 s 77: see PARA 907 ante.

5 Ie ibid s 78 (as amended), and any regulations made under s 79(2): see PARA 915 note 4 ante.

6 Ibid s 108(6)(c). As to the limitation on this duty see s 108(9), and for the default powers of the appropriate minister see s 108(10). See also MEDICINAL PRODUCTS vol 30(2) (Reissue) PARA 168.

## **UPDATE**

### **880-934 Pharmaceutical Chemists and Pharmacies**

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI 2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).

## **916 Enforcement**

TEXT AND NOTES--The following provisions come into force on 1 October 2009: SI 2008/2714. The Pharmaceutical Society is under a duty, concurrently with the appropriate minister, to enforce the provisions of the 1968 Act s 72A(4) and (5) (see PARA 910A) in their application to England and Wales: s 108(6A) (added by Health Act 2006 s 31(1)(b)). The Pharmaceutical Society is under a duty to enforce the other

provisions of the 1968 Act s 72A, and any regulations made under them, in their application to England and Wales: s 108(6B). The appropriate minister is under no duty to enforce those other provisions, or any regulations made under them, in their application to England and Wales: s 108(6C). Notwithstanding s 108(6C) the appropriate minister is to be treated for the purposes of ss 111-114 (1) as empowered by s 108 to enforce those other provisions, or any regulations made under them, in their application to England and Wales, and (2) to that extent as an enforcement authority in relation to those other provisions or those regulations in their application to England and Wales: s 108(6D).

NOTES 1, 6--1968 Act s 108(9), (10), (11)(b) amended: SI 2006/2407.

TEXT AND NOTES 2, 6--1968 Act s 108(1) amended, s 108(9), (10) further amended: Health Act 2006 s 31(1)(a), (c), (d) (in force 1 October 2009: SI 2008/2714).



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/9. PHARMACEUTICAL CHEMISTS AND PHARMACIES/(5) DISCIPLINE AND DISQUALIFICATION/(i) The Statutory Committee/917. Constitution of the statutory committee.

## **(5) DISCIPLINE AND DISQUALIFICATION**

### **(i) The Statutory Committee**

#### **917. Constitution of the statutory committee.**

Disciplinary powers are entrusted to a committee of the Royal Pharmaceutical Society known as 'the statutory committee'<sup>1</sup>. It consists of five members appointed by the council of the Society<sup>2</sup> and a sixth member, the chairman, who is appointed by the Privy Council<sup>3</sup>, and who must have practical legal experience<sup>4</sup>. If, owing to illness or other infirmity, the chairman becomes temporarily incapable of performing his duties, the Privy Council may appoint another person to be a member of the committee and to act in his place<sup>5</sup>.

A person appointed to the statutory committee by the council of the Society need not be a member of either the council or the Society<sup>6</sup>, but vacancies must be filled so as to ensure that at least one member of the statutory committee is a pharmaceutical chemist resident in Scotland<sup>7</sup>. Members of the statutory committee hold office for five years, except in the case of a temporary chairman appointed under the provisions described above<sup>8</sup>, who holds office only for the period, not exceeding six months, for which he is appointed<sup>9</sup>. All members are eligible for reappointment at the expiration of their period of office<sup>10</sup>.

Any member of the statutory committee may at any time resign by giving written notice of his resignation, either to the registrar<sup>11</sup>, if he was appointed by the council<sup>12</sup>, or, in any other case, to the clerk of the Privy Council<sup>13</sup>.

A member of the committee may be removed by the body which appointed him either for misbehaviour or for inability to perform his duties<sup>14</sup>.

1 Pharmacy Act 1954 s 7. As to the Society see PARA 881 et seq ante.

2 As to the council see PARA 882 ante.

3 Pharmacy Act 1954 s 7, Sch 1 para 1(1). The Privy Council may direct a special health authority to exercise its functions in relation to the appointment and removal of the chairman of the committee if a direction has been made by the Secretary of State under the Health and Social Care (Community Health and Standards) Act 2003 s 187: Pharmacy Act 1954 Sch 1 para 3A(1), (2) (Sch 1 para 3A added by the Health and Social Care (Community Health and Standards) Act 2003 s 187(8), Sch 12 para 1). As to special health authorities see HEALTH SERVICES vol 54 (2008) PARA 136 et seq. As to the exercise of the powers of the Privy Council see PARA 886 ante. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

4 Pharmacy Act 1954 Sch 1 para 2(a).

5 Ibid Sch 1 para 1(2). During any period for which any temporary chairman is appointed, any reference to the chairman of the statutory committee in any enactment other than in Sch 1 para 1(1) (see the text to note 3 supra) is to be construed as a reference to the temporary chairman: Sch 1 para 1(2). From this it follows that a temporary chairman must also have practical legal experience.

6 See ibid Sch 1 para 2.

7 Ibid Sch 1 para 2(b).

8 Ie under ibid Sch 1 para 1(2).

- 9 Ibid Sch 1 para 3(1).
- 10 Ibid Sch 1 para 3(1).
- 11 For the meaning of 'the registrar' see PARA 888 note 1 ante.
- 12 Pharmacy Act 1954 Sch 1 para 3(2)(a).
- 13 Ibid Sch 1 para 3(2)(b). Where a direction has been given in accordance with Sch 1 para 3A(2) (as added) (see note 3 supra), notice of resignation must be given to the special health authority: see Sch 1 para 3A(3) (as added: see note 3 supra).
- 14 Ibid Sch 1 para 3(2).

## **UPDATE**

### **880-934 Pharmaceutical Chemists and Pharmacies**

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI 2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/9. PHARMACEUTICAL CHEMISTS AND PHARMACIES/(5) DISCIPLINE AND DISQUALIFICATION/(i) The Statutory Committee/918. Proceedings of the statutory committee.

### **918. Proceedings of the statutory committee.**

The quorum of the statutory committee is three, of whom the chairman must be one<sup>1</sup>. The committee may act by a majority of the members present, and in the case of an equality of votes the chairman has a casting vote<sup>2</sup>. The committee may make regulations<sup>3</sup> as to the procedure which it is to follow in exercising its jurisdiction under the Pharmacy Act 1954<sup>4</sup> and the Medicines Act 1968<sup>5</sup>, but such regulations do not come into force until they have been approved by the Privy Council<sup>6</sup>. The Privy Council may approve such regulations either with or without modifications, but where it proposes modifications it must give the committee a reasonable opportunity of making observations on them and must take those observations into consideration before approving the regulations<sup>7</sup>. This power of the Privy Council to approve regulations is exercisable by statutory instrument, and any statutory instrument made is subject to annulment pursuant to a resolution of either House of Parliament<sup>8</sup>.

1 Pharmacy Act 1954 s 7, Sch 1 para 4(1). As to the constitution of the statutory committee and as to the chairman see PARA 917 ante.

2 Ibid Sch 1 para 4(2).

3 Regulations made under this power were approved by, and are set out in the Appendix to, the Pharmaceutical Society (Statutory Committee) Order of Council 1978, SI 1978/20 (as amended): see PARA 924 et seq post.

4 As to this jurisdiction see PARAS 920-921 post.

5 As to this jurisdiction, which relates to bodies corporate and pharmacists' representatives carrying on a retail pharmacy business, see PARA 922 post.

6 Pharmacy Act 1954 Sch 1 para 5(1); Interpretation Act 1978 s 17(2). As to the exercise of the powers of the Privy Council see PARA 886 ante. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

7 Pharmacy Act 1954 Sch 1 para 5(2).

8 Ibid Sch 1 para 5(3).

### **UPDATE**

#### **880-934 Pharmaceutical Chemists and Pharmacies**

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI

2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/9. PHARMACEUTICAL CHEMISTS AND PHARMACIES/(5) DISCIPLINE AND DISQUALIFICATION/(i) The Statutory Committee/919. Expenses of the statutory committee.

### **919. Expenses of the statutory committee.**

The Royal Pharmaceutical Society<sup>1</sup> must pay to the members of the statutory committee<sup>2</sup> such reasonable travelling expenses as are fixed by the council of the Society<sup>3</sup>, with the approval of the Privy Council<sup>4</sup>, and may pay to any member of the committee such fees as are so fixed<sup>5</sup>. All other expenses of the committee must be defrayed by the Society<sup>6</sup>.

1 As to the Society see PARA 881 et seq ante.

2 As to the constitution of the statutory committee see PARA 917 ante.

3 As to the council see PARA 882 ante.

4 As to the exercise of the powers of the Privy Council see PARA 886 ante. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

5 Pharmacy Act 1954 s 7, Sch 1 para 6.

6 Ibid Sch 1 para 6.

### **UPDATE**

#### **880-934 Pharmaceutical Chemists and Pharmacies**

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI 2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/9.  
 PHARMACEUTICAL CHEMISTS AND PHARMACIES/(5) DISCIPLINE AND DISQUALIFICATION/(ii)  
 Directions of the Statutory Committee/920. Control of registrations.

## **(ii) Directions of the Statutory Committee**

### **920. Control of registrations.**

Where a person applying to have his name registered<sup>1</sup> has been convicted of any criminal offence or has been guilty of any misconduct<sup>2</sup> which in the opinion of the statutory committee<sup>3</sup> renders him unfit to have his name on the register<sup>4</sup>, the committee, after inquiring into the matter, may direct that the applicant's name is not to be registered, or is not to be registered until the committee otherwise directs<sup>5</sup>.

Where a registered pharmaceutical chemist<sup>6</sup> or any person employed by him in the carrying on of his business<sup>7</sup> has been similarly convicted or has been guilty of such misconduct, the committee, after inquiring into the matter, may direct the registrar<sup>8</sup> to remove the chemist's name from the register<sup>9</sup>. The committee may, either of its own motion or on the application of the person concerned, direct the registrar to restore to the register a name which has been removed under this provision<sup>10</sup>, either without fee, or on the payment to the Royal Pharmaceutical Society of a fee not exceeding that prescribed for the registration of those who have passed the Society's examination<sup>11</sup>.

Where the name of a registered pharmaceutical chemist has been removed from the register for non-payment of the annual retention fee<sup>12</sup>, and that person, or anyone employed by him in the carrying on of his business, has, either before or after the removal of the name, been convicted of crime or been guilty of misconduct, the committee, after inquiring into the matter, may direct that the chemist's name is not to be restored to the register, or is not to be restored until the committee otherwise directs<sup>13</sup>.

In all the above cases, the committee may direct that no application to register a name or to restore it to the register, as the case may be, is to be entertained until the expiration of such period or the fulfilment of such conditions as the committee specifies<sup>14</sup>.

Further, where the committee is satisfied that any person is subject to a disqualifying decision<sup>15</sup>, the committee is entitled to exercise in relation to that person its above-mentioned powers of giving directions<sup>16</sup> on the assumption that the grounds on which the decision was expressed to be made constitute such misconduct rendering him unfit to have his name on the register as would, apart from this provision, justify the exercise of those powers<sup>17</sup>.

1 For the meaning of 'registered' see PARA 888 note 6 ante.

2 A single serious act or error can be misconduct for the purpose of disciplinary proceedings, and the word 'misconduct' does not necessarily connote moral censure: *R v Pharmaceutical Society of Great Britain, ex p Sokoh* (1986) Times, 4 December. As to professional misconduct see the cases cited in the notes to paras 143, 456 ante.

3 As to the constitution of the statutory committee see PARA 917 ante. The maxim that a person ought not to be punished twice for the same offence does not apply to proceedings before a disciplinary committee; and it has been held that the prohibition in the Powers of Criminal Courts Act 1973 s 13(3) (repealed) against relying on a conviction as evidence of professional misconduct has no application where the allegation relied not on a previous conviction, but on circumstances leading to a conviction: *R v Statutory Committee of the Pharmaceutical Society of Great Britain, ex p Pharmaceutical Society of Great Britain* [1981] 2 All ER 805, [1981] 1 WLR 886, DC.

4 For the meaning of 'register' see PARA 888 note 4 ante.

5 Pharmacy Act 1954 s 8(1)(i). As to the procedure on the inquiry see PARA 924 et seq post. No direction other than a direction authorising the registration of a name or its restoration to the register may be given by the statutory committee under s 8(1) without the chairman's assent: s 9(1). As to the chairman see PARA 917 ante. As to the power of the Council for the Regulation of Health Care Professionals to refer to the court a direction of the statutory committee under the Pharmacy Act 1954 s 8, or a decision of the committee not to make such a direction, see PARA 306 ante.

6 For the meaning of 'registered pharmaceutical chemist' see PARA 889 note 1 ante.

7 For restrictions on the liability of a pharmaceutical chemist to have his name removed from the register on the ground of some act or omission of his employee see the Pharmacy Act 1954 s 9(2), (3); and PARA 921 post.

8 For the meaning of 'the registrar' see PARA 888 note 1 ante.

9 Pharmacy Act 1954 s 8(1)(ii). See also note 5 supra. A direction under s 8(1)(ii) does not take effect until three months after notice of it has been given under s 8(3) (see PARA 923 post) or, where an appeal to the High Court is brought against the direction (see PARA 933 post), until the appeal is determined or withdrawn: s 11(1).

10 Ie under ibid s 8(1)(ii).

11 Ibid s 8(2) (amended by the Pharmaceutical Qualifications (EEC Recognition) Order 1987, SI 1987/2202, art 2(6)). As to this fee see PARA 892 ante. As to the Society see PARA 881 et seq ante.

12 Ie under the Pharmacy Act 1954 s 12: see PARA 899 ante. As to this fee see PARA 889 ante.

13 Ibid s 8(1)(iii). See also notes 5, 7 supra.

14 Ibid s 8(1). As to the requirement for the chairman's assent see note 5 supra.

15 A person is subject to a disqualifying decision if: (1) a decision is made in respect of that person by responsible authorities in an EEA state other than the United Kingdom; (2) that decision has the effect in that state either that that person ceases to be registered or otherwise officially recognised to practise pharmacy in that state or that he is prohibited from practising pharmacy there; and (3) that decision is expressed to be made on the grounds that the person has committed a criminal offence or has been guilty of any misconduct: ibid s 8(1B) (added by the Pharmaceutical Qualifications (EEC Recognition) Order 1987, SI 1987/2202, art 2(6); and amended by the European Qualifications (Health Care Professions) Regulations 2003, SI 2003/3148, reg 8). For the meaning of 'EEA state' see PARA 892 note 10 ante. For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

16 Ie its powers under the Pharmacy Act 1954 s 8(1).

17 Ibid s 8(1A) (added by the Pharmaceutical Qualifications (EEC Recognition) Order 1987, SI 1987/2202, art 2(6)).

## UPDATE

### 880-934 Pharmaceutical Chemists and Pharmacies

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI 2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/9. PHARMACEUTICAL CHEMISTS AND PHARMACIES/(5) DISCIPLINE AND DISQUALIFICATION/(ii) Directions of the Statutory Committee/921. Restriction on directions in case of employee's fault.

### **921. Restriction on directions in case of employee's fault.**

Where the act or omission of an employee could be made the ground of a direction by the statutory committee<sup>1</sup> involving the cesser or restriction of the right of the employer to have his name registered<sup>2</sup>, the committee must not give the direction unless proof is given to its satisfaction of one or more of the facts specified below and the committee is of the opinion, having regard to the facts so proved, that the employer ought to be regarded as responsible for the act or omission<sup>3</sup>.

For this purpose, the facts as to one or more of which the committee must be satisfied are:

- 1028 (1) that the act or omission in question was instigated or connived at by the employer<sup>4</sup>;
- 1029 (2) that the employer or any employee of his had been guilty at some time within 12 months before the date on which the act or omission in question took place of a similar act or omission and that the employer had, or reasonably ought to have had, knowledge of that previous act or omission<sup>5</sup>;
- 1030 (3) if the act or omission in question was a continuing one, that the employer had, or reasonably ought to have had, knowledge of its continuance<sup>6</sup>;
- 1031 (4) in the case of a criminal offence under the Pharmacy Acts<sup>7</sup>, that the employer had not used due diligence to enforce the execution of those Acts<sup>8</sup>.

1   le under the Pharmacy Act 1954 s 8(1): see PARA 920 ante. As to the constitution of the statutory committee see PARA 917 ante.

2   For the meaning of 'registered' see PARA 888 note 6 ante.

3   Pharmacy Act 1954 s 9(2).

4   Ibid s 9(3)(a).

5   Ibid s 9(3)(b).

6   Ibid s 9(3)(c).

7   For the meaning of 'the Pharmacy Acts' see PARA 898 note 3 ante.

8   Pharmacy Act 1954 s 9(3)(d).

## **UPDATE**

### **880-934 Pharmaceutical Chemists and Pharmacies**

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of



Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI 2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/9. PHARMACEUTICAL CHEMISTS AND PHARMACIES/(5) DISCIPLINE AND DISQUALIFICATION/(ii) Directions of the Statutory Committee/922. Disqualification and removal from the register of premises.

## **922. Disqualification and removal from the register of premises.**

The statutory committee has disciplinary powers where a body corporate carries on a retail pharmacy business<sup>1</sup> and: (1) that body is convicted of an offence under any of the relevant Acts<sup>2</sup>; or (2) any member of the board or any officer of or person employed by that body is convicted of an offence, or has been guilty of misconduct<sup>3</sup>, and the offence or misconduct is such as in the committee's opinion renders him, or would if he were a pharmacist<sup>4</sup> render him, unfit to be a pharmacist<sup>5</sup>. In these circumstances, the committee, after inquiring into the case, may direct<sup>6</sup> that the body corporate be disqualified for the purposes of the provisions of the Medicines Act 1968<sup>7</sup> relating to pharmacies<sup>8</sup>. If the committee gives such a direction, it must direct the registrar<sup>9</sup> to remove from the register<sup>10</sup> all premises entered in it as being premises at which the body corporate carries on a retail pharmacy business<sup>11</sup>. If the committee does not give such a direction, it may, if it thinks fit, direct the registrar to remove from the register all the premises or such of them as may be specified in the direction<sup>12</sup>. Directions given by the committee may if it thinks fit be given so as to have effect for a limited period<sup>13</sup>.

Where a representative<sup>14</sup> of a pharmacist carries on his business and the representative or a person employed by a representative is convicted of an offence, or has been guilty of misconduct, and the offence or misconduct is such as in the committee's opinion renders him, or would if he were a pharmacist render him, unfit to be a pharmacist, the committee, after inquiring into the case, may direct that the representative be disqualified for the purposes of the pharmacy provisions of the Medicines Act 1968<sup>15</sup>.

However, the committee must not give a direction in a case under head (2) above<sup>16</sup> or in respect of a representative<sup>17</sup> unless one or more of certain facts<sup>18</sup> are proved to the committee's satisfaction<sup>19</sup>, and it is of the opinion, having regard to those facts, that the board of the body corporate or, as the case may be, the representative is to be regarded as responsible for the offence or misconduct in question<sup>20</sup>.

The committee may revoke at any time any direction which is in force either on the application of the person to whom it relates or without any such application<sup>21</sup>.

1 For the meaning of 'retail pharmacy business' see PARA 903 ante. As to bodies corporate carrying on such businesses see PARA 912 ante. As to the constitution of the statutory committee see PARA 917 ante.

2 Medicines Act 1968 s 80(1)(a). 'The relevant Acts' means the Pharmacy Act 1954, the Medicines Act 1968, the Misuse of Drugs Act 1971, and the Pharmacy (Northern Ireland) Order 1976, SI 1976/1213 (as amended): Medicines Act 1968 s 80(5) (amended by the Misuse of Drugs Act 1971 s 12(7); and the Pharmacy (Northern Ireland) Order 1976, SI 1976/1213, art 26(b), Sch 5 para 6).

3 As to misconduct see PARA 920 note 2 ante.

4 For the meaning of 'pharmacist' see PARA 907 note 8 ante.

5 Medicines Act 1968 s 80(1)(b).

6 No direction may be given under *ibid* s 80 (as amended) without the assent of the chairman of the committee: s 82(1). Such a direction does not take effect until the end of the three month period from the date on which notice of the direction is given to the body or person concerned or, if an appeal is brought (see PARA 934 post), until the appeal has been determined or withdrawn: s 82(2).

7 *le ibid* Pt IV (ss 69-84) (as amended): see PARA 902 et seq ante.

8 Ibid s 80(1). As to the power of the Council for the Regulation of Health Care Professionals to refer to the court a direction of the statutory committee under the Medicines Act 1968 s 80, or a decision of the committee not to make such a direction, see PARA 306 ante.

9 For the meaning of 'the registrar' see PARA 902 note 1 ante.

10 For the meaning of 'the register' see PARA 902 note 2 ante.

11 Medicines Act 1968 s 80(2)(a).

12 Ibid s 80(2)(b).

13 Ibid s 80(3). In this case, at the end of the period, the registrar must restore to the register any premises removed from it in compliance with the direction: s 80(3).

14 For the meaning of 'representative' see PARA 913 note 1 ante; definition applied by ibid s 80(5).

15 Ibid s 80(4).

16 Ie under ibid s 80(1)(b).

17 Ie under ibid s 80(4).

18 These facts are: (1) that the offence or misconduct in question was instigated or connived at by the board or by a member of the board, or by the representative, as the case may be; (2) that, in the case of a body corporate, a member of the board, or an officer of or person employed by the body corporate, had, at some time within 12 months before the date on which the offence or misconduct in question occurred, been guilty of a similar offence or similar misconduct and that the board had, or with the exercise of reasonable care would have had, knowledge of that previous offence or misconduct; (3) that, in the case of the representative, he or a person employed by him had, at some time within 12 months before the date on which the offence or misconduct in question occurred, been guilty of a similar offence or similar misconduct and (where it was a similar offence or similar misconduct on the part of an employee) that the representative had, or with the exercise of reasonable care would have had, knowledge of that previous offence or misconduct; (4) if the offence or misconduct in question is a continuing offence or continuing misconduct, that the board or the representative had, or with the exercise of reasonable care would have had, knowledge of its continuance; (5) in the case of an offence in respect of a contravention of an enactment contained in any of the relevant Acts (see note 2 supra), that the board or the representative had not exercised reasonable care to secure that the enactment was complied with: Medicines Act 1968 s 81(2).

19 Ibid s 81(1)(a).

20 Ibid s 81(1)(b).

21 Ibid s 83(1). As to appeals see s 83(2); and PARA 934 post.

## UPDATE

### 880-934 Pharmaceutical Chemists and Pharmacies

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI 2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).

**922 Disqualification and removal from the register of premises**

TEXT AND NOTES--1968 Act ss 80, 81(1), 82(1), 83(1) amended: SI 2007/289.

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 PHARMACEUTICAL CHEMISTS AND PHARMACIES/(5) DISCIPLINE AND DISQUALIFICATION/(ii)  
 Directions of the Statutory Committee/923. Notice of directions.

### **923. Notice of directions.**

Where the statutory committee<sup>1</sup> gives a direction which affects the right of a person who has been convicted of a criminal offence or is guilty of misconduct to have his name on the register<sup>2</sup>, it must give notice of its direction to the person to whom the direction relates<sup>3</sup>; and, where it refuses an application to have his name restored to the register made by a person whose name has been removed from the register in pursuance of such a direction<sup>4</sup>, it must give notice of its refusal to the applicant<sup>5</sup>. Notice of such direction or refusal must be given by being sent to the person concerned in a registered letter or by recorded delivery and, in the case of a registered pharmaceutical chemist<sup>6</sup>, the letter must be addressed to his address on the register<sup>7</sup>.

1 As to the constitution of the statutory committee see PARA 917 ante.

2 Ie where the committee gives any direction under the Pharmacy Act 1954 s 8(1), (2) (as amended): see PARA 920 ante. As to misconduct see PARA 920 note 2 ante. For the meaning of 'the register' see PARA 888 note 4 ante. This is the register of pharmacists, not the register of premises.

3 Ibid s 8(3)(a).

4 Ie where it refuses an application under ibid s 8(2) (as amended), by a person whose name has been removed from the register under s 8(1)(ii): see PARA 920 ante.

5 Ibid s 8(3)(b).

6 For the meaning of 'registered pharmaceutical chemist' see PARA 889 note 1 ante.

7 Pharmacy Act 1954 s 8(3); Recorded Delivery Service Act 1962 s 1(1).

## **UPDATE**

### **880-934 Pharmaceutical Chemists and Pharmacies**

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI 2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/9. PHARMACEUTICAL CHEMISTS AND PHARMACIES/(5) DISCIPLINE AND DISQUALIFICATION/(iii) Statutory Committee Procedure/A. CASES ARISING OUT OF CONVICTIONS OR MISCONDUCT/924. Action by secretary on receipt of information.

### **(iii) Statutory Committee Procedure**

#### ***A. CASES ARISING OUT OF CONVICTIONS OR MISCONDUCT***

##### **924. Action by secretary on receipt of information.**

The secretary of the statutory committee<sup>1</sup> must submit to the chairman of that committee any information, or a summary of any information, received by him from which it appears that:

- 1032 (1) a registered pharmaceutical chemist<sup>2</sup>, or a person employed by him in the carrying on of his business, has been convicted of a criminal offence, or has been guilty of misconduct<sup>3</sup>;
- 1033 (2) a body corporate carrying on a retail pharmacy business<sup>4</sup> has been convicted of an offence under the relevant Acts<sup>5</sup>;
- 1034 (3) a member of the board of, or any officer of, or person employed by, a body corporate carrying on such a business has been convicted of an offence, or has been guilty of misconduct<sup>6</sup>;
- 1035 (4) a pharmacist's representative<sup>7</sup>, or a person employed by a representative in the retail pharmacy business in respect of which he is the representative, has been convicted of a criminal offence, or has been guilty of misconduct<sup>8</sup>;
- 1036 (5) a person applying to be registered as a pharmaceutical chemist has been convicted of a criminal offence, or has been guilty of misconduct<sup>9</sup>; or
- 1037 (6) a person whose name has been removed from the register<sup>10</sup> for non-payment of the annual retention fee or a person employed by him in the carrying on of his business has been convicted of a criminal offence, or has been guilty of misconduct<sup>11</sup>.

1 As to the constitution of the statutory committee see PARA 917 ante.

2 For the meaning of 'registered pharmaceutical chemist' see PARA 889 note 1 ante; definition applied by the Pharmaceutical Society (Statutory Committee) Order of Council 1978, SI 1978/20, Appendix reg 1(a).

3 Ibid Appendix reg 3(a). As to misconduct see PARA 920 note 2 ante.

4 For the meaning of 'retail pharmacy business' see PARA 903 ante; definition applied by ibid Appendix reg 1(a).

5 Ibid Appendix reg 3(b). For the meaning of 'the relevant Acts' see PARA 922 note 2 ante; definition applied by Appendix reg 1(a).

6 Ibid Appendix reg 3(c).

7 For the meaning of 'representative' see PARA 913 note 1 ante; definition applied by ibid Appendix reg 1(a).

8 Ibid Appendix reg 3(d).

9 Ibid Appendix reg 3(e).

10 Ie under the Pharmacy Act 1954 s 12(1): see PARA 899 ante. For the meaning of 'the register' see PARA 888 note 4 ante; definition applied by the Pharmaceutical Society (Statutory Committee) Order of Council 1978, SI 1978/20, Appendix reg 1(a).

11 Ibid Appendix reg 3(f).

## **UPDATE**

### **880-934 Pharmaceutical Chemists and Pharmacies**

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI 2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/9. PHARMACEUTICAL CHEMISTS AND PHARMACIES/(5) DISCIPLINE AND DISQUALIFICATION/(iii) Statutory Committee Procedure/A. CASES ARISING OUT OF CONVICTIONS OR MISCONDUCT/925. Action by chairman.

### **925. Action by chairman.**

The chairman of the statutory committee<sup>1</sup> may require any allegation of fact in a complaint charging misconduct to be substantiated by a written statement signed by a responsible person, or, if he thinks fit, by a statutory declaration<sup>2</sup>. The chairman may in any case direct the secretary to invite the person affected<sup>3</sup> to submit in writing any answer or explanation which he may wish to offer<sup>4</sup>.

After considering the information, the supporting evidence available, and any answer or explanation submitted by the person affected, the chairman must deal with the matter as follows: (1) if he is of opinion that the case is outside the committee's jurisdiction or that the complaint is frivolous or that it may properly be disregarded owing to lapse of time or other circumstances, he must decide that the case is not to proceed further<sup>5</sup>; (2) if he is of opinion that the conviction or misconduct alleged is not of a serious nature or is for any other reason of such a character that the matter can be disposed of without an inquiry, he may, after consultation orally or by letter with the other members of the committee, decide that the case is not to proceed further, but may direct the secretary to send a reprimand to the person affected and caution him as to his future conduct<sup>6</sup>; (3) in any other case, the chairman must direct the secretary to take the necessary steps for the holding of an inquiry by the committee<sup>7</sup>. The chairman must report to the committee any case in which he has not directed an inquiry to be held<sup>8</sup>.

1 As to the constitution of the statutory committee see PARA 917 ante.

2 Pharmaceutical Society (Statutory Committee) Order of Council 1978, SI 1978/20, Appendix reg 4. As to misconduct see PARA 920 note 2 ante. Any such statement or statutory declaration must specify, as respects any fact not within the declarant's personal knowledge, the source of his information and the grounds for his belief in its truth: Appendix reg 4. As to statutory declarations see CIVIL PROCEDURE vol 11 (2009) PARA 1024.

3 'The person affected' means the registered pharmaceutical chemist, body corporate, representative or other person affected by any information received by the committee: *ibid* Appendix reg 1(a). For the meaning of 'registered pharmaceutical chemist' see PARA 889 note 1 ante; definition applied by Appendix reg 1(a).

4 *Ibid* Appendix reg 5.

5 *Ibid* Appendix reg 6(i).

6 *Ibid* Appendix reg 6(ii).

7 *Ibid* Appendix reg 6(iii). If, however, it appears to the chairman in a case arising under Appendix reg 3(b) or Appendix reg 3(c) (see PARA 924 heads (2), (3) ante) that the person affected has no present intention of continuing or commencing to carry on a retail pharmacy business or, in a case arising under Appendix reg 3(f) (see PARA 924 head (6) ante), that the person affected has no present intention of practising pharmacy or seeking employment in a pharmaceutical capacity, he may postpone dealing with the matter until evidence of such an intention is submitted to him: Appendix reg 6 proviso.

8 *Ibid* Appendix reg 7.

## **UPDATE**

### **880-934 Pharmaceutical Chemists and Pharmacies**



Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI 2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/9. PHARMACEUTICAL CHEMISTS AND PHARMACIES/(5) DISCIPLINE AND DISQUALIFICATION/(iii) Statutory Committee Procedure/A. CASES ARISING OUT OF CONVICTIONS OR MISCONDUCT/926. Action where an inquiry is directed.

## **926. Action where an inquiry is directed.**

Where the chairman of the statutory committee has directed an inquiry to be held, the secretary must instruct a solicitor to investigate the facts of the case and to present, or brief counsel to present, the case to the committee at the inquiry<sup>1</sup>. If the solicitor reports that, as a result of his investigations, he is of the opinion that the evidence available is insufficient to prove the alleged conviction or misconduct<sup>2</sup>, the committee must consider his report, decide whether to hold an inquiry and give such directions as it thinks fit<sup>3</sup>. In the interval, all proceedings must be stayed; and the secretary must give any necessary notices to persons concerned, including the complainant<sup>4</sup>.

If, at any time after an inquiry has been directed and before it has been held, information is received by the secretary or by the solicitor which might have justified the chairman in not directing an inquiry in the first instance, that information must be referred to him and he may direct that the inquiry is not to proceed further, and he must then report his direction to the committee<sup>5</sup>.

1 Pharmaceutical Society (Statutory Committee) Order of Council 1978, SI 1978/20, Appendix reg 8. The secretary must also give the requisite notices and take the other steps required: see further PARA 927 et seq post. He need not instruct a solicitor where the complainant undertakes to present his case to the committee: Appendix reg 8 proviso. As to the constitution of the statutory committee see PARA 917 ante.

2 As to misconduct see PARA 920 note 2 ante.

3 Pharmaceutical Society (Statutory Committee) Order of Council 1978, SI 1978/20, Appendix reg 9.

4 Ibid Appendix reg 9.

5 Ibid Appendix reg 10.

## **UPDATE**

### **880-934 Pharmaceutical Chemists and Pharmacies**

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI 2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).

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## **B. INQUIRIES**

### **927. Notice of inquiry.**

Not less than 28 days<sup>1</sup> before the day appointed for holding an inquiry<sup>2</sup>, the secretary of the statutory committee<sup>3</sup> must send by registered letter or recorded delivery letter to the person affected a notice in the proper form<sup>4</sup> accompanied by a copy of the regulations<sup>5</sup>; and where a complainant has undertaken to present his case to the committee, the secretary must send to him by registered letter or recorded delivery letter copies of the notice and of the regulations<sup>6</sup>. Notices so sent to any person may be amended with the consent of the committee or chairman<sup>7</sup>.

Both the person affected and the complainant are entitled to inspect or to be supplied with copies of relevant documentary evidence<sup>8</sup>.

1 This period of notice may be reduced by agreement with the person affected and the complainant: Pharmaceutical Society (Statutory Committee) Order of Council 1978, SI 1978/20, Appendix reg 11(a) proviso. For the meaning of 'the person affected' see PARA 925 note 3 ante.

2 The chairman may at any time postpone the opening of the inquiry and direct the secretary to give any necessary notices to persons concerned, including the complainant: *ibid* Appendix reg 15.

3 As to the constitution of the statutory committee see PARA 917 ante.

4 As to the form of the notice see the Pharmaceutical Society (Statutory Committee) Order of Council 1978, SI 1978/20, Appendix reg 11(b), Schedule. The notice must specify generally the matters into which the inquiry will be held, and must state the day, hour and place appointed for holding the inquiry: Appendix reg 11(a). It must direct the attention of the person affected to his rights under Appendix reg 14: Appendix reg 14.

5 *Ie* the regulations set out in the Pharmaceutical Society (Statutory Committee) Order of Council 1978, SI 1978/20, Appendix: see Appendix reg 11(b).

6 *Ibid* Appendix regs 11(b), 12. Notices required under Appendix reg 11 must be addressed: (1) in the case of a registered pharmaceutical chemist, to him at his address in the register; (2) in the case of a representative, to him at his address as last notified to the registrar; (3) in the case of a body corporate, to it at its registered office; and (4) in the case of any other person, to him at his last known place of abode: Appendix reg 12. For the meaning of 'the registrar' see PARA 888 note 1 ante; and for the meaning of 'the register' see PARA 888 note 4 ante (definitions applied by Appendix reg 1(a)).

7 *Ibid* Appendix reg 13. Written notice of the amendment must be sent to such person in the manner provided by Appendix reg 12, or otherwise brought to his notice by the secretary before or in the course of the inquiry: Appendix reg 13. In appropriate circumstances, the person affected may demand an adjournment: see Appendix reg 13 proviso.

8 *Ibid* Appendix reg 14. After giving reasonable notice to the secretary, the person affected is entitled free of charge to inspect, and to be supplied with a copy of, any information or summary alleging misconduct or a conviction sent to the chairman in pursuance of Appendix reg 3 (see PARA 924 ante), and any written statement or statutory declaration sent to the committee in pursuance of Appendix reg 4 (see PARA 925 ante); and a complainant who has undertaken to present his case to the committee is similarly entitled free of charge, after giving reasonable notice to the secretary, to inspect and to be supplied with a copy of any answer or explanation submitted by the person affected in pursuance of Appendix reg 5 (see PARA 925 ante): Appendix reg 14.

## **UPDATE**

**880-934 Pharmaceutical Chemists and Pharmacies**

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI 2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/9. PHARMACEUTICAL CHEMISTS AND PHARMACIES/(5) DISCIPLINE AND DISQUALIFICATION/(iii) Statutory Committee Procedure/B. INQUIRIES/928. Procedure at the hearing.

## **928. Procedure at the hearing.**

An inquiry held by the statutory committee must be held in public, except that the committee may at any time direct that the public be excluded from an inquiry or any part of it if it appears to the committee that in the interests of justice or for some other compelling reason the public should be so excluded<sup>1</sup>. The person affected<sup>2</sup> and a complainant presenting his case to the committee may each be represented by a solicitor or counsel<sup>3</sup>.

If the person affected does not appear and the committee is satisfied that notice of the inquiry was duly sent to him<sup>4</sup>, it may either adjourn the inquiry<sup>5</sup> or proceed with it in his absence<sup>6</sup>. Similarly, where a complainant who has undertaken to present his case to the committee does not appear, or where he fails, in its opinion, to present his case properly, the committee may nevertheless proceed with the inquiry or may adjourn the inquiry; if the committee adjourns the inquiry it may instruct a solicitor in connection with the case<sup>7</sup>.

At a hearing, where the parties appear, the statement of case and evidence against the person affected is presented first<sup>8</sup>, followed by the statement of case and evidence for that person<sup>9</sup>. In certain circumstances, a reply to the case for the person affected will be allowed<sup>10</sup>.

The committee may receive evidence by oral statement<sup>11</sup>, written and signed statement or statutory declaration<sup>12</sup>. It may, in its discretion, decline to admit the written statement or declaration of a person not present, and is bound to disregard the oral or other evidence of a person who is present but refuses to submit to cross-examination<sup>13</sup>.

The committee may at any stage of the proceedings adjourn the inquiry<sup>14</sup>.

1 Pharmaceutical Society (Statutory Committee) Order of Council 1978, SI 1978/20, Appendix reg 16. As to the constitution of the statutory committee see PARA 917 ante.

2 For the meaning of 'the person affected' see PARA 925 note 3 ante.

3 Pharmaceutical Society (Statutory Committee) Order of Council 1978, SI 1978/20, Appendix reg 17. Alternatively a body corporate may be represented by one of its directors or officers: Appendix reg 17.

4 At the opening of the inquiry, the secretary must read the notice of inquiry and, if the person affected is not present or represented, must satisfy the committee that the notice was duly sent to him: *ibid* Appendix reg 18. The person affected or the person representing him may waive the right for the notice of inquiry to be read: Appendix reg 18. As to the notice of inquiry see PARA 927 ante.

5 Where an inquiry is adjourned from one meeting to another, the validity of the proceedings at the later meeting cannot be questioned merely because the members of the committee present at the earlier and the later meeting were not all the same: *ibid* Appendix reg 29.

6 *Ibid* Appendix reg 19.

7 *Ibid* Appendix reg 19. Such a solicitor is to be instructed in accordance with Appendix reg 8 (see PARA 926 ante); and the provisions of Appendix regs 9-10 (see PARA 926 ante) apply during the adjournment: Appendix reg 19.

8 *Ibid* Appendix reg 20(a).

9 *Ibid* Appendix reg 20(b).

10 *Ibid* Appendix reg 20(c). Where the person affected has produced no evidence other than his own, no reply will be allowed without leave of the committee: Appendix reg 20(c).

11 A witness is first examined by the person producing him, then cross-examined, and then re-examined: *ibid* Appendix reg 21. Members of the committee may put through the chairman, or on his invitation, such questions as they think desirable: Appendix reg 22.

12 *Ibid* Appendix reg 21. As to statutory declarations see CIVIL PROCEDURE vol 11 (2009) PARA 1024.

13 *Ibid* Appendix reg 21.

14 *Ibid* Appendix reg 23. As to the notices to be given where no date, time and place is appointed for the resumed meeting see Appendix reg 23; and as to the production of fresh evidence at the resumed hearing see Appendix reg 24. As to the validity of resumed proceedings see note 5 *supra*.

## **UPDATE**

### **880-934 Pharmaceutical Chemists and Pharmacies**

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI 2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).

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## **929. Decision of the statutory committee.**

On the conclusion of the hearing, the statutory committee must deliberate in private<sup>1</sup> and must decide:

- 1038 (1) whether the conviction or misconduct<sup>2</sup> is proved<sup>3</sup>;
- 1039 (2) if so, whether such conviction or misconduct is such as to render the person with regard to whom it is proved unfit to be on the register, or is such as would, if he were a registered pharmaceutical chemist<sup>4</sup>, to render him unfit to be on the register<sup>5</sup>;
- 1040 (3) if so, whether one of the statutory directions<sup>6</sup> should be made<sup>7</sup>; and
- 1041 (4) whether any reprimand or admonition should be addressed to the person affected<sup>8</sup>.

The committee may postpone<sup>9</sup> its decision or any part of it, either generally or on such terms as it may approve<sup>10</sup>. The chairman must announce in public the committee's decision, including any postponement, and the terms, if any, on which it is made<sup>11</sup>. The secretary must communicate the decision to the person affected and to the complainant, and must communicate to the registrar<sup>12</sup> any direction to be acted upon by him<sup>13</sup>.

1 The presence, during the deliberations of the statutory committee, of the secretary of the Pharmaceutical Society did not, on the particular facts of the case, render the committee's decision invalid: *Re Lawson* (1941) 57 TLR 315. As to the constitution of the statutory committee see PARA 917 ante.

2 As to misconduct see PARA 920 note 2 ante.

3 Pharmaceutical Society (Statutory Committee) Order of Council 1978, SI 1978/20, Appendix reg 25(a). As to the standard of proof cf para 143 ante.

4 For the meaning of 'registered pharmaceutical chemist' see PARA 889 note 1 ante; definition applied by ibid Appendix reg 1(a).

5 See ibid Appendix reg 25(b). For the meaning of 'the register' see PARA 888 note 4 ante; definition applied by Appendix reg 1(a). Head (2) in the text does not apply where the only allegation is that a body corporate carrying on a retail pharmacy business has been convicted of an offence under the relevant Acts (ie an allegation under reg 3(b): see PARA 924 ante): Appendix reg 25(b). For the meaning of 'the relevant Acts' see PARA 922 note 2 ante; definition applied by Appendix reg 1(a).

6 Ie a direction under the Pharmacy Act 1954 s 8(1) (see PARA 920 ante) or under the Medicines Act 1968 s 80(1), (2) or (4) (see PARA 922 ante).

7 Pharmaceutical Society (Statutory Committee) Order of Council 1978, SI 1978/20, Appendix reg 25(c).

8 Ibid Appendix reg 25(d). For the meaning of 'the person affected' see PARA 925 note 3 ante.

9 As to the validity of postponed proceedings see ibid Appendix reg 29; and PARA 928 note 5 ante.

10 Ibid Appendix reg 25 proviso. If the committee postpones its decision under Appendix reg 25(c) or (d) (see heads (3) and (4) in the text), it may, before reaching a decision on resuming, take into account any information then or previously given to it concerning the conduct of the person affected since the original hearing: Appendix reg 27. It may not, however, take into account any adverse report without giving the person affected a reasonable opportunity of answering it: Appendix reg 27 proviso.

11 Ibid Appendix reg 26.

- 12 For the meaning of 'the registrar' see PARA 888 note 1 ante; definition applied by ibid Appendix reg 1(a).
- 13 Ibid Appendix reg 28. As to the registrar's duty in this respect see PARA 900 ante.

## **UPDATE**

### **880-934 Pharmaceutical Chemists and Pharmacies**

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI 2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).



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### ***C. APPLICATIONS FOR RELIEF FROM CONSEQUENCES OF PREVIOUS DECISIONS***

#### **930. Applications for relief.**

Where an individual whose name has been removed from the register<sup>1</sup> as a result of conviction or misconduct applies<sup>2</sup> to have his name restored to the register<sup>3</sup>, or where an individual applies<sup>4</sup> for variation of a direction previously given by the statutory committee<sup>5</sup> as a result of conviction or misconduct<sup>6</sup>, or where a body corporate or a pharmacist's representative applies<sup>7</sup> for the revocation of a direction<sup>8</sup> to disqualify<sup>9</sup>, the application must be made in writing to the secretary of the statutory committee signed by the applicant, or, in the case of a body corporate, by a member of its board, and stating the grounds on which it is made<sup>10</sup>. No application for restoration of a name to the register may be entertained by the committee unless supported by a statutory declaration made by the applicant<sup>11</sup> and accompanied by at least two certificates of his identity and good character<sup>12</sup>.

1 For the meaning of 'the register' see PARA 888 note 4 ante; definition applied by the Pharmaceutical Society (Statutory Committee) Order of Council 1978, SI 1978/20, Appendix reg 1(a).

2 Ie under the Pharmacy Act 1954 s 8(2) (as amended): see PARA 920 ante. As to misconduct see PARA 920 note 2 ante.

3 Pharmaceutical Society (Statutory Committee) Order of Council 1978, SI 1978/20, Appendix reg 30(a).

4 Ie under the Pharmacy Act 1954 s 8(1): see PARA 920 ante.

5 As to the constitution of the statutory committee see PARA 917 ante.

6 Pharmaceutical Society (Statutory Committee) Order of Council 1978, SI 1978/20, Appendix reg 30(b).

7 Ie under the Medicines Act 1968 s 83(1): see PARA 922 ante.

8 Ie under ibid s 80 (as amended): see PARA 922 ante.

9 Pharmaceutical Society (Statutory Committee) Order of Council 1978, SI 1978/20, Appendix reg 30(c).

10 Ibid Appendix reg 30.

11 The declaration must identify the applicant with his application, the statements made in it and the required certificates: ibid Appendix reg 31. As to statutory declarations see CIVIL PROCEDURE vol 11 (2009) PARA 1024.

12 Ibid Appendix reg 31. One certificate must be given by a registered pharmaceutical chemist, and the other must be given by such a chemist or by a fully registered medical practitioner (see PARA 3 ante), a justice of the peace or a legally qualified holder of a judicial office: Appendix reg 31. For the meaning of 'registered pharmaceutical chemist' see PARA 889 note 1 ante; definition applied by Appendix reg 1(a). As to the power of the Council for the Regulation of Health Care Professionals to refer to the court a decision to restore a person to the register see PARA 306 ante.

#### **UPDATE**

#### **880-934 Pharmaceutical Chemists and Pharmacies**

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI 2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/9. PHARMACEUTICAL CHEMISTS AND PHARMACIES/(5) DISCIPLINE AND DISQUALIFICATION/(iii) Statutory Committee Procedure/C. APPLICATIONS FOR RELIEF FROM CONSEQUENCES OF PREVIOUS DECISIONS/931. Matters to be considered.

### **931. Matters to be considered.**

Where the name of an applicant for restoration was removed<sup>1</sup> on a complaint made by a person who himself appeared to present the facts of his complaint to the statutory committee, the secretary must, if he knows that person's address, give notice to him of the application and inform him that he may submit in writing to the committee any objection to restoration<sup>2</sup>. The secretary must communicate the substance of any such objection to the applicant, who may reply to it in writing<sup>3</sup>.

In considering any application for relief from the consequences of a previous decision<sup>4</sup>, the committee may take account of any information in its possession concerning the applicant's conduct since the date of the original direction<sup>5</sup>. The chairman may direct that the substance of any adverse report be sent to the applicant who must be given an opportunity of submitting a reply to it in writing, and the application must not be considered until after a reply from the applicant is received or a reasonable time for submitting a reply has, in the committee's opinion, elapsed<sup>6</sup>. Unless these steps have been taken, no adverse report may be taken into account<sup>7</sup>.

1    Ie under the Pharmacy Act 1954 s 8(1): see PARA 920 ante.

2    Pharmaceutical Society (Statutory Committee) Order of Council 1978, SI 1978/20, Appendix reg 32. As to the constitution of the statutory committee see PARA 917 ante.

3    Ibid Appendix reg 32.

4    Ie any application under ibid Appendix reg 30: see PARA 930 ante.

5    Ibid Appendix reg 33.

6    Ibid Appendix reg 33.

7    Ibid Appendix reg 33.

## **UPDATE**

### **880-934 Pharmaceutical Chemists and Pharmacies**

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI 2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/9. PHARMACEUTICAL CHEMISTS AND PHARMACIES/(5) DISCIPLINE AND DISQUALIFICATION/(iii) Statutory Committee Procedure/C. APPLICATIONS FOR RELIEF FROM CONSEQUENCES OF PREVIOUS DECISIONS/932. Consideration of the application.

### **932. Consideration of the application.**

Unless the chairman of the statutory committee directs that the application is to be considered in public, the committee must consider it in private<sup>1</sup>. Its procedure is such as it may determine<sup>2</sup>, but unless it decides to grant the application without a hearing, the applicant is entitled to appear before it in person or by a solicitor or counsel and to adduce evidence<sup>3</sup>. If the original direction was given following a complaint, the complainant may be given an opportunity of being heard or of submitting evidence as to any matter that appears to the committee to be material<sup>4</sup>.

The committee, if it thinks fit, may adjourn consideration of an application from one meeting to another<sup>5</sup>.

The secretary must communicate the committee's decision to the applicant and to any objector, and must communicate to the registrar<sup>6</sup> any direction to be acted upon by him<sup>7</sup>.

1 Pharmaceutical Society (Statutory Committee) Order of Council 1978, SI 1978/20, Appendix reg 34. As to the constitution of the statutory committee see PARA 917 ante.

2 Ibid Appendix reg 36.

3 Ibid Appendix reg 35(a). The committee must inform the applicant of these rights, but it is entitled to proceed with the application if he declines to appear or to adduce evidence before it, or if he fails to appear or adduce evidence on an occasion fixed for the purpose of which written notice has been posted to him at the address to which notice of an original inquiry (as to which see PARA 927 ante) would have been sent to him: Appendix reg 35(b).

4 Ibid Appendix reg 35(c).

5 Ibid Appendix reg 37. The provisions of Appendix reg 29 (see PARA 928 note 5 ante) as to the validity of the proceedings at the later meeting apply: Appendix reg 37.

6 For the meaning of 'the registrar' see PARA 888 note 1 ante; definition applied by ibid Appendix reg 1(a).

7 Ibid Appendix reg 38. Where appropriate, any such communication to the registrar must direct his attention to the Pharmacy Act 1954 s 11(2), which requires the approval of the Privy Council for registration or restoration of a name to the register where an appeal to the High Court has been dismissed (see PARA 933 post): Pharmaceutical Society (Statutory Committee) Order of Council 1978, SI 1978/20, Appendix reg 38. For the meaning of 'the register' see PARA 888 note 4 ante; definition applied by Appendix reg 1(a). As to the exercise of the powers of the Privy Council see PARA 886 ante. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

## **UPDATE**

### **880-934 Pharmaceutical Chemists and Pharmacies**

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical

Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI 2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/9. PHARMACEUTICAL CHEMISTS AND PHARMACIES/(5) DISCIPLINE AND DISQUALIFICATION/(iv) Appeals/933. Appeals by individuals.

## **(iv) Appeals**

### **933. Appeals by individuals.**

A person aggrieved by a direction<sup>1</sup> of the statutory committee<sup>2</sup> that a name be removed from the register<sup>3</sup>, or be not registered or restored to the register or be not registered or restored until the committee otherwise directs, or a person aggrieved by the refusal of an application<sup>4</sup> to restore a name to the register after removal for conviction or misconduct, may, at any time within three months from the date on which he has been given notice of the direction or refusal, appeal against it to the High Court<sup>5</sup>. On any such appeal, the Royal Pharmaceutical Society is to be made respondent<sup>6</sup>.

The High Court may, on any such appeal, make such order as it thinks fit, including an order as to the costs of the appeal and in particular as to the payment of any such costs by the Society, whether or not the Society appears on the hearing of the appeal; and the court's order on the appeal is final<sup>7</sup>. The registrar<sup>8</sup> must make such alterations in the register as are necessary to give effect to the court's order<sup>9</sup>.

If the High Court has dismissed an appeal against a direction<sup>10</sup> that a name be removed from the register, or that, until the statutory committee otherwise directs, it is not to be registered or restored to the register, a direction by the committee authorising the registration or restoration of the name does not take effect until it is approved by the Privy Council<sup>11</sup>.

1    Ie under the Pharmacy Act 1954 s 8(1): see PARA 920 ante.

2    As to the constitution of the statutory committee see PARA 917 ante.

3    For the meaning of 'the register' see PARA 888 note 4 ante.

4    Ie under the Pharmacy Act 1954 s 8(2) (as amended): see PARA 920 ante.

5    Ibid s 10(1). As to appeals generally see CPR Pt 52. The appeal is heard by the Queen's Bench Division: *Practice Direction-Appeals* PD52 paras 22.1, 22.3(1)(d). As to appeals generally see CPR Pt 52; and CIVIL PROCEDURE vol 12 (2009) PARA 1657 et seq. As to the consideration of appeals by the court see the cases cited in PARAS 188 note 14, 478 notes 5, 6 ante.

6    Pharmacy Act 1954 s 10(1); *Practice Direction-Appeals* PD52 para 22.3(4).

7    Pharmacy Act 1954 s 10(2). As to the finality of the court's order see the Supreme Court Act 1981 s 18(1) (c), which excludes the jurisdiction of the Court of Appeal (see CIVIL PROCEDURE vol 12 (2009) PARA 1705); and see generally *Re Racal Communications Ltd* [1981] AC 374, [1980] 2 All ER 634, HL.

8    For the meaning of 'the registrar' see PARA 888 note 1 ante.

9    Pharmacy Act 1954 s 10(3).

10   Ie a direction under ibid s 8(1): see PARA 920 ante.

11   Ibid s 11(2). As to the exercise of the powers of the Privy Council see PARA 886 ante. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

## **UPDATE**

### **880-934 Pharmaceutical Chemists and Pharmacies**

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI 2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).

### **933 Appeals by individuals**

NOTE 7--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/9. PHARMACEUTICAL CHEMISTS AND PHARMACIES/(5) DISCIPLINE AND DISQUALIFICATION/(iv) Appeals/934. Appeals by bodies corporate and pharmacist's representatives.

### **934. Appeals by bodies corporate and pharmacist's representatives.**

Appeal lies from a direction of the statutory committee<sup>1</sup> that a body corporate or a pharmacist's representative<sup>2</sup> be disqualified from carrying on a retail pharmacy business<sup>3</sup> or that any or all of the premises of a body corporate be removed from the register<sup>4</sup>, or from the committee's refusal to revoke such a direction on the application<sup>5</sup> of the person to whom it relates<sup>6</sup>. In these circumstances, the body corporate or other person to whom the direction relates, or the applicant for the revocation of the direction, as the case may be, may appeal to the High Court against the direction or the refusal at any time within three months from the date on which notice of the direction or refusal is given to him<sup>7</sup>.

On any such appeal, the High Court may give such directions as appear to it to be appropriate; and it is the duty of the statutory committee to comply with any such directions and, where appropriate, it is the duty of the registrar to make such alterations in the register as are necessary to give effect to them<sup>8</sup>.

No appeal lies from any decision of the High Court on such an appeal<sup>9</sup>.

1    Ie under the Medicines Act 1968 s 80 (as amended): see PARA 922 ante. As to the constitution of the statutory committee see PARA 917 ante.

2    For the meaning of 'representative' see PARA 913 note 1 ante.

3    For the meaning of 'retail pharmacy business' see PARA 903 ante.

4    Medicines Act 1968 s 82(3).

5    Ie under *ibid* s 83(1): see PARA 922 ante.

6    *Ibid* s 83(2).

7    *Ibid* ss 82(3), 83(2). As to appeals generally see CPR Pt 52. The appeal is heard by the Queen's Bench Division: *Practice Direction-Appeals* PD52 paras 22.1, 22.3(1)(b). The appeal must be supported by written evidence and, if the court so orders, oral evidence; and the appeal is by way of re-hearing: *Practice Direction-Appeals* PD52 para 22.3(2). The appellant must file the appellant's notice within 28 days after the decision that the appellant wishes to appeal: *Practice Direction-Appeals* PD52 para 22.3(3). The appellant's notice must be served on the registrar of the Royal Pharmaceutical Society: *Practice Direction-Appeals* PD52 para 22.3(4). The Society may appear as respondent and, for the purpose of enabling directions as to costs to be given, the Society is deemed to be a respondent whether or not it appears: Medicines Act 1968 ss 82(4), 83(3); PD 52 para 22.3(4). For the meaning of 'the registrar' see PARA 888 note 1 ante. As to the Society see PARA 881 et seq ante. As to appeals generally see CPR Pt 52; and CIVIL PROCEDURE vol 12 (2009) PARA 1657 et seq. As to cases in respect of appeals generally see those cited in PARAS 188 note 14, 478 note 6 ante.

8    Medicines Act 1968 ss 82(5), 83(3).

9    *Ibid* ss 82(6), 83(3). As to the finality of the court's decision see PARA 933 note 7 ante.

## **UPDATE**

### **880-934 Pharmaceutical Chemists and Pharmacies**

Pharmacy Act 1954 repealed: SI 2007/289. New arrangements are made for the professional regulation of pharmacists and pharmacy technicians: Pharmacists and

Pharmacy Technicians Order 2007, SI 2007/289 (amended by SI 2007/3101 and, with effect from a day to be appointed, SI 2009/1182). See also the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, SI 2007/441 (amended by SI 2007/3101, SI 2008/1553, SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007, SI 2007/442 (amended with effect from a day to be appointed by SI 2009/1182); the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, SI 2007/561 (amended by SI 2009/1182); and the Approved European Pharmacy Qualifications Order of Council 2007, SI 2007/564 (amended by SI 2007/3101).

#### **934 Appeals by bodies corporate and pharmacist's representatives**

TEXT AND NOTES 5-7--1968 Act s 83(2) amended: SI 2007/289.

TEXT AND NOTE 8--1968 Act s 82(5) amended: SI 2007/289.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/10. APOTHECARIES/(1) INTRODUCTION/935. Former meaning of 'apothecary'.

## 10. APOTHECARIES

### (1) INTRODUCTION

#### 935. Former meaning of 'apothecary'.

An apothecary was formerly a person who carried on the business which is now and has been since about the end of the eighteenth century carried on by pharmacists, that is to say, the preparation and sale of drugs for medicinal purposes and the compounding and dispensing of medicines. Gradually the apothecary assumed the functions of the physician, and the right of apothecaries to attend patients and to diagnose and treat their diseases was recognised by the law<sup>1</sup>, although the dispensing and compounding of medicines according to the prescriptions of others was and continued to be regarded as a most important branch of the duty of an apothecary<sup>2</sup>.

1 The preamble to the statute 6 & 7 Will & Mar c 4 (Exemptions of Apothecaries) (1694) (repealed) suggests that it was at that time part of the duty of an apothecary to attend and advise the sick as well as to make up and sell medicines. See also *Rose v College of Physicians* (1703) 5 Bro Parl Cas 553. In *Apothecaries' Co v Lotinga* (1843) 2 Mood & R 495 at 499, Cresswell J defined an apothecary as 'one who professes to judge of an internal disease by its symptoms and applies himself to cure that disease by medicine'. It appears from the Apothecaries Act 1815 that an apothecary was originally required to be able to prepare with exactness and dispense medicines from the prescriptions of physicians (see s 5 (repealed)), and that he should have skill and ability in the science and practice of medicine (s 14 (repealed)). Formerly, a surgeon could not recover his charges for medical treatment unless he was also an apothecary: *Allison v Haydon* (1828) 4 Bing 619, in which the judgments define what were then thought to be the respective provinces of physician, surgeon, apothecary and chemist. As to the recovery of fees by surgeons see PARA 222 et seq ante.

2 *Apothecaries' Co v Warburton* (1819) 3 B & Ald 40 at 43, where a farrier occasionally supplying and administering medicines not made up from the prescriptions of others was held not to be practising as an apothecary. See, however, *Re Palmer, ex p Crabb* (1856) 8 De GM & G 277, where the supply of medicines, not made up on the prescriptions of others, by a surgeon to patients was held to be evidence of practice as an apothecary.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/10. APOTHECARIES/(1) INTRODUCTION/936. Change in functions of apothecaries.

### **936. Change in functions of apothecaries.**

At the time when the Apothecaries Act 1815 was passed, the apothecary occupied an intermediate position between the doctor and the chemist. In modern times it may be said with accuracy that apothecaries, as a class of practitioner to be distinguished from registered medical practitioners<sup>1</sup> on the one hand and from pharmacists<sup>2</sup> on the other, have ceased to exist. In practice, apothecaries do not seek to perform the functions of pharmacists, and qualification as an apothecary is one of the methods of becoming a registered medical practitioner<sup>3</sup>. The profession of apothecary has become merged with that of medical practitioner and nowadays an apothecary is a registered medical practitioner to whom the general law applies as it does to other medical practitioners. As a result of this change in the status and functions of the apothecary many of the provisions of the law relating to apothecaries became obsolete<sup>4</sup>.

1 As to the practice of medicine see PARA 190 et seq ante.

2 As to the rights and functions of pharmaceutical chemists and pharmacists see PARA 880 et seq ante. For the restrictions on making arrangements under the national health service for the dispensing of medicines by persons other than registered pharmacists see the National Health Service Act 1977 s 43(2) (as amended); and HEALTH SERVICES vol 54 (2008) PARA 339 et seq.

3 As to the right of apothecaries to be registered as medical practitioners see PARAS 93, 99 ante, 940 post.

4 As to the repeal of the obsolete provisions see PARA 937 post.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/10. APOTHECARIES/(1) INTRODUCTION/937. Repeal of legislation.

### **937. Repeal of legislation.**

In 1989, following a detailed examination in conjunction with the Society of Apothecaries of London<sup>1</sup>, of the Apothecaries Acts 1815 to 1907<sup>2</sup>, the Law Commission, recognising that the distinctive functions of an apothecary had long been obsolete, concluded that the legislation had been superseded or was obsolete or unnecessary. The Commission therefore recommended the repeal of those Acts and allied statutory provisions, and its proposals<sup>3</sup> were implemented by the Statute Law (Repeals) Act 1989<sup>4</sup> which, however, expressly provides that the repeal of the Apothecaries Acts 1815 to 1907 does not affect the powers of the Society<sup>5</sup> to make provision in connection with the grant and holding of licentiates in medicine and surgery and of other qualifications<sup>6</sup>.

1 As to the Society of Apothecaries see PARA 938 et seq post.

2 Ie the Apothecaries Act 1815, the Apothecaries Act Amendment Act 1874 and the Apothecaries Act 1907.

3 See *Statute Law Revision: Thirteenth Report* (Law Com no 179; Cm 671) (May 1989).

4 Ie the Statute Law (Repeals) Act 1989 s 1(1), Sch 1 Pt V.

5 As to these powers see PARA 939 post.

6 See the Statute Law (Repeals) Act 1989 s 1(2), Sch 2 Pt II para 5.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/10. APOTHECARIES/(2) THE SOCIETY OF APOTHECARIES/938. Constitution of the Society.

## **(2) THE SOCIETY OF APOTHECARIES**

### **938. Constitution of the Society.**

The Society of Apothecaries is a livery company of the City of London<sup>1</sup>. It was incorporated by royal charter in the reign of James I as the Master, Wardens and Society of the Art and Mystery of Apothecaries of the City of London<sup>2</sup>. The charter was subsequently confirmed, for the main part, and the powers and duties of the Society were enlarged by statute<sup>3</sup>. Now that this legislation has been repealed<sup>4</sup>, the charter, so far as unrepealed, remains the basic instrument of government of the Society.

1 See CORPORATIONS vol 9(2) (2006 Reissue) PARA 1305 et seq.

2 Charter dated 6 December 1617.

3 See the Apothecaries Act 1815 preamble s 1 (repealed).

4 As to the repeal of the legislation see PARA 937 ante.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/10. APOTHECARIES/(2) THE SOCIETY OF APOTHECARIES/939. Functions of the Society.

### **939. Functions of the Society.**

The modern functions of the Society of Apothecaries in relation to medical education are provided for by the Medical Act 1983, which constitutes the Society as one of the bodies entitled to grant primary United Kingdom qualifications conferring upon the holders the right to registration under that Act<sup>1</sup>. The other functions of the Society are provided for by the byelaws and regulations of the Society which are made by virtue of its charter of incorporation<sup>2</sup>.

1 See PARAS 93 ante, 941 post. The right is subject to passing a qualifying examination (see PARAS 38, 94 ante) and satisfying the requirements as to experience (see PARA 95 et seq ante). As to the conduct of examinations see PARA 940 post. As to registration see PARA 99 et seq ante. For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

2 As to this charter see PARA 938 ante. Copies of the byelaws and regulations may be seen on application to the Worshipful Society of Apothecaries of London, Apothecaries' Hall, Black Friars Lane, London EC4V 6EJ.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/10.  
APOTHECARIES/(3) EXAMINATIONS AND QUALIFICATIONS/940. Conduct of examinations.

### **(3) EXAMINATIONS AND QUALIFICATIONS**

#### **940. Conduct of examinations.**

In order for the examinations held by the Society of Apothecaries to be qualifying examinations for the purposes of registration under the Medical Act 1983<sup>1</sup>, the standard of proficiency required from candidates must conform to the standard of proficiency prescribed by the education committee of the General Medical Council<sup>2</sup>. The Society, with the approval and under the directions of the education committee, may unite or co-operate in conducting examinations with other bodies entitled to grant qualifications registrable under that Act<sup>3</sup>.

Since the repeal of the Apothecaries Acts 1815 to 1907<sup>4</sup>, the conduct of the qualifying examinations held by the Society and related matters are governed by the byelaws and regulations of the Society<sup>5</sup>.

1 As to qualifying examinations see PARA 94 ante. As to registration see PARA 99 ante.

2 See the Medical Act 1983 s 5(2)(b); and PARA 57 ante. For the meaning of 'the prescribed standard of proficiency' see PARA 57 note 6 ante. As to the General Medical Council see PARA 13 et seq ante.

3 See *ibid* s 4(3), (4) (s 4(3) as amended); and PARA 93 ante. As to the control exercised by the education committee over qualifying examinations such as those held by the Society of Apothecaries see PARA 57 et seq ante.

4 As to the repeal of the Apothecaries Acts 1815 to 1907 see PARA 937 ante.

5 As to these byelaws and regulations see PARA 939 text and note 2 ante.



Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/10. APOTHECARIES/(3) EXAMINATIONS AND QUALIFICATIONS/941. Qualifications.

#### **941. Qualifications.**

The medical qualification granted by the Society of Apothecaries in accordance with its byelaws and regulations<sup>1</sup> is the 'Licentiate in Medicine and Surgery of the Society of Apothecaries, London'. This qualification is one of the primary United Kingdom qualifications which entitles the holder, provided he has passed a qualifying examination and has the necessary experience, to be registered under the Medical Act 1983<sup>2</sup>.

<sup>1</sup> As to these byelaws and regulations see PARA 939 text and note 2 ante.

<sup>2</sup> See the Medical Act 1983 s 3(1)(a) (as substituted), s 4(3)(d); and PARAS 93, 99 ante. For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

Halsbury's Laws of England/MEDICAL PROFESSIONS (VOLUME 30(1) (REISSUE))/10. APOTHECARIES/(4) USE OF TITLES; PRIVILEGES OF APOTHECARIES/942. Use of titles; privileges of apothecaries.

#### **(4) USE OF TITLES; PRIVILEGES OF APOTHECARIES**

##### **942. Use of titles; privileges of apothecaries.**

The Medical Act 1983 protects the use of the title of apothecary<sup>1</sup>. A licentiate in medicine and surgery of the Society of Apothecaries is entitled to such privileges as are common to all registered medical practitioners, including a right to describe himself as a qualified or registered medical practitioner<sup>2</sup>. However, he may not use the letters MD after his name unless he holds a degree entitling him to do so; nor may he so describe himself as reasonably to induce the belief in others that he has any medical qualification which in fact he has not<sup>3</sup>.

1 See the Medical Act 1983 s 49 (as amended); and PARA 190 ante.

2 See PARAS 190-192 ante. See also note 3 infra.

3 *R v Baker etc Justices and Clarke* (1891) 66 LT 416. In *Hunter v Clare* [1899] 1 QB 635, DC, it was held that a licentiate of the Society was not entitled to use the description 'physician and surgeon'; but it is not clear whether the principle of this decision is affected by the Medical Act 1983 ss 3, 4(3), 16(1), 17, 49, 49A (ss 3, 17 as substituted and amended; ss 4(3), 16(1), 49 as amended; and s 49A as added) (see PARA 99 et seq ante). The Apothecaries Act 1907 provided for the award by the Society of Apothecaries of London of a licentiate in medicine and surgery instead of the plain licentiate previously awarded by it, and the licentiate consequently became obsolete. As to the qualification now granted by the Society see PARA 941 ante. As to the repeal of the Apothecaries Act 1907 see PARA 937 ante.